



CITY OF West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of August 14, 2013

Members present: Vice Chair Christine Steel, Russell Axelrod, Lorie Griffith, Nancy King, Robert Martin, and Holly Miller

Members absent: Chair Michael Babbitt

Staff present: John Sonnen, Planning Director; Chris Kerr, Economic Development Director; and Megan Thornton, Assistant City Attorney

CALL TO ORDER

Vice Chair Steel called the meeting to order in the Council Chambers of City Hall at 6:30 p.m.

WORK SESSION

Discuss proposed CDC and Comprehensive Amendments intended to eliminate ineffectual and inefficient regulations to encourage positive economic development ("Cut the red tape project")

The Commissioners examined the July 26, 2013 version of the public hearing draft. Mr. Kerr planned to try to identify areas that may be redeveloped and put a report together for the public hearing.

City Council Goals (2003)

Commissioner Axelrod had edited and distributed a revised version of the 'Council Goals Adopted Feb. 5, 2003' which he titled, "Citizen Vision Goals for the West Linn Comprehensive Plan." He explained that having clear vision statements would help planning. The draft goals could be vetted at a public hearing. The Commissioners generally agreed to do that and to reinsert Goal 8, removed in the preliminary draft as suggested by Commissioner Miller. Commissioner Axelrod agreed to add back an existing goal he had removed: (Goal 8 'Maintain openness and accessibility for the public to the members of the City Council') and to submit a revised draft back to Mr. Sonnen.

Goal 9 - Economic Development

The Commissioners agreed to not strike the paragraph under Background and Findings that reported that residents had clearly expressed an interest in retaining the City's quiet residential character.

50:44

Goals

Staff explained that Economic Development Goal 4 to 'Ensure' there was adequate commercial and industrial land for a range of employment opportunities in the City, did not mean the City's

intent was rezoning. It was about meeting state and Metro requirements to have enough commercial/industrial land for projected population and employment. Making the most of existing commercial/industrial land was a way to achieve it. Vice Chair Steel observed the majority of Commissioners would not change Goal 4.

54:29

Recommended Action Measures (RAM)

The Commissioners were equally split on whether or not RAM 14, to explore the availability of high speed data connections, should be removed. They would let the City Council decide. The question of the cost to the City was raised. Commissioner Martin suggested the City might get into that business and might even make a profit.

LAND USE APPEALS

99.160 Decision by Director. The majority of Commissioners supported changing the code to say that not less than three members of the Commission or the Council could order a review of the final decision of the Planning Director.

1:25

Type, Scope and Application for Appeal or Review (99.280/99.250). Ms. Thornton, Mr. Sonnen and Mr. Kerr talked about the differences between a *de novo* appeal hearing, which would be holding an entirely new hearing as if the Planning Commission had never heard the matter; and an on-the-record appeal hearing, in which the City Council examined the record of the Planning Commission hearing and then determined whether or not the grounds for appeal were substantiated. They clarified that in an on-the-record hearing the applicant could not bring an entirely different application to the City Council, but could make changes to it if the changes would not require applying new code criteria. They pointed out the proposed criteria afforded the Council a few, limited, opportunities to reopen the record if there was a factual error or there had been a procedural error.

The Commissioners observed an on-the-record hearing would encourage the applicant to bring their best product to the Commission hearing. Ms. Thornton confirmed for Vice Chair Steel that if the Planning Commission had denied an application because it did not offer a good enough benefit to the City an on-the-record appeal hearing would allow the applicant to add something to the application that might be viewed as a greater benefit to the City. Commissioner Martin questioned how this proposed change related to economic development. Mr. Kerr advised the proposal was about both economic development and removing wasteful, redundant and ineffective procedures and practices of the City that wasted taxpayer dollars and staff time. He advised the *de novo* process was costly; devalued Commission decisions; was not predictable enough; and harmed citizen involvement when new evidence that others had not had a chance to review was suddenly allowed at the last minute. He advised that allowing neighborhood associations to appeal for free allowed them to drag the process out. Commissioner Miller advised that not everyone was feeling they had been heard regarding the proposal as the EDC had primarily contacted businesses.

