



PLANNING COMMISSION

WORK SESSION

Minutes of March 5, 2014

Members present: Chair Christine Steel, Vice Chair Russell Axelrod, Jesse Knight, Robert Martin and Ryerson Schwark
Members absent: Lorie Griffith and Nancy King
Staff present: Chris Kerr, Community Development Director; and Sara Javoronok, Associate Planner

CALL TO ORDER

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

[Note: Video recording begins during consideration of minutes.]

APPROVAL OF MINUTES

Commissioner Martin **moved** to approve the Minutes of October 23, 2013 as corrected by Vice Chair Axelrod. Vice Chair Axelrod **seconded** the motion and it **passed** 3:0:2. Commissioner Knight and Commissioner Schwark abstained.

Vice Chair Axelrod **moved** to approve the Minutes of November 20, 2013 as corrected by Vice Chair Axelrod. Commissioner Martin **seconded** the motion and it **passed** 3:0:2 Commissioner Knight and Commissioner Schwark abstained.

PUBLIC COMMENT

No members of the public were present.

WORK SESSION

CDC-10-02 - Discuss PUD/Infill draft code amendments

The February 28, 2014 Staff Memorandum and Draft Amendments documents are available online at: <http://westlinnoregon.gov/planning/planning-commission-work-session-15>

Ms. Javoronok outlined the history of the project beginning with the Council resolution establishing the task force and the purpose, which was to provide the opportunity for additional infill housing and have infill housing that was more compatible with the surrounding area. She presented color-coded draft amendments showing what the task force recommended and what staff recommended in different colors. She advised some issues to be addressed were the differences between two versions of the amendments; recommendations in regard to flag lots; whether there should be a minimum size for a PUD and if so what size; transfer of density on steep slopes; and the kinds of lots that were often created in PUD developments.

Staff discussed flag lots. She compared the examples of older infill flag lots along Kenthorpe with a newer subdivision along Rosemont. She presented a table showing the differences between the height limits and setbacks proposed by the task force and by staff. She advised that the task force limits could be problematic because they would limit the types and sizes of houses that could be built on those lots. She advised that in regard to flag lot design and connectivity options, having the fronts of the houses face the accessway could provide mid-block lanes over time that would provide additional connectivity in areas where there were not many through streets and it might work better for people because the new houses would not face someone else's rear yard. Lake Oswego required that and it had been successful. The staff recommendation was to require the houses and garages to be oriented towards the lane; and, require screening and/or fencing, as appropriate, along the perimeter to provide privacy between front and rear yards.

Commissioner Martin indicated that he was concerned they were discounting the work of the task force. Mr. Kerr noted that one of the goals was to try to allow for different housing types. He thought the task force left it that cottage housing could be done in a PUD, but he said an alternative approach was to just codify the standards for it. Staff proposed separate standards for cottage housing.

Ms. Javoronok then discussed Planned Unit Development (PUD) and Planned Residential Development (PRD). She advised that PUDs provided more planning flexibility than traditional zoning and contained a mix of complementary uses. PRDs were primarily residential developments, but some contained limited commercial uses or other accessories and services. She showed a slide that listed some of the many existing PUDs in West Linn. She presented and discussed the example of the Trillium Woods development in Lake Oswego. That PUD's lots were smaller than the minimum lot size of the underlying zone (R-5: 5,000 s.f.); at 28' it was well below the height limit of 40'; and with 32 units it was in between minimum and maximum density (27 to 34). She advised that Lake Oswego had a higher Floor Area Ratio (FAR) and allowed slightly more lot coverage than West Linn, which affected massing. She pointed out that a lot of site area was set aside as open space. She clarified that the staff version of the proposed code made it the homeowners' association's responsibility to maintain the open space unless the City wanted it dedicated to the City.

