



CITY OF West Linn

PLANNING COMMISSION

Minutes of November 20, 2013

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

Members absent: None

Staff present: Chris Kerr, Interim Planning Director; Zach Pelz, Associate Planner; and Megan Thornton, Assistant City Attorney

PREMEETING WORK SESSION

Chair Babbitt convened the work session in the Rosemont Room of City Hall at 6:30 p.m. Staff pointed out Commissioner Martin had suggested code amendments related to the Master Trails Plan. Staff and the Commissioners discussed general procedure for the hearing. The Commissioners anticipated they would vote on three motions related to a recommendation regarding the original amendments recommended by staff (the October 4 public hearing draft dated September 4); the Commission's alternative draft (dated November 20) and a recommendation regarding outreach for the Council hearing. They planned to clarify at the hearing that they intended to address tree protection standards in a separate process. Mr. Kerr advised the existing code regarding neighborhood association contact procedure was still in the document, but no one was proposing to make any changes to that section. Vice Chair Steel advised that she did not support keeping Citizen Vision Goals in the document. Chair Babbitt noted the Commission had asked neighborhood associations to submit ideas about what could be done to make on-the-record hearings work, but none had been submitted. Mr. Spir advised the primary concern related to the proposed WRA code was that the 'hardship' provisions needed some work. Mr. Kerr offered to arrange for IT staff to meet with the Commissioners to work out issues related to their electronic tablets. He discussed upcoming agendas. He and Chair Babbitt recalled the City Council had asked boards and commissions to try to be more efficient.

CALL TO ORDER – REGULAR MEETING

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:00 p.m.

PUBLIC COMMENT

Alice Richmond, 3939 Parker Rd., [unintelligible due to poor quality audio]

Roberta Schwarz, 2206 Tannler Dr., encouraged people to participate in the West Linn Pantry Turkey Drive and the Holiday Craft Fair.

APPROVAL OF MINUTES

Vice Chair Steel **moved** to approve the Minutes of August 21, 2013. Commissioner King **seconded** the motion and it **passed** 5:2. Commissioners Griffith and Axelrod abstained.

Commissioner Axelrod **moved** to approve the Minutes of September 4, 2013. Commissioner Miller **seconded** the motion and it **passed** 7:0.

Commissioner Axelrod **moved** to approve the Minutes of September 11, 2013. Commissioner King **seconded** the motion and it **passed** 5:2. Vice Chair Steel and Commissioner Miller abstained.

PUBLIC HEARING

CDC 13-01, CDC and Comprehensive Plan amendments intended to eliminate ineffectual and inefficient regulations to encourage positive economic development, CDC-13-01, "Cut the red tape project"

Chair Babbitt opened the public hearing. He recalled the previous vote to recommend the September version of draft code amendments had failed. He announced the Commissioners planned to conduct several votes related to a motion to not recommend the September version; a recommendation regarding the latest draft; and a recommendation on how to move forward with additional outreach. He announced the Commissioners planned to take up potential changes to CDC 55.100 related to trees as a separate matter from the current proceedings except for one change to one provision to clarify that the area of trees to be protected was to be "at least 20%."

Teri Cummings, 2190 Valley Ct., raised a point of order related to whether the process could continue because the Commission had previously voted against the draft amendments; the City Attorney's advice on process had not been placed in the public record; and the Commissioners had acknowledged that there had not been sufficient public involvement.

Ms. Thornton clarified that she had sent an email to the Commission just before the October 30 meeting that contained her advice to the Commission and that it was exempt from Public Records Law because of attorney-client privilege. She clarified that there had been a public records request for that information and she had released it to the requestor, but she did not believe it was in the record, which might not have been open at the time. She related that in her email she had advised the Commission that there had been two items to vote on at the previous hearing, which included the original public hearing draft, dated September 4, 2013. However, they had only voted on a motion related to the Commission's own, alternative draft. Chair Babbitt asked her to provide a copy of her email to be read aloud verbatim into the record prior to public testimony (see below).