Commissioner Axelrod discussed Application provision A.3, which called for the party who sought to appeal to provide a statement that clearly and distinctly identified the 'exact grounds' for which the decision should be reversed or modified. He suggested that might be too much to ask them for in the time they had to appeal. He would remove 'exact' so the petitioner only had to outline the basis for their appeal. He suggested there could be other reasons for appeal besides what was listed as A.3.a-c (which were that the approval criteria had been misapplied and that there was a factual error or a procedural irregularity). For that reason he did not support striking provision D, which specified that the appeal or review application 'may state grounds for appeal or review.' Ms. Thornton advised being more specific meant the petitioner had to do more than generally allege that approval criteria had been misapplied. They would have to specify what those criteria were. That would provide fair warning to the other party so they could be prepared to argue their position on it. Commissioner Axelrod held the word 'exact' should be removed. Vice Chair Steel then indicated the Commissioners would strike 'exact'. The Commission recessed for ten minutes.

1:55 to 2:07

Vice Chair Steel reconvened the meeting and asked for a show of hands of those in favor of the on-the-record hearing and in favor of not charging neighborhood associations an appeal fee. She announced the result was that the Commissioners unanimously supported that. She asked staff to remove the word, 'exact.'

END 1 CD/START 2 CD

Commissioner Martin reported former Mayor Norm King had told him the City had once held on-the-record appeal hearings, but had gone to *de novo* hearings primarily because there had not been enough time for people to assemble their arguments before the hearing. Commissioner Martin suggested if the City was going to have on-the-record appeal hearings they should extend the public notice period and publish the staff report about three weeks prior to the Planning Commission hearing in order to give the public more time to review the material and prepare for the hearing. Mr. Sonnen indicated that he would evaluate the implication of releasing the staff report earlier.

2 CD /4:00

75.040 Time Limit on a Variance and Special Waivers

Mr. Kerr and Ms. Thornton clarified that a variance was granted based on a hardship. A special waiver allowed the applicant to do something that was better than what the code would allow. A waiver would not help an applicant overcome a hardship.

60.070 Approval Standards and Conditions

The Commissioners discussed the following two proposed changes to conditional use criteria:

~~A.3: The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.~~ The proposal will not have significant adverse impacts on the

livability or usability of nearby properties due to noise, glare from lights, late-night operations, odors, litter, or privacy and safety issues.

A.7. ~~The use will comply with the applicable policies of the Comprehensive Plan. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, or precludes the use of surrounding properties for permitted uses in the zone.~~

Mr. Kerr and Ms. Thornton advised that if a conditional use was listed in a zone the City had already decided that use was acceptable in that zone per the Comprehensive Plan and could be allowed after the requested use was closely looked at (in regard to things such as scale and impacts) to determine if it fit that area. They advised that if the Commission did not think a particular use should be on a zone's list of conditional uses they should change the ordinance to remove it. *Mr. Kerr left the meeting.

At the end of this discussion the Commissioners had reached stalemate regarding whether to recommend the above changes or not. They agreed to continue discussing them at a future time. Comments and concerns heard during this discussion included that:

- The sentence about the overall needs of the community should be retained, with 'community' defined. (Commissioner Miller)
- The 'community' was West Linn. (Commissioner Griffith)
- The criterion, 'Overall needs of the community' had been very relevant in the water treatment plant case.
- If the Commission objected to a proposed conditional use which was not on a zone's list they would rely on 'overall needs of the community.' (Commissioner Martin)
- The new language proposed for A.7 was not sufficient. Decisions about conditional use should also be based on the Comprehensive Plan and the community vision. (Commissioner Axelrod)
- Demonstrating 'will not have significant adverse impacts' was sometimes extremely difficult for people to do and it was a lower level of evaluation than the current wording, so 'significant' should be removed. (Commissioner Axelrod)

Ms. Thornton and Mr. Sonnen advised that the 'significant adverse impacts' standard was whatever the City Council determined it was when it interpreted its own code. It was not necessarily the way it was applied in environmental law case rulings. Removing the qualifier, 'significant' impacts would mean even slight impacts. Each zone listed uses that were permitted (allowed outright) in it or could be allowed as conditional use if the use met the criteria for conditional use. One could not apply for a conditional use if it was not listed in that zone. Consistency with the Comprehensive Plan would have been considered when the original ordinance that adopted the list of conditional uses in a zone was approved. If the Commission did not like some things listed as conditional uses then they should amend the code. Commissioners Martin and Axelrod then offered the following comments:

- The conditional uses list was always going to be incomplete. The Commissioners should imagine a use that was not on the list and that no one objected to that did not benefit the community, but was just for the applicants' own use. The Commission could not allow it. (Commissioner Martin)
- A suggestion that the criterion could give the Planning Commission the option to base a decision to approve or deny a conditional use on 'the overall needs of the community' in some cases. (Commissioner Axelrod)
- The Oregon Department of Land Conservation and Development guidelines Commissioner Martin had circulated advised that 'the criteria for conditional use would typically provide that the proposal is to be consistent with the Comprehensive Plan.' There should not be concern about staff having to go through the Plan policies to compare them to one or two conditional use requests each year because it would apply the "teeth" of the Comprehensive Plan. (Commissioner Martin)

Ms. Thornton related the intent of the change to Criterion 7 was to provide clearer guidelines, consistency and more certainty to the staff and the Commission and to people who were considering whether to apply for conditional use. It would reduce a legal risk that if staff did not prepare findings that dealt with some sub-policy they did not believe was applicable an opponent could try to base an appeal to LUBA on inadequate findings. State law required the City to make a finding under every applicable goal and policy. The process of preparing those findings used a lot of staffing resources and was why the staff reports were so lengthy. A better way to implement the Plan was by ensuring that every CDC ordinance the City adopted was directly in line with the Comprehensive Plan. If the Commission believed a use currently on the conditional use list should not be there they could consider legislatively amending the list.

2 CD/42:39

Commissioners Martin and Axelrod held the Commission should be able to base a conditional use decision on the Comprehensive Plan. Commissioner Axelrod reasoned the City was exposed to a certain level of risk of liability anyway. Commissioner Martin suggested the use might be on the CDC zone list but be inconsistent with the Comprehensive Plan. An example of that was that schools with under 200 students were on the list. Without the first sentence of Criterion 7 the Commission would not be able to look at whether such a use fit the community and they could not base denial on the Comprehensive Plan. Ms. Thornton again advised that the Commission could look at amending the list of conditional uses. That way an applicant would not think they could be able to get a permit when actually the Commission would never allow it in that location. She further advised that the school use would only be allowed if it met all of the other criteria related to things like size and impacts. Mr. Sonnen advised that state law said the Comprehensive Plan did not apply to decisions unless the CDC specifically called for it to do so. Vice Chair Steel observed the Commissioners were at stalemate about the above-proposed changes. The Commissioners decided to table that discussion for that night.

2 CD/51:33

Process

The Commissioners decided not to distribute a revised public hearing draft with the changes they had made so far because it was a work in progress and that might confuse people. They agreed to accelerate the schedule and hold a special work session on August 19.

Commissioner Axelrod could not be at the August 19 meeting. He planned to submit a list of the key issues he was concerned about. He highlighted some of them: Class I variance; diminishing neighborhood involvement; the threshold of number of units that determined who would review an application; that a hotel/motel should not be allowed in any area, but should where a master planning process showed the community wanted one; the question of why there were residential zone changes; the changes to height standards; the approach to tree management; and that the proposal did not seem to relate to the survey results. He reported what he found in reviewing the survey results: Permitting and parking were big issues, and all but a few of the responders thought things were going fine with the City. He said he was for anything that would streamline the process. He indicated he liked the concept of integration of multi-uses in the proposal that could make property use more viable.

Mr. Sonnen confirmed staff was still receiving and compiling comments for the record that would be in the hearing packet.

2 CD/1:24

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Mr. Sonnen planned to talk to IT about issues with the sound system. Commissioner Griffith encouraged them all to attend the centennial celebration that weekend.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Commissioner Miller asked if people were inquiring about bike use along the Rosemont Trail. Mr. Sonnen understood the City was working on resolving challenges related to getting easements for bike travel across driveways and putting warning devices where sight distance was limited.

ITEMS OF INTEREST FROM STAFF

Mr. Sonnen advised that the electronic tablets were being tested.

ADJOURNMENT

There being no other business, Vice Chair Steel adjourned the meeting at approximately 10:07 p.m.

APPROVED:

Christine M. Steel

Christine Steel, Vice Chair

10-30-13

Date