Mr. Kerr explained the big picture was the City Council had taken action because the community perceived that PUDs were being abused – that developers were taking advantage of being able to have smaller lots and not giving anything back in terms of things like public amenities. Ms. Javoronok added that currently developers had to do a PUD on sites with natural resource-constrained land. Commissioner Martin recalled the Commission had been concerned because PUDs on very small parcels ended up with oversized housing that conflicted with the rest of the neighborhood. Mr. Kerr advised that if it was just avoiding an environmental issue, cluster housing was a way to deal with it instead of a PUD. Ms. Javoronok explained that the staff-recommended amendments carried out the task force's idea of

allowing sensitive area cluster development subdivisions for areas with WRAs or other constraints, but a developer who wanted to could go an extra step and do a PUD (which would require going through the PUD process; paying an additional fee; and providing some benefits).

Commissioner Martin asked why the task force proposed a 3-acre minimum for a PUD but the staff did not propose any minimum size. The 3-acre minimum would mean there would be enough space for it without giving up compatibility with the rest of the neighborhood. Mr. Kerr suggested the Commissioners think about the pros and cons. Three acres was a lot if the developer wanted to do a townhome PUD rather than a single-family-home PUD. They could not really provide enough amenities on a very small piece of property, for example, with only 12 lots. He advised it was common to use minimum lot size or minimum number of dwellings as the threshold. Ms. Javoronok pointed out the Trillium Woods example was clusters of townhouses on a 4.5-acre site. It was a fairly dense development of small lots. They had set aside significant area for open space.

50:59

Ms. Javoronok defined Cluster Development as development that was concentrated on a portion of a site while the rest of the site was undeveloped. The concept was to preserve natural areas to add some beneficial use to the community and transfer density from there to other portions of the site. She advised the current code did not provide for this type of development. However, there were some existing developments in West Linn that had reduced the size of the lots to preserve a natural area.

Staff summarized that a PUD was currently required in order to develop constrained lands. On smaller parcels that could be problematic, so they might need to set a minimum parcel size, but they did not want to preclude a 2.9 acre parcel either. It was a balancing choice. The land that was available for development in West Linn was constrained. Clustered development would retain natural resource areas and still allow the development. The staff proposal allowed lot sizes, dimensions and yards to be reduced by 30% while the task force recommended 20%. The staff proposal allowed constrained lands to develop with a PUD, if the developer chose to do that, but they would have to meet PUD criteria which included offering some additional benefits they would not have to offer with straight-out cluster development. In regard to Planned Residential Development (PRD) both the task force and the staff versions limited the development to residential; provided for flexibility in lot size, lot coverage and FAR; and allowed for a mix of housing types. The staff version set no minimum size; continued to offer the current code's option for density transfer; continued to offer the current code's offer of a density bonus for affordable housing, open space and for parks; and retained existing open space requirements. Approval criteria related to compatibility/public benefit and providing better design than the code would have otherwise required. Both versions of the draft listed sustainability features and appropriate transitions and buffers. The standards in the staff version allowed exceptions to the underlying zoning for FAR, lot coverage, lot size, yards and dimensions, and imposed additional requirements for perimeter lots. The existing code set no minimum size for a PUD. The task force draft set a minimum of three acres; and the staff version had no minimum, but would allow clustering of lots without requiring a PUD, which

they thought was a more practical alternative. The idea was to encourage developers to go that route instead of a PUD, which seemed contrived for property with WRA, and which had given the Planning Commission the most trouble. The Commissioners asked staff to provide a chart so they could better understand and compare the options.

Commissioner Schwark summarized that what he was hearing was that good clustering code would address a lot of the problems associated with shoving everyone, including people with smaller subdivisions, into a PUD if they needed to work around any type of natural features on the land. If they had good clustering code then they could look at setting a size threshold (acreage or units) on PUDS. He commented that three acres seemed like an awful lot of property in West Linn.

Mr. Kerr advised that Measure 56 notice was required. Staff agreed to research how many lots would be affected by a 3 acre minimum.

