



CITY OF West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of October 23, 2013

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

Members absent: Holly Miller

Staff present: Peter Spir, Associate Planner; Sara Javoronok, Associate Planner; and Megan Thornton, Assistant City Attorney

CALL TO ORDER

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

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

Vice Chair Steel **moved** to accept the Minutes of August 14, 2013 with changes by Commissioner Axelrod. Commissioner Martin **seconded** the motion and it **passed** 6:0.

WORK SESSION

Discuss and refine draft Water Resource Area regulations, CDC 10-03

See the October 16, 2013 Staff Memorandum "Water Resource Areas, Repeal and Replacement of Chapter 32."

Mr. Spir reported that staff had more work to do on sections regarding density transfer and land division and integrating the WRA and PUD/Infill chapters. He highlighted particular aspects of the proposal as follows:

Applicability. The proposed map would replace the Engineering Department's Surface Water Management Plan Map as the basis for delineating the resources. The new map only showed the 26 miles of streams and not the many miles of buried pipes and roadside ditches the replaced map showed.

Exemptions. There were more exemptions for things like trails shown in master plans and lateral additions to homes that did not bring them any closer to the WRA. The concept was to use exemptions to steer the public in the right direction and award good behavior. A building or structural addition would now be limited to approximately the size of a two-car garage. Another, Metro-influenced limit was that just one accessory structure up to 120 s.f. and 10' high could be in the WRA and it had to be at least 50' from the water feature itself.

Approval Criteria (Section 32.060). This section contained a statement that addressed public concern that the City would try to exact property from applicants who came in for minor changes, such as a deck project, or require public access across private lands. It specified that the City would not pursue dedications from private property owners applying for permits not involving land division.

Setbacks from the water feature. Staff proposed to simplify the setback table. For example, on zero to 25% slopes the setback was 65'; on steeper slopes it was 200'; and it was 50' from riparian corridors or a ravine. If a property owner provided a geotechnical engineering report that showed slope stability would not be compromised by any development as close as 25' then the setback could be reduced to 25'. Staff did not think it made sense to impose a 65' setback from ephemeral streams which carried no water most of the time and that often did not even have a discernible channel. They proposed to make that setback 15'. The proposed code featured illustrations and footnotes to explain and clarify the starting point to measure the WRA from. The existing code was unclear and created an issue regarding road, driveway and utility crossing of streams. The proposed code specified that new roads, driveways and utilities were to avoid WRAs unless it could be demonstrated that no other practical alternatives existed.

Daylighting of streams. The proposed code offered a reduced setback in order to encourage people to open up and restore some of the many piped streams. The City would get mitigation on site or elsewhere.

Corrupted resources. Another Metro-influenced provision that would apply to properties where the quality of the resource was corrupted and disturbed and nothing could be done with them under the current code, would allow a developer to have consultants assess the function, quality and value of the WRA and propose restoration for the site and mitigation elsewhere.

Hardship provision (Section 32.110). Staff proposed to replace language that meant property owners had to demonstrate the code would deprive them of all economically viable uses of the land and that might mean they could only have a 600 s.f. house. The replacement language specified the basis was 'reasonable use' which would relate to that area's market and adjacent uses. Washington State used a similar provision. It allowed uses found in similarly zoned and sized lands in the area of the site. The current West Linn hardship provision allowed people to disturb up to 5,000 s.f. of the WRA whether the lot was as small as 8,000 s.f. or an acre or more. Staff proposed to make it more equitable by incorporating a sliding scale that would allow the owner to develop up to 30% of the WRA, or 5,000 s.f. of it, whichever was greater. Staff did not see the logic of counting area that was excavated for utilities and then backfilled and restored as disturbed area. If the proper erosion control measures were in place and the restoration was done professionally it would not be considered part of the disturbed area.

Land Division/Density Transfer. No subdivisions or partitions would be allowed for lots that were completely within a WRA unless it was to create a lot for dedication/conservation. Subdivisions and partitions were allowed on lots that were partially within the WRA. Staff planned to work on adjustments that would integrate Chapter 32 and Chapter 17 language regarding density transfer. Eventually they planned to shift more language regarding density transfer to Chapter 17 because Chapter 32's mission should be focused on WRAs and not about land divisions and density transfers.