Ms. Cummings asked the CCI to discuss making it clear that legal advice regarding process should be disclosed in the public record. Vice Chair Steel recalled Chair Babbitt had announced

at a previous meeting that they were going to reopen the record and have another work session and he had explained why. Chair Babbitt recalled when Karie Oakes had asked about process the Commissioners had discussed why they were moving forward.

24:30

Staff Report

Mr. Kerr pointed out the September 26 staff memorandum specifically removed (deferred) several items that raised concerns: 99.038 Neighborhood association contact; 99.060 Approval authority; 60.070 Conditional Use criteria; and 55.100(B) protection of natural areas (trees). He indicated he believed the Commissioners were on board in regard to waiting to address tree issues in a separate process and about not making any changes to the neighborhood association contact section, even though those sections were still in the draft. He showed a slide summarizing thirteen direct, positive, impacts of the amendments that were still proposed that would create more flexibility in code; streamline some provisions; and incentivize the kinds of developments the community wanted to see. He talked about two additional code changes that Commissioner Martin had suggested be included (see Mr. Kerr's November 20, 2013 Memorandum). One was a code provision that meant the City would not take private property for trails. The other would subject trail segments in excess of 200 feet to Class II Design Review by the Planning Commission. He recalled the Commissioners had discussed adopting those kinds of code provisions when they approved the Master Trails Plan. Chair Babbitt confirmed that.

Ms. Thornton provided copies of her October 28, 2013 email to the Planning Commission. Chair Babbitt read it aloud for the record as follows:

Good Morning all,

As I mentioned previously I believe further action is necessary. CDC 98.050(C) states that the "Planning Commission may on its own motion recommend to the Council an alternative recommendation; however, in addition, the Commission must take action on the specific proposal before it." The Commission never made a motion at all concerning the staff proposal, and if 98.130 was to be read the way that Ms. Oakes suggests, 98.050(C) would not have any impact. One of the cannons of statutory construction under Oregon law is that the courts will assume that the legislative body intended the code to comprise a workable whole; thus, a court would construe a statute in a manner that gives effect to related code provisions. Applying that cannon, I think a vote is necessary on the proposal, and it is the Commission's ability to make a true recommendation on the proposal instead of relying on the default provision. Thus, I would suggest that the Commission vote on the original proposal, as well as its own recommendation on October 30. I find nothing in Chapter 98 that would prevent the Commission from taking another vote on its proposal.

Megan

37:00

Public Testimony

[Note: Written testimony that was submitted at this hearing can be viewed on the website:

<http://westlinnoregon.gov/planning/economic-development-code-amendments>]

Tom Neff, 601 Marylhurst Cir., indicated that because he had not been aware there had been another document his written testimony might not mean anything now. Vice Chair Steel thanked Mr. Neff for his efforts.

Alice Richmond, 3939 Parker Rd., indicated she did not understand all of the proposed code changes, but if they would bring commerce and revenue to West Linn and benefit city residents instead of benefitting Oregon City and other cities then she supported them. She noted Ross had located a store in Oregon City, not West Linn.

Megan Bose, 19775 Derby St., indicated she had submitted written testimony on October 29. She supported keeping zoning laws because their intended purpose was to plan a residential city. She said citizen involvement and oversight were critically important. She said West Linn residents resided there because of the City's residential nature, tree canopy, parks and open spaces and great schools. She said the majority of residents favored economic development, but it should fit within existing infrastructure. She said additional outreach would be good.

Ed Schwarz, 2206 Tannler Dr., spoke for the Savannah Oaks Neighborhood Association. He read aloud excerpts from a letter from Dr. Martin Gilbert, 2594 Bronco Ct. In his letter Dr. Gilbert explained that West Linn's robust tree canopy and green spaces contributed to its high quality of livability and property value. Many physicians and clinicians had chosen to live in West Linn because of the City's emphasis on protecting its open, park-like environment. Dr. Gilbert cited a SE 122nd Avenue study as a blueprint for developing a livable, sustainable and healthy community. He suggested the proposed amendments would take West Linn in the opposite direction. He advised the Planning Commission to vote against them because they would 1) threaten retention of green spaces; 2) endanger the City's beautiful and valuable tree canopy; and 3) undermine the provisions which provided the process and opportunity for meaningful citizen input in decisions. He wrote that there should be frontloaded engagement of grass roots organizations and neighborhood associations before changes to the CDC or Comprehensive Plan were brought forward.