Commissioner Martin offered general guidance on what the values he was looking for were. He wanted to honor the work the task force had done already. If they overrode it they needed to provide a clear explanation why. His review perspective was how it would impact the existing neighbor. He indicated he thought it was a wonderful idea to introduce cottage housing in the code. Commissioner Schwark related that he lived on a flag lot in an older community and it fit the neighborhood very well. He agreed with Chair Steel that they should be thinking about infill flag lots separately from new development flag lots and ensure the infill lots were not damaging the livability of the surrounding neighborhood. Vice Chair Axelrod related the serious impact allowing more homes in the new, flag-lot-design, Rosemont Pointe development had on adjacent property owned by his brother. A house that was 40' tall and about five feet from the property line presented one big wall to the neighbor. He clarified for Commissioner Schwark that the problem was due to flag lot design, not general code setbacks. Staff advised that since Rosemont Pointe was approved the City had changed how they defined and measured height, so if it were built today it might be a bit lower. They advised that height was generally limited to 35' but in certain circumstances on a steeply sloped lot it could be as high as 45'.

Commissioner Schwark agreed with Commissioner Martin that PUDs should have proper buffer zones around their boundaries. He said it sounded like there was not a proper buffer at Rosemont Pointe and they had put a house where it impacted the neighborhood. Mr. Kerr advised that the task force version would have addressed the problem Vice Chair Axelrod had described by requiring the house to have tiered setbacks, where the second floor was set back even farther than the first floor. Vice Chair Axelrod indicated he agreed with that. Chair Steel noted the task force recommended buffers surrounding PUDs. Staff asked the Commissioners to consider whether it was most important to address how the development impacted what was around its perimeter and did it matter what it was in the interior portion of it, such as clustered housing. Ms. Javoronok advised that if Rosemont Pointe had been subject to the task force-recommended setback requirements none of the homes could technically have the second story. That would have affected marketability. The Commissioners should consider

that. Vice Chair Axelrod indicated he would balance having the developer of a major-sized development have a couple fewer homes with livability. Commissioner Schwark explained that the people who bought into the development knew what they were getting. He cared about the perimeter and how it affected the neighbors. Mr. Kerr advised that both the staff and task force versions were dramatic changes to what could be done on a flag lot property.

Commissioner Martin wanted to know why cottage housing was not proposed to be allowed in zones with larger-sized lots. Ms. Javoronok clarified it was allowed in R4-5 to R10. Lower-density zones were usually for property with some natural resources or site features and were where people did not want the level of development they would have with cottage housing. R3 and R2.1 were where they wanted more intensive kind of development, such as townhouses and apartments.

Commissioner Martin cited Arbor Cove as an example of a very livable development. Mr. Kerr observed it was pretty dense housing with tight driveways. Commissioner Martin noted they had a berm and a hill so one did not know it was there. Mr. Kerr recalled that everyone had loved a really creative development on Dollar Street with alternative housing type. It had been approved with variances, but never built. He asked the Commissioners to think about providing that kind of opportunity for creative solutions in the code and not write PUD language that meant that could not happen. Commissioner Martin agreed it was a great project.

Mr. Kerr clarified for Chair Steel that a developer with a parcel that was not quite 3 acres could not get a variance from the 3-acre PUD minimum under the PUD language. Commissioner Schwark suggested staff consider and recommend some rational minimum acres or units based on the land they had available in the City. Vice Chair Axelrod suggested allowing a PUD on a site that was within 10% of the limit to be a Planning Commission decision. Commissioner Martin referred to Alternative Development Standards language and cautioned not to allow any loopholes that would allow new large developments to have more impact on WRAs. Ms. Javoronok explained staff was moving, but not weakening, WRA code language.

Commissioner Martin recalled that one of the problems with PUDs had been that the developer dedicated the part that contained a WRA for a public park and then jammed the houses onto the remaining land. The city was ending up with many little, disconnected, parks that it had to maintain. He suggested that a larger PUD would have a better chance of being substantial enough to accommodate a public area such as a historical site. Commissioner Schwark wondered if they could require a homeowners association to take care of those public spaces or require them to pay toward the cost of the Parks Department being responsible for them. He noted it was a sort of back door tax, but if the City was going to get saddled with an additional public space then maybe there should be some incremental costs associated with that. Ms. Javoronok advised that for the most part, unless the City wanted to accept it, the property owners were to maintain those areas, and that was also the staff recommendation. Chair Steel recalled during the Suncrest review the Commissioners heard that the Parks Department did

not want the open space dedicated to the City. The Commissioners had been concerned that residents and successor residents might not be aware that the homeowners association was supposed to take care of it and no one would take care of the area. Mr. Kerr commented there was no easy answer if the City could not take control of them, but he was sure the City Council would like a recommendation related to that. Ms. Javoronok advised the City enforced when the homeowners association did not maintain it.