21:59

Questions/Discussion

Mr. Spir confirmed that when the staff worked on integrating the WRA and PUD/Infill chapters they would look at whether someone could use the hardship provision on a large parcel and then on the lots created after it was subdivided.

Commissioner Axelrod wanted to know the basis for the 30% value in the '5,000 s.f. or 30%, whichever is larger' provision. He suggested some analysis of actual West Linn lots was necessary. On large lots the allowed amount of disturbed area might be out of proportion. Commissioner Martin suggested keeping the '5,000 s.f.' limit and eliminating '30%' because there was an alternative mechanism that people could use to have more than 5,000 s.f. if they demonstrated it would not harm the WRA. Mr. Spir advised the alternative process was intended primarily for disturbed sites. Commissioner Martin suggested expanding it so it applied to more than just disturbed sites. Mr. Spir advised that in some areas just putting in a 12-foot wide driveway consumed so many square feet that the owner had almost no developable area. Commissioner Martin observed the guiding principle was to protect as much land as necessary to protect the stream. He preferred to be able to apply the alternative method to any WRA permit so they could look at it on a case-by-case basis.

Mr. Spir recalled the code allowed someone to make lot line adjustments to make better use of lots. That approach allowed owners to have some reasonable return on their property. Ms. Thornton observed that the alternative process required owners to hire experts to justify their proposal. She suggested the proportional approach or setting the cap higher than 5,000 s.f. on a very large property to allow for increased development might make sense. She clarified the 30% of the WRA value came from the Troutdale code, which had been approved by Metro. She recalled in an earlier draft it was set at 50% of the entire property. The Commissioners asked staff to contact Troutdale to see how their limit was working for that city. Chair Babbitt observed the Commissioners wanted a little more research done on how the 30% provision would actually impact properties in the City.

Staff clarified for the Commissioners that the WRA and PUD/Infill code efforts had begun separately as ad hoc projects. At this point they thought the best approach was to finish the projects while coordinating the language related to density transfer and land divisions in both chapters so they reconciled with each other. Then, eventually, they would consolidate it into Chapter 17. They needed more time to work on the reconciliation. At this meeting they

Commissioner Griffith asked how 32.040.A.2 Vegetation Maintenance was enforced. She recalled a situation where an area had been restored, but later the non-native plants had come back and created a nuisance. Chair Babbitt advised enforcement was complaint driven. Mr. Spir observed that requiring people to get permits to behave well and do things like remove invasives and put in native plants was not encouraging them to do that, so the amendments would exempt them from having to get permits for it. He noted a WRA had many functions. If it was there for transporting flood waters or as wildlife habitat it did not matter if it had blackberries in it. Ms. Thornton advised if the situation Commissioner Griffith described was a nuisance the Municipal Code ordinance regarding noxious growth could apply and offer an enforcement mechanism.

Commissioner Axelrod advised that the proposed WRA code was fairer, more straightforward, and more flexible, while protecting actual resources and not everywhere water was pumped through pipes. That reduced what the City was required to track by 75%. He said the committee did not want to produce overly burdensome regulations on small property owners who just wanted to do little things around their homes. He recalled reading a comment about having an exemption for really little things. Mr. Spir advised there was already language in the proposal that provided that the Planning director could excuse an applicant from having to get a consultant. He noted that since the director was not a trained biologist it would have to be painfully obvious to anyone that they should be excused. He estimated staff would complete the impact analysis related to the 30% disturbed area in about ten days.

59:31

Public Comment regarding WRA code

See written public comments at <http://westlinnoregon.gov/planning/planning-commission-special-meeting-9>

Ann Miller had submitted a September 3, 2013 email. She was concerned that 32.110 language related to hardship allowance required that the lot had to be recorded on or before January 1, 2006. She questioned the fairness of allowing the same amount of disturbance on an R5 lot as on a larger R10 lot. She related that she and her neighbors had postponed dividing their lots because it would result in much higher property taxes. She had once planned to divide her 2.5-acre property into four lots; then sacrificed one lot when the setback increased; and then lost another lot because the driveway was considered disturbed land. She indicated that was a huge economic loss that impacted her retirement investment. She suggested changing the language to just refer to property owned in the applicant's name prior to January 2006.