Mr. Schwarz then testified that the neighborhood association's position was that the document and the process were flawed. It had been a moving target. Although the Commission had taken some positive steps and rectified some issues, there were still issues the neighborhood was concerned about. They did not want to change from *de novo* appeal hearings because *de novo* gave citizens a chance to bring forward new concerns after the record was developed in the first hearing. They had jobs and it was difficult for them to keep up with the record, what the changes were, and what the proposal was in many applications. Mr. Schwarz noted the Planning Commission had changed the proposed provision which would have required a majority of Commissioners to agree to call up a planning director's decision. He asked them to recommend making the same change for the City Council, so two councilors could call for it. He indicated he believed if there had been more public notice/input at the beginning of this process it would not have cost the City so much staff and Commission time. (See Savannah Oaks Neighborhood Association Resolution dated August 6, 2013).

During the questioning period Chair Babbitt recalled the Commissioners had decided not to change the number of City Councilors because the City Charter called for a majority. Mr. Schwarz clarified that Dr. Gilbert resided in the Hidden Springs Neighborhood. Commissioner Axelrod explained the Commissioners had been trying to ferret out which were actually “cut the red tape” amendments and eliminate those which were controversial or needed to be clarified. Mr. Schwarz clarified that Association Vice President Ken Pryor had represented the Association at the work session when neighborhood association representatives met with the Commissioners. Mr. Schwarz clarified that they were comfortable with some changes in the draft and agreed a lot of it was cutting the red tape. However, they were trying to bring some aspects of it to light that were of concern because they would curtail citizen input.

Roberta Schwarz, 2206 Tannler Dr., had submitted “Testimony to the Planning Commission on November 20, 2013 Re: Cutting the Red Tape Amendments,” and a November 14 email. She pointed out her written testimony talked about seven items that should not be in the proposal. She testified that existing neighborhood association presidents had met and the majority of them had voted that those items should be eliminated. She explained *de novo* hearings offered the citizens a new, fresh start, and allowed them to present new information to the City Council during the appeal hearing. She indicated neighborhood associations had utilized the *de novo* process many times. She testified that a member of the Economic Development Committee had told her that change had never been discussed or proposed by the Committee. Ms. Schwarz was concerned that staff was adding things they wanted under the guise of the Committee. She held that it was very important to allow two City Councilors who saw an issue related to a decision to call it up. She asked the Planning Commission to recommend that.

During the questioning period Ms. Schwarz identified the Committee member she had spoken to as Linda Neese of the Chamber of Commerce. Chair Babbitt related that several other members of the Committee had also confirmed that and the Commissioners had discussed that very few of the items had come from the Committee. He noted many of the seven items on Ms. Schwarz’ list had been removed from the proposal. She identified the remaining issues as trees, *de novo* hearings, and allowing two Councilors to call up a decision.

Brenda Perry, 2286 Haskins Rd., had submitted written testimony. She related that she had participated in the Commission work session with neighborhood association representatives. She was concerned that two emails her husband had submitted were not included in the package of written testimony. Because she recalled the Commission had voted ‘no’ and acknowledged there had not been community input she questioned the legality and the additional cost of reopening the hearing and starting from scratch. She indicated the document was still flawed, complicated and messy. She noted it was not indexed, and it was hard to understand what was being changed and why. Although she appreciated that more community input would be solicited later she considered this putting the cart before the horse. She advised the City to have someone in mind and a purpose for a development and not just allow someone to build on vacant land so they could make a few dollars from it. She noted that

while there were long-vacant office buildings on Blankenship someone was proposing to build more next door and in other areas. Traffic was a problem. They should not let West Linn turn into a city of gridlock, empty buildings, and development for the sake of development. She asked the Commissioners to keep West Linn livable, consider carefully, and not just push through a document because it was before them.