Vice Chair Axelrod asked if the Commission was going to be looking at new multi-use regulations separately. He noted some commercial lands could fall into multiuse and could be part of this. Mr. Kerr related that making modifications to the mixed-use district was on the front burner. He indicated that if the question was what was the allowable mix of uses one could have in a PUD, that was different, and he would advise against trying to address both commercial and residential in one planned development chapter. He said he thought they should stay separate. Chair Steel announced a ten minute break and thereafter reconvened the meeting.

The Commissioners and staff discussed what they wanted to see in the comparison charts they wanted staff to prepare. They indicated they just wanted to focus on the differences between the current code and the task force and staff versions and an explanation of why staff proposed something different. They pointed out there were five purpose statements in the staff version and seven in the task force version, and that the staff version did not address duration of approval. Commissioner Martin suggested positioning the blue and green (task force and staff) versions side by side on the website. When asked which components (clustering, PUDs, flag lots or cottage housing) had the highest priority, Mr. Kerr advised they should all be considered together, but if they had to drop one it could be one of the housing components. It was really important to fix the flag lot code, add the clustered housing component that was not there now, and fix the PUD code so it was on the books in time for the many applications he anticipated were going to come in.

Chair Steel indicated as a member of the task force she felt that for the most part staff had expanded on their work and improved the task force recommendation. Her only concern was in regard to the zero lot line concept that eaves could be over the lot line which would require the owners to be on the neighbor's property to clean their gutters. Commissioner Knight indicated he did not see a lot of huge differences in the versions. He saw improvements and clarifications. He agreed with Mr. Kerr this should be moved forward sooner rather than later because it would be a lot better than the code they currently had.

Commissioner Martin recalled the Commission had promised citizens they would make the code change that would require a 200' proposed trail segment to go through Planning Commission design review. It was in the Cut the Red Tape package, which would also require a Measure 56 notice. He inquired if the City could save money by using one Measure 56 notice for both packages. Mr. Kerr advised there had to be separate notices and the City Council was going to consider the Cut the Red Tape package in about six weeks. Notice pertaining to the

amendments the Commission was currently considering would be sent to owners of property that could be subdivided.

2:09

REVIEW PLANNING COMMISSION RULES

When the Commissioners considered the Rules they suggested changing attendance language to reflect what they actually did, which was that they responded to an emailed inquiry from staff. Staff was to then let all the Commissioners know who was going to attend the meeting. Mr. Kerr related that Assistant City Attorney Thornton was making changes to the language regarding *ex parte* contact and disqualifying a Commissioner who was biased. He asked them to wait to hear from her. He said Ms. Thornton was making sure the newly modified City Council rules meshed with those of the advisory boards because there were legal issues if they did not. The Rules referred to a Planning Commission 'subcommittee.' Mr. Kerr advised that only the City Council could create a 'subcommittee' and the related staffing resources budget had to be approved at a public hearing. That was a legal question for Ms. Thornton to advise them about. Chair Steel observed they would wait to hear what she advised. The Rules limited Commissioners' ability to request information from staff. Mr. Kerr advised the City Council followed a similar rule. He noted the Commissioners had made some pretty extensive requests for information during the Cut the Red Tape project. Vice Chair Axelrod characterized that as "collaborating." Commissioner Martin said they should just make a note to be sensitive to it. Commissioner Schwark anticipated Mr. Kerr would caution them at the point it became too much. Mr. Kerr confirmed that he would encourage them to ask clarifying questions of staff that did not take a lot of staff time to answer; and, that it was not considered an *ex parte* discussion. The Rules called for the Commissioners to refer to staff as 'Mr.' or 'Ms.' Commissioner Martin explained that he was "Dr. Martin" but he wanted to either be called "Bob" or "Commissioner Martin." Commissioner Knight suggested the overall policy should be professional courtesy. Commissioner Schwark suggested they modify the rule by eliminating the language regarding how they were to address each other and then indicating that the overall policy was that they were going to talk to each other professionally, using professional courtesy, but with mutual consent they could be informal.