Audrey Lazar, Failing St., described her particular circumstance that her house, walkway and driveway footprints currently totaled around 5,000 s.f. and she wanted to eventually put a small addition on her house. She wanted to know if she could only expand vertically. She also asked if the proposal had anything to do with removing trees. Mr. Spir advised there were exemptions for owners of property that was in the WRA that would allow them to expand without having to get a WRA permit, which included lateral additions that did not go any closer

to the creek. He invited her to meet with staff to discuss her specific circumstances. He clarified the proposal did not address tree removal.

Alma Coston, 5798 Hood St., asked for clarification regarding dedications, easements and public access. Mr. Spir advised that there was no language in this code that gave anyone the right to walk on her private property. The City could not go in and create trails, rights-of-way, etc. on private property. There was an explicit statement about that in the proposed amendments. Ms. Coston was concerned that when people were allowed to use trails across private properties the chance of fire increased tremendously. She asked if the City was going to allow restoration of a specific property. Mr. Spir indicated he was not aware of any preapplication conference about a boat barn and Chair Babbitt suggested she meet with staff to talk about the specific property. Ms. Coston clarified that in *Horsey v. City of West Linn* the application had not been turned down because of the access for utilities, but for lack of a definition of 'disturbance.' She hoped the proposed code contained a clear definition.

1:12

Discuss and refine draft PUD/infill regulations, CDC 10-02

See the October 18, 2013 Staff Memorandum "PUD and infill code amendments"

Ms. Javoronok presented the proposed amendments. Since the process began in 2010 the task force had met more than 20 times. She wanted the Commissioners to look at the draft and offer comments and suggestions before she prepared the public hearing draft. She also wanted them to discuss the citizen involvement strategy. She clarified that the draft they were looking at color-coded staff and task force recommendations, which sometimes were different. She related that, unlike the current code, the proposed code did not force a PUD when there were natural resources/constrained areas on the site. There was an alternative code to go to.

Flag lot development. The intent of the proposed changes was to make flag lots work better. Staff recommended having units front on lanes and access drives so some houses would not be looking at the back of other houses; and keeping the existing 20' front yard setback. The task force recommended a 10' front yard setback and a 20' garage setback. The task force would reduce allowable height the closer the structure was to the neighbor but staff recommended addressing this through screening or other methods as it was difficult to regulate height.

Planned Residential Development. Both the staff and the task force wanted to provide flexibility in lot size and FAR and to allow for a mix of housing types. Staff proposed to include an option to allow density transfer from natural resource/constrained areas within a PRD if the property owner wanted to do that. The draft retained density bonuses the existing PUD code provided for, but expanded them to allow density bonus for providing aspects such as affordable housing, open space and parks. The draft code retained the current code's open space requirements.

Approval criteria were substantially the same as the existing code with some wording changes.

- Compatibility. A planned development was to provide some kind of community facility or preserve some natural or historical resource.
- Site design was to be something beyond what could be done under the usual code. It might relate to parking, screening, circulation, materials, etc.
- Architectural design was to be something beyond what could be done under the usual code.
- Sustainability was to be incorporated into the development. That could be through aspects such as LEED or similar level buildings; transportation demand management; and pervious surface/green streets. The task force also suggested on-site generation of renewable energy.
- Transitions/buffers were to be incorporated between the site and adjacent properties.

The staff version had more extensive development standards. Perimeter lots could not be smaller than 75% of the lot size of the underlying zone. There had to be open space. Density could be transferred from natural resources/constrained areas. There was a density bonus for affordable housing, open space or parks. The task force recommended offering alternative development standards. An applicant could propose alternatives to the FAR and lot coverage limits. Perimeter lots abutting existing single-family homes could not be reduced to less than 75% of the minimum lot size for those homes.

Staff planned to put this code into a new Chapter 17 and eventually move related language from other chapters to it. Staff recommended adding code regarding the housing types of cottage housing and zero lot line development to this chapter.