Teri Cummings, 2190 Valley Ct., had submitted written testimony. She testified that the City Charter required a majority of City Councilors to make a decision, but Council practice when she served on the Council was to reserve the right for two Councilors to bring something up. She indicated she supported *de novo* appeal hearings. She cited the Holiday Inn Express case. In 2009 she and Councilor Kovash asked the Council to look at that conditional use approval. When the Council looked at it in *de novo* proceedings information had come out that the hotel could have been a fire trap because it did not meet fire safety standards. She contended that a requirement for a majority of Councilors to call something up would make it less likely the City would catch and correct an error. She clarified that *de novo* was not so the application could be changed later in the process. She reasoned that if Planning staff advised applicants of the limits of the code and what could or could not happen in the City so all of the dots were dotted, the T's were crossed, and the application met the code, there would be no reason for an appeal. She noted that professional developers could take time to work out aspects of an application with staff, but the general public only had a matter of days to understand what might be in their neighborhood. They knew their neighborhood and their input could help provide the accurate and complete information the decision-makers needed to make a good decision. She supported her neighborhood's recommendations to retain *de novo* hearings; retain the neighborhood's right to appeal without cost; retain the current requirement that all subdivisions and design review applications be heard in public by the Planning Commission and not the Planning Director; retain all current requirements for applicants to meet with neighborhoods; retain current tree protection codes; and retain current provisions that not less than two Planning Commissioners or City Councilors could call something up. She suggested addressing the problem the City might be having with *de novo* hearings by changing the language so it required appellants to have a basis for their appeal. She suggested they add a definition to the CDC for *de novo* that clearly supported 99.120, which limited the amount that an application could be changed.

During the questioning period Ms. Cummings explained that she and Councilor Kovash had been initially inclined to want to review the Holiday Inn decision because environmental protection had not been fully addressed. The safety issue had come out later.

1:16

Karie Oakes, 1125 Marylhurst Dr., referred to three documents she had submitted: her October 26 written testimony regarding the procedure; a public records request to have Ms. Thornton's emailed advice and the City's response placed in the record; and a document which contained Chapter 98 code related to procedure. She asked that the hearing be continued based on the facts that although Ms. Thornton's email had been read aloud at the hearing it was not in the hearing packet and no one there was prepared to address it; the procedure was confusing and

it was unclear when the record was open and when it was closed; and some of the written testimony was not in that night's hearing package, including her October 26 written testimony. She recalled that Ms. Perry had said her husband's written testimony was not there. Ms. Oakes said it was a slippery slope that the more missteps taken, the more things had to be done to cover them up. In regard to her public records request Ms. Oakes related that she had made the request on October 29 and not received a response until November 13, so she barely had time to review it.

Ms. Oakes cited and read aloud provisions of Chapter 98 code related to procedure (98.130, 98050.C, and 98.110) to rebut Ms. Thornton's argument for a whole new hearing. She held the Commission had taken action on the specific proposal before it - as the code called for - on October 2. She was not aware of any alternative recommendation made by the director, but if there was an alternative recommendation it was not in the notice, which was what the code required. She recalled the Commission had voted against recommending the modified proposal; Chair Babbitt had adjourned the hearing; and everyone had gone home thinking it was all over, because it was. Then Chair Babbitt had sent out an email regarding Ms. Thornton's advice that further action was necessary. The email said nothing about still being in deliberations. Ms. Oakes contended the procedure being used was out of order. She also noted that 98.110.C provided that if the Commission failed to recommend a proposed legislative change within 60 days of the first hearing the director was to report a failure to the City Council. She questioned why the current hearing was being held when it had been over 60 days since the first hearing on September 4. Ms. Thornton reported that she had notified the City Council about it at a Council work session after the October 2 meeting. She could not recall the specific date. Commissioner Martin mentioned that 98.110.C provided that the City Council could then choose to refer the proposed change back to the Planning Commission and he observed that was sort of what had happened.