Mr. Kerr clarified that if the City Attorney was not available to be present at all regular meetings he would arrange for another attorney to be present. He indicated that the meeting reporter requirement was fulfilled by having someone video-record meetings. Chair Steel related the Mayor had asked if the Commission could start their meetings a half hour earlier. Prehearing sessions and regular meetings would begin at 6:00 p.m. and 6:30 p.m. Points offered during the ensuing discussion included that they should determine if it was doable for the public; what affect it might have on staff time and cost; that it was not necessary to spend so much time on the staff report, especially when people were waiting to testify; that the Commission should stay on task and keep their focus on the criteria; that when the Commissioners made it a practice to arrange to leave work early so they could be at a Commission meeting the public could too, if it was important to them; and that Commissioner Griffith had told Chair Steel she was fine with meeting a half hour earlier, but they did not know Commissioner King's feelings

about it. Mr. Kerr related the City Council started their pre-meeting at 6:00 p.m. and their regular meeting at 6:30 p.m. They met twice a month even though the Charter only required them to meet once a month and at least one of those meetings was a work session. He suggested the Commission try to end their meetings by 10:00 p.m. Chair Steel agreed with Commissioners Schwark and Knight that if the public needed to get there they would. A half hour would not make that much difference and it could be that as many citizens might want it to start earlier as would want it later.

In regard to motions, Chair Steel offered to lend her copy of *Robert's Rules of Order* to any Commissioners who wanted to borrow it. Mr. Kerr clarified the sergeant at arms at the meetings was the planner. The Rules indicated that only the chair could break a tie. The Commissioners noted their practice was that the chair voted last. Mr. Kerr advised that was how they should continue to do it.

The Commissioners held a lengthy discussion about the Rule that allowed a Commissioner(s) to give someone who had used up their five minutes for testimony up to five more minutes in one-minute increments. Discussion comments were:

- It should be the exception rather than the rule. If someone had something really valuable to add a Commissioner would extend their time. It was useful to have a formal way of doing it so not everybody expected they would receive it.
- It had not been abused.
- The approach should be to give people as much time as they wanted so they could get their points out.
- It really did not matter if they kept the additional minutes for testimony language because the person testifying could talk longer if a Commissioner asked them a question. However, keeping the rule would be a friendlier, courteous, thing to do.
- If no Commissioner agreed to add a minute the person would not be able to speak longer.
- There would be people who made it a practice to insist on taking as much time as possible while not really giving the Commission facts.
- If someone was pounding the table the Commissioners should get to the reason they were so emotional. People had a right to have a temper tantrum. They should listen to everyone's opinion.
- If the chair asked the person who hit the five-minute limit for testimony if they needed more time and they said yes, it would be awkward if none of the Commissioners were willing to add more time. It would be better if a Commissioner who thought it was appropriate just chimed in that they would add an additional minute so the person testifying could complete their presentation.
- This would be at the Commissioners' discretion. Five minutes was a fair amount of time to have to make a point.
- How people who came to testify at hearings were treated influenced how they felt about the City. Some were terrified of public speaking. The Commission had been trying for several years to make it comfortable for people so come up to speak and they had seen the

effect that the quality of hearings went up. A few people might be belligerent and they would have to deal with them. The Commissioners' attitude and conduct towards people who testified should cause every person who came up to testify to feel honored that the Commission was giving them their whole attention and cared about everything they had to say. The Commission should always be on the side of making sure that people had the opportunity to say everything they felt they had to say.

- Limiting the time people had to testify encouraged them to structure and focus their testimony on key things so it was productive and the Commission got valuable information.
- Last week someone had testified that she did not understand something. But a hearing was the worst place to deal with that. She could have had a long conversation with staff that would have saved a lot of time and staff could have walked her through everything, step by step.

Chair Steel observed the consensus was that they were not going to change this, but they were agreeing to use the time extension rule with discretion and ask questions as the first line of allowing a person to extend testimony a bit if necessary.