Staff thought cluster development would apply to natural resource/constrained areas. Ms. Javoronok and Mr. Spir were still working on the details. Generally speaking, there would be a 50% transfer of density (similar to the current PUD code), but in areas of significant trees and somewhat steep slopes 100% density could be transferred. She clarified that this code would not apply to single lots that were completely encumbered by natural resource areas. Multiple lots that were encumbered could transfer density to a less constrained or impacted location but could not create new buildable lots. There could be up to 30% reduction of lot size, lot dimensions and yards (tables in the code detailed those reductions). The idea was to be able to move all development to the unconstrained portion of the site and put constrained area in a separate tract. It could potentially be dedicated to the City but it was more likely that it would be part of a homeowners' association or a conservation tract. The task force version would apply to natural resource/constrained lands or other areas. 50% of the density could be transferred from the sensitive resources area. It had a lot more detail about how to calculate density transfer. The idea was to try to make it as easy as possible for people to work with the code. The task force version recommended a 20% reduction in lot sizes, dimensions, and setbacks rather than the 30% staff recommended. The resource area was to be set aside in a separate tract, just like the staff version.

Alternative development standards (related to natural resources/constrained areas)

Cottage Housing. Staff proposed to allow cottage housing as an alternative development type. The Northwest had a lot of these types of developments, such as Salish Pond in Wood Village. They were generally groups of smaller, two-bedroom houses for one to two residents. The code would allow them to be constructed in groups of 4 to 12 houses. They were limited to 1,200 s.f. which was relatively large for this type of housing, but might make sense in West Linn. There were some design and open space requirements. Lot coverage would be limited to 40% and FAR would be the same as the underlying zone.

Zero lot line development. Staff proposed to allow this type of development. Side yard area was shifted to one side to make it a more usable yard space. This code would not apply to street-side yards or yards that were not part of a zero lot line development. Eaves could project over the property line. There would be a maintenance easement to allow the property owners to maintain the property. There were provisions to address privacy concerns such as window placement.

Citizen Involvement

Ms. Javoronok related that she was going to talk to the neighborhood association presidents organization; she would meet with any neighborhood association that asked her; she was going to update the project page on the City website and post the public hearing draft when it was ready; and, she was going to put the notice in the City's email blast and on social media.

1:31

Questions/Discussion

Ms. Javoronok clarified that TVF&R required a 12' gated accessway and 20' of unobstructed clearance, so emergency accesses on flag lots could not be smaller than that.

Vice Chair Steel wanted to know the difference between cottage housing and clustered development. Ms. Javoronok advised that one would cluster housing to protect a resource by transferring the density to an area of the site that did not have the constraint. The concept of cottage housing was to allow smaller houses which would be centered on a square. There might be a resource area on the site that they wanted to stay away from, but they could not transfer any density in this type of development. She was asked and clarified that a 10,000 s.f. lot might be too small for cottage development. She explained that in addressing slope gradients she had followed the code definitions of Type I and II lands. Those slopes would not be developed and the density would be transferred from those areas. Vice Chair Steel indicated she wanted to be sure people could not interpret the code as allowing them to build on steep slopes.

Commissioner Martin commented that cottage and clustered housing might work well if the site was large enough to allow opportunities for creativity. However, they might not work well on very small sites. He recalled the task force had set a minimum size of three acres for PUDs. Ms. Javoronok observed that someone might have a really good idea for a PUD on a 2.95 acre lot.

Commissioner Martin suggested in that case they should be told to buy more land, or there could be an exception provision. There had to be a limit so an applicant with an acre-size lot would not argue there was nothing in the code that said they could not do it. Then the Planning Commission would be forced to approve things they did not like.