The Commissioners and staff then discussed whether and how this was different from the typical, historical, process they had used; and when and what approach the Commission had initially talked about. Chair Babbitt indicated the Commissioners had never talked about moving this forward to City Council by presenting two separate recommendations in two separate documents. They wanted to move the Commission's recommendation forward anticipating that there would be a separate memorandum from staff that talked about areas where staff disagreed with the Commission's proposed language. Ms. Thornton recalled that the Commissioners had known what the staff proposal was and then decided as far back as September to hold work sessions to create their own, separate, proposal. Mr. Kerr indicated he planned to forward the Commission's complete, final, strike-out/underline formatted, document, with the recommendation on top, just as they had discussed from early on. Then, if the City Council wanted a separate document, staff would provide one.

Chair Babbitt and Commissioner Martin asked Ms. Thornton if the reason this was coming back to the Commission was because they had voted against Commissioner Martin's motion to recommend and had not made a specific recommendation to deny. She noted they were

relying on the default provision that if they did not recommend or deny it would go to the City Council as if they had denied it. She advised there was nothing in the code to prevent them from revisiting that decision as long as the City Council had not taken it up, so from a practical perspective it did not really matter and they could vote on the proposal before them that night. Commissioner Miller questioned that logic. Commissioner Martin questioned the legitimacy of a dual process in which the Planning Commission had worked on its draft in a public process but the staff recommendation, which would be forwarded to the City Council at the same time, had not had any exposure to the public. Mr. Kerr advised staff typically made alternative recommendations to the City Council at Council level; the Council often directed staff to do additional work and revisit issues, and come up with different proposals the Planning Commission had never seen; and staff always clarified for Council what the Planning Commission approved and why and what the staff alternative, or recommendation, was. He acknowledged this process was a little different because the Commission had clearly wanted their own document to go forward without staff comments on them. He noted staff had been clear about all of the various places they were in disagreement with the Commission recommendation and they had even gone through the list with the Commission.

Chair Babbitt asked if the staff recommendation would be the original public hearing draft that had been in the original notice and proposed to the Planning Commission back on September 4. Mr. Kerr advised that staff had reported about and documented everything that was changed and/or coming out of it. Chair Babbitt indicated he had reservations about holding a vote on that draft because he did not know what was in it. Mr. Kerr assured the Commissioners that the City Council would see the Planning Commission's document and hear exactly what the Commission voted for and why. They would also have the alternative options and recommendations from staff and the EDC so they could make an informed decision.

David Rittenhouse, 2101 Greene St., conveyed more documents from Ms. Oakes to the Commission. He said she wanted them to know that one document had been sent out six days before the hearing when it should have been sent out ten days before the hearing; and that this was a new hearing, with new drafts, but there was no written staff report being presented for this new hearing.

Mr. Rittenhouse related his previous experience as a neighborhood association president. He advised that *de novo* hearings were an "equalizer." Neighborhood associations were always at a distinct disadvantage because they had to catch every problem and every error on short notice. He called it "bait and switch" when a planner came to a neighborhood association meeting and presented a plan and traffic reports to them that were nothing like those in the final report. He said they could not depend on anything until the final report. He recommended a process in which the proposal would be frozen after it was presented to the neighborhood association so what they saw was what they actually got. He indicated there had been instances when he had pointed out errors in a planner's report. He told the Commissioners that if they wanted to cut the red tape, they should improve the process for the neighborhood associations as well as the Planning Department. He asked them to think long

and hard about taking away *de novo* appeal hearings as it was one of the few things that helped them defend neighborhoods and catch a mistake during an appeal.

Questions

Commissioner Martin asked the neighborhood associations to suggest changes that could be made that would help the neighborhood associations be informed and prepared for a Planning Commission hearing and make the process efficient enough that one hearing was all they needed. Mr. Rittenhouse recommended having neighborhood association officers on the CCI so it had their perspective.

Chair Babbitt recalled there had been a request to extend the hearing. Ms. Thornton advised the law that required a continuance when a request was made at the first evidentiary hearing applied to quasi-judicial proceedings.

Ms. Oakes raised a point of order that the draft and the written testimony received since October 2 hearing had only been made available to the public on November 14 when the CDC required it to be made available ten days before the hearing. Chair Babbitt noted the draft they were looking at was the draft they had examined at the October 30 work session. He noted the hearing had been continued to a date certain of November 20, so the draft had been out for at least 20 days. Ms. Thornton confirmed that. She recalled at their October 30 meeting the Commission had specified that staff was to turn out a packet on November 14 so there was time for the public to comment before the hearing. She was not sure whether the person placing the comments on the website had waited until November 14 to post all of them.

Ms. Oakes indicated it was a problem that the October 30 draft, which was on the website and was the version sent to the neighborhood associations, had been changed. Ms. Thornton and Mr. Kerr clarified that the changes the Commissioners verbally required at their October 30 meeting were in the current, November 20, draft. Ms. Oakes noted the current draft had only been available to the public for six days. Chair Babbitt clarified it was the document the Commissioners had looked at on October 30 and made some modifications to. All of the changes had been made in an open, public, process. Mr. Kerr reported it had been re-noticed exactly as required even though the code probably did not require that because the Commission had held the record open until a date certain [November 20].

Chair Babbitt closed public testimony. He announced a ten-minute recess and thereafter reconvened the hearing. At that time he announced the WRA hearing was going to be rescheduled.

2:16

Deliberations

The Commissioners discussed the process. Commissioner Martin suggested they proceed as they had planned and vote on three motions related to the staff proposal; the Planning Commission proposal; and a recommendation regarding public involvement. He noted that

while there may not have been a complete draft available ten days ahead of time all of the information in the draft was available as they had the draft and a public record of the changes to be incorporated into it. It had all been in the public domain longer than the required period.

Chair Babbitt remarked that this had been an extremely frustrating process that seemed to be going all over the place, and he honestly did not know how to fix it at this point. On October 2 they had recognized the process was flawed and that there had not been enough outreach and communication as far as to what the code amendments were about. During the month and twenty days since they had been discussing it, holding work sessions, and it had been in the paper. After 50 days he hoped people had gotten the point that it was not so much about economic development. He commented that he thought they had worked hard listening and compromising and trying to come up with the best code they could; they could make some changes people wanted during deliberations; they needed to take some sort of action because he doubted that delaying this further would result in a different outcome; and the City Council had made it clear that if the Commission took no action they would remand it back to the Commission and the Commission would then be in the same boat. He anticipated they would recommend an outreach and communication process prior to the City Council hearing.

Commissioner Axelrod indicated he agreed with Chair Babbitt's and Commissioner Martin's comments. He remarked that it had been a frustrating process. Throughout it they had tried to sort out what were reasonable, objective, changes geared towards the objectives. He saw things in the draft that should move forward, but he noted there were several things that the Commissioners disagreed about and should hold a separate vote on.

MOTION

Commissioner Martin **moved** to deny the September 4, 2013 public hearing draft from Planning staff with extreme prejudice. Vice Chair Steel seconded the motion and it passed 7:0.

2:25

MOTION

Commissioner Martin **moved** to modify the [November 20 public hearing] draft to reinsert the language in 99.280.A that provided that all appeals and reviews were to be *de novo*; and to delete 99.280.B and C. Vice Chair Steel **seconded** the motion and discussion followed.

Vice Chair Steel related that she had previously been convinced that on-the-record was the way to go with the exception of planning director's decisions. However, she now understood the importance of *de novo* hearings to the citizens and felt they should keep the *de novo* language as it was previously in the code. She recalled her experience working in an engineering department was that designers did not purposely not meet a schedule or deadline. Things just never went the way they wanted them to. Commissioner Miller agreed with Vice Chair Steel and her defense of planners. Commissioner Miller said she had been persuaded by testimony. The bottom line was that if they really wanted public involvement they needed to give the citizens that opportunity at every step they could, from start to finish. Every time she listened to testimony she had learned something. It was too big a burden to put on neighborhood

associations to do all the research for everybody when a case was heard for the first time, but they did have an obligation to be involved and educate their members. They should let their members know that the cut the red tape amendments were not necessarily about economic development. Vice Chair Steel related that presenters at training sessions she had attended had advised that whether to have *de novo* and on-the-record appeal hearings was each jurisdiction's choice. She indicated she thought retaining *de novo* was kind of a privilege and it was important for people who appealed to not over-use that privilege, because the issue would come up again.

Commissioner King related that she now felt that the topic of working with neighborhood associations was a big enough topic that the code should not be changed until the city really worked closely with the neighborhood associations and improved citizen involvement. Commissioner Axelrod indicated he agreed with all of the above comments and favored retaining *de novo*. He explained it was clear from testimony; from the fact that the maximum amount of time the public had to see the final plan was 15 days; and from his own experience trying to find a staff report on the website that the public did not have sufficient time to review complex projects. He agreed with Ms. Cummings that an appellant should have to provide the basis for filing an appeal. Chair Babbitt indicated that at some point he would like to see the City go to an on-the-record system, but they were not ready for it yet. He recalled the Commissioners had asked the neighborhood association representatives to bring them some ideas about how to make on-the-record appeal hearings work for the associations. He said the CCI should invite neighborhood association presidents and others to discuss that at its December 4 meeting. **The vote on the motion was conducted and it passed 6:1.** Commissioner Griffith voted no.

2:36

The Commissioners then considered a motion related to the specific language regarding *de novo*.

MOTION

Commissioner Martin **moved** to modify 99.280 by striking C, which provided that 'the appeal shall be limited to the provisions of 99.280'; to keep the language in 99.280 that had been deleted; and to delete the new language. Vice Chair Steel **seconded** the motion, but explained that she was concerned that they might not have the complete text section in front of them as they made this decision. Discussion followed.

Vice Chair Steel suggested that the motion should be to just reinstate the original language regarding *de novo*. Commissioner Martin clarified that his intent was to essentially leave this section unchanged. Commissioner Martin **withdrew his motion** in order to restate it. Vice Chair Steel **withdrew her second**.

MOTION

Commissioner Martin then **moved** to delete 99.170, 99.240, 99.250, 99.270, and 99.280, explaining that they referred to all of the *de novo* changes. Commissioner Axelrod **seconded**.

Vice Chair Steel explained that she wanted to have a wider net and a simpler motion to achieve the same thing just in case they had missed a particular paragraph. **The vote was conducted and the motion failed 7:0.**

MOTION

Vice Chair Steel **moved** to reverse the changes to Chapter 99 regarding *de novo* and have them revert back to the way they were originally written before the process began. Commissioner Axelrod **seconded** the motion. Chair Babbitt summarized that the motion would essentially put *de novo* back to its original state, including all of the chapters that it was referenced in. **The vote was conducted and the motion passed 6:1.** Commissioner Griffith voted no.

2:48

The Commissioners then considered a motion to add two CDC changes they had discussed when they heard the Trails Master Plan. [Mr. Kerr addressed them in his November 20 Memorandum to the Commission, 'CDC-13-01 – Additional provisions suggested by Commissioner Martin regarding the 2013 Trails Master Plan.']

MOTION

Commissioner Martin **moved** to add the two changes to the draft to add language to CDC 28.110(F)(5) to clarify that acquisitions and easements would be negotiated with willing sellers in accordance with city policy regarding property acquisition; and to modify 56.020.C and 56.020.D to indicate that any new trails would be subject to a Class II Design Review by the Planning Commission in a public hearing. Vice Chair Steel **seconded** the motion.

Commissioner Miller asked for assurance that those changes had been noticed so the public had an opportunity to comment. Chair Babbitt observed that the hearing notice covered Chapters 28 and 56; the specific, proposed, code language had been presented at the beginning of the hearing; and the Commissioners had talked about what code changes they would recommend at the time they approved the Trails Master Plan. Commissioner Martin disclosed that he owned property along the river which was not directly affected by the Trails Master Plan right now, but there was a potential interest. **The vote was conducted and the motion passed 7:0.**

2:53

MOTION

Commissioner Martin **moved** to completely delete section 99.038 regarding neighborhood contact required for certain applications from the draft before it went to the City Council [See Procedural Amendments pages 21-23.] He explained that he did not think it should be in the document if the Commissioners were not making any changes to it. Commissioner Axelrod **seconded** the motion and it **passed 7:0.**

2:55

Commissioner Martin recalled the Commissioners had discussed not making any changes to the tree code except for correcting the minimum protection in 55.100.B from 'up to 20%' to 'at least 20%' (see page 48).

MOTION

Commissioner Martin **moved** to restore the original language of 55.100.B but correct 55.100.B.2.b. on lines 2 and 6 to read 'at least 20%'; and, to strike the last sentence of 55.100.B [which was currently proposed to be struck]: 'Please note that in the event that more than 20% of the non-Type I and II comprise significant trees the developer should not be required to save the excess trees.' Commissioner Axelrod **seconded** the motion and it **passed 7:0.**

3:03

The Commissioners then revisited whether or not to include sections in the draft that they were not making any changes to. Commissioner Miller was concerned that if nothing was there it might not be clear to City Council that the Commission recommendation was to keep that code the same.

MOTION

Chair Babbitt **moved** to include Chapter 99.038 in the Planning Commission hearing draft and also all of the chapters related to the original language for the *de novo* hearing. Commissioner Axelrod **seconded** the motion and advised it should be bolded text. Chair Babbitt **withdrew his motion.**

MOTION

Chair Babbitt **moved** that even though the Commission was not making any changes to them the draft should include the language in CDC 99.038 and all of the language related to the original *de novo* appeal code; and, it was to be notated in bold letters at the top that the Commission was recommending no changes to those sections. Commissioner Miller **seconded** the motion and discussion followed. Vice Chair Steel suggested he modify the motion so it applied to anything else they wanted to revert back to the original language. She also expressed a preference for italics. Chair Babbitt **withdrew his motion.** Commissioner Axelrod **withdrew his second.**

MOTION

Chair Babbitt **moved** that any code language in the current public hearing draft that the Commission wanted to revert back to the original code language be included in the draft presented to the City Council; and, that it be notated in bold, italic, letters that the Planning Commission was recommending no changes to that code section. Commissioner Axelrod **seconded** the motion and it **passed 6:1.** Commissioner Martin voted no.

3:10

Commissioner Martin addressed the issue of domesticated chickens. [See Uses and Development Permitted related to 'agricultural and horticultural use' under Prescribed Conditions in CDC 08.050.4, 09.050.4, 10.050.4, 11.050.5, 12.050.5 and 13.050.7.] He noted Municipal Code 5.415 was not consistent with the proposed CDC amendments. It said 'except for domesticated chickens, no person shall keep or maintain livestock or poultry within the City.' The proposed CDC amendments essentially did not permit poultry or livestock within 100 feet of any residence. He suggested they keep the existing code except

to add 'and provided domesticated chickens shall not be permitted within 100 feet of any residence' if the goal was to regulate where people kept their chickens. He suggested they add the definition for Poultry that had been in the staff's draft: 'Any fowl, with the exception of domesticated chickens.'

MOTION

Commissioner Martin **moved** to change the drafted text by deleting 'poultry or livestock and other than normal household pets' and replacing it with 'Provided that domesticated chickens shall not be permitted within 100 feet of any residence other than the dwelling on the same lot.' He said that meant someone could not put a chicken coup next to a neighbor's house. Commissioner Axelrod **seconded**.

Vice Chair Steel suggested the proposed language might be targeted toward agricultural use of