Mr. Kerr planned to ask Ms. Thornton to clarify exactly when the public was allowed to ask questions of the Commission as the Commissioners found the rules confusing in that regard.

The Commissioners discussed whether each Commissioner should be polled at polling time, or if the chair should just invite any Commissioners to volunteer to share their initial thoughts at that time. Commissioner Schwark would have the chair invite them to talk. Commissioner Martin would continue to poll every Commissioner because it worked well because by the time everyone had spoken they had a good idea what the direction and issues were and what type of motion to make. If it was denial they would not have to waste time working on conditions of approval. Chair Steel did not agree it had worked well in the water treatment plant hearing because after the initial polling showed they were all opposed and they had each given their reasons they had not discussed them further. Everyone's opinion had gone into the findings even though she did not necessarily agree with all of them.

The Rules called for the Commissioners to explain their rationale. Mr. Kerr explained it was important to do that so staff had something to use when they prepared the findings supporting the decision. They should be very specific about what evidence they heard and how they were applying it to which criterion. Chair Steel explained that if she felt a Commissioner's decision was not based on the criteria she wanted to be able to discuss that. Mr. Kerr confirmed for Commissioner Martin that the motion to deny should include the criteria it was based on.

Commissioner Schwark then related that in regard to polling Commissioner Martin had persuaded him that the initial polling revealed the issues they should be focusing on. If they were all opposed then they should talk about what the criteria they found were not met. Commissioner Knight indicated that if the rules had been working he would not change them.

Chair Steel recalled Commissioner King had not strongly supported mandatory polling. She suggested they talk about it again later when Commissioner King was present and then decide.

The Commissioners discussed the rule that only the chair could break a tie. Discussion points included that the chair voted last, so the issue was probably decided by the time she would vote; if the chair voted early it might have undue sway on other members; if there was no need to break a tie the chair did not have to vote, so that way she could serve as a mediator and peacekeeper.

3:40

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Vice Chair Axelrod related that it was harder to find meeting notes and videos on the website now. Mr. Kerr confirmed staff was making changes. The Commissioners should let him know so staff could let the consultant know what was not working.

Vice Chair Axelrod explained he was disturbed about things he had heard on the recording of the Council's retreat discussion. He recalled that the City Manager had misrepresented to the City Council what the Planning Commission did and did not review and their ability to make unbiased opinions based on the facts and details and not their opinions. He indicated he was going to listen to the tapes more carefully and then discuss his concerns with staff. He thought the characterizations he heard indicated very serious discord. Commissioner Martin noted that one of the characterizations referred to a hostile work environment. He asked Mr. Kerr about it. Mr. Kerr confirmed he had not been in a hostile work environment at this meeting. He pointed out the Commission had a joint work session scheduled with the City Council on April 7.

Commissioner Martin indicated he felt the misunderstandings and exaggerations were because the City Council was not taking the time to listen to Planning Commission hearings. He also opined that a certain amount of blame was on the Planning Commission because they had not proactively communicated with the City Council. To illustrate the problem he said there had been a statement to the City Council to the effect that the Commissioners had dismissed Mr. Kerr's survey during the Cut the Red Tape project when that had not been what happened. After Vice Chair Axelrod asked for the full survey and all of the results the Commissioners had reviewed them and factored them into deliberations. He said the Planning Commission needed to address all of the mischaracterizations and not just sit back and let misconceptions build up. Commissioner Schwark observed that Vice Chair Axelrod and Commissioner Martin were wound up about something he had not seen. He said he did not want to be caught in the middle of a debate.

Chair Steel asked if the Commission could have a block of time (15 minutes) on the joint meeting agenda to discuss it. She recalled they had been expecting to talk about what went wrong with the Cut the Red Tape project at the January joint work session with the City Council but it never came up. That had happened two years in a row. Commissioner Martin suggested they could prepare for it ahead of time and talk about how they could better work together.

Commissioner Schwark indicated that he did not want to engage until he had a chance to review it himself.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Steel adjourned the meeting at approximately 10:20 p.m.

APPROVED:

Christine M Steel
Christine Steel, Chair

May 7, 2014
Date