Ms. Javoronok explained her thinking was that an applicant would propose clustered housing in a subdivision application. If they wanted to propose a PUD they would then also have to submit a PUD application. She thought applicants would prefer going through the clustered development process, which would still be a Planning Commission decision. Commissioner Martin indicated he wanted to draw the line at a minimum size because the Commission would have to apply the code. Chair Babbitt recalled the task force felt it was important to set the minimum at three acres. Part of the rationale was that city planners did not like PUDs so they would not try to promote them. He favored keeping the minimum size of three acres. He clarified he thought cottage housing was a type of PUD, which should have a minimum size of 3 acres. Ms. Javoronok advised the proposal was not written that way. It put cottage and clustered development in a separate category from PUD. Chair Babbitt recalled the task force had talked about cluster and cottage developments. They understood clustered and cottage housing was supposed to be within the PUD as forms of housing that would allow more flexibility in arranging houses in a PUD. Ms. Javoronok agreed the Commission could make them a type of PUD. The drafted code put them in a separate section. They did not necessarily have the same requirements as put forth in other parts of the PUD chapter because they would not work well with them. Under the draft code the developer did not have to apply for a PUD to be able to do cottage housing. She had looked at other jurisdictions' cottage housing codes. Some put it in the PUD section and some made it a separate section. It was a choice to make. Having it within the PUD chapter required applicants to take an extra step and apply for a PUD.

Vice Chair Steel asked staff to explain what a PUD was and what it was supposed to do. Ms. Javoronok explained a PUD provided more flexibility than a standard partition or subdivision. In exchange for that flexibility the applicant had to provide an additional feature that they would not otherwise be required to provide. Examples were some kind of community facility; a natural area, park or open space; site and architectural design that exceeded what the code required; incorporating sustainable elements; and ensuring there were transitions and buffers appropriate to the surrounding development. She agreed with Vice Chair Steel that in West Linn this choice was usually driven by some kind of constraint such as slopes or non-buildable areas. The City had small infill parcels that were not as easy to develop. The current code said if there were those types of constraints on your land you had to do a PUD but sometimes it was difficult to make a small piece of land meet the PUD requirements. The draft amendments would mean they would not have to any more if they used the clustered development code. Ms. Javoronok agreed that PUDs were usually on larger sites and used when the applicant wanted to provide a mix of housing types or do something creative that did not neatly fit the code requirements for a subdivision. Ms. Thornton observed that a PUD was not necessarily a response to environmental constraints. The developer might be able to meet the code but want to develop something much more interesting that was either aesthetically more pleasing

or more environmentally sound. Vice Chair Steel inquired why the City needed the PUD concept any more if they were going to allow alternatives like cottage and clustered housing. Ms. Javoronok suggested the PUD language, with the density bonuses for providing things the code did not require, was an incentive because it allowed the applicant to build more on their land. She clarified the cottage and zero lot line housing code she had written did not offer a density bonus because it already allowed clustering and concentrating development in a different way.

Vice Chair Steel asked where environmental constraints factored in. Ms. Javoronok clarified the staff version would not require a PUD if there was an environmental constraint. The applicant could do clustered development without a PUD application and that would be a much simpler process to go through. However, if they wanted to do a PUD and transfer density the same way they could in the cluster chapter they would have to provide the additional amenities, like a park or more open space. Vice Chair Steel asked if this was creating more choices than other communities typically offered. Ms. Thornton observed more choices offered more flexibility. Because of that it was more likely the City would see a better fit on a particular parcel.

Commissioner Martin was concerned that if they decoupled clustered development from the PUD process the result could be that there would be a clustered development in the R10 zone that did not look at all like the R10 development around it. Existing residents who had bought into an R10 area did not expect to see high density clustered development there. Ms. Javoronok pointed out that clustered development would allow a 20% (task force recommendation) or 30% (staff recommendation) reduction in lot size. That could mean R10 zone sized lots could be reduced to 7,000 s.f. in the development, but only if that was the amount of density transferred from the resource area. The resource area would be set aside in a separate tract. The overall number of housing units on the parcel would be fewer than there could be if there was no resource area on that parcel. Commissioner Martin recalled that the Suncrest development, where density had been transferred from a large area of WRA to another part where more houses had been built that would have been built had the density not been transferred. He said it was inconsistent with the surrounding neighborhood. He remarked that the Planning Commission had started this code revision project in order to avoid that in the future. If the clustered development was under a PUD and the PUD was limited to 3 acres he saw no problem because that was a large enough parcel to design something with a transition that would not impact the people around it. But on a small parcel like Suncrest there was not enough room and the result was a jarring transition in type and density of housing in that neighborhood. Chair Babbitt recalled they had decided to work on the PUD code because PUDs were required when there were constrained lands and because they saw that people were taking advantage of the PUD code because it was less stringent and the Planning Commission would not be able to impose restrictions on what was proposed. A planner had told them he would like to completely eliminate the PUD chapter, but they found they could not do that. They did not want to promote PUDs.

Chair Babbitt expressed his frustration that the task force had worked so hard and long on code, collaborating with staff, and then staff had changed it. Commissioner Martin recalled the same thing had happened with the WRA code, but the committee had met again after the legal review to go through it and understand what had been changed and why. He suggested the PUD/Infill Task Force could do that. Ms. Thornton explained that in regard to the WRA her legal review was focused on ensuring that all of the pieces of the code fit together and they were not moving backwards when they adopted new code provisions. Sometimes the result was reorganization and changes of definitions. She noted staff changes had affected both projects and made the process more complicated. Commissioner Martin observed that both projects had been affected by diverted staffing resources, communications problems, and shifting priorities. He advised it was important to follow the established procedures of involving all of the stakeholders so that when the proposed code was moved forward it was not a surprise to anyone and they were all sitting at the table and proud of it.

Ms. Javoronok indicated she had heard what the Commissioners wanted and would incorporate it. She was open to additional suggestions. Vice Chair Steel suggested they reconvene the task force members for a single meeting to show them the proposed chapter and ask for their feedback. It would show respect for the time they had already invested. She asked staff to take a closer look at the setbacks and height limits on flag lots that the task force recommended because the task force wanted to have more generous setbacks for the benefit of surrounding neighbors whose privacy would be affected by a new house built next to them. Ms. Javoronok agreed to do that and consider the impact on neighbors.

Chair Babbitt and Vice Chair Steel agreed to call the task force together again on November 13 to discuss the draft.

Commissioner Axelrod asked staff to provide locations of examples of developments the Commissioners could go to look at in order to get an idea of the spacial relationships. Ms. Javoronok agreed to do that. Commissioner Axelrod referred to zero lot line developments and indicated he did not like the idea of allowing eaves to hang over the property line. Ms. Javoronok advised there would be an easement in place that buyers would know about when they purchased. Vice Chair Steel asked what was gained by having a zero lot line development and why each house should not be positioned in the middle of its lot. Ms. Javoronok advised the result was a more functional side yard. She said she was aware of some in Portland, but they were hard to spot because they did not look that much different from what was around them. Commissioner Axelrod asked why the code should not allow cottage housing to be in a range of 1,000 to 1,200 s.f. or as large as 1,500 to 1,700 s.f. Ms. Javoronok advised the proposed code limited a single story cottage to 1,000 s.f. and a two story cottage to 1,200. That was actually larger than typical cottages. The higher range he suggested was closer to the size of standard size houses.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Griffith announced she had nominated Roger Shepherd for the Robert Moore Award for Outstanding Citizen. Chair Babbitt related that the City Manager had agreed to look into issues related to how their electronic tablets were organized. He announced the EDC director was about to mail a letter inviting neighborhood association presidents to attend the Commission's October 30 work session on the Cut the Red Tape project.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Chair Babbitt asked the CCI to look into what neighborhood associations did to increase citizen involvement in their meetings. Commissioner Martin suggested the City might set up a Listserve for each neighborhood association. Commissioner Griffith suggested all active members could invite a new person to the meetings. Commissioner King suggested making it easy for citizens to see what the 'hot topic' issues were on the City's website. Chair Babbitt announced that his term was ending and he had reapplied to serve on the Planning Commission.

ITEMS OF INTEREST FROM STAFF

Ms. Javoronok invited any Commissioner who wanted to fill the open spot for a League of Oregon Cities event on November 3 to contact the Planning Department.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the meeting at approximately 9:00 p.m.
APPROVED:

Christine M Steel
for Michael Babbitt, Chair

3-5-14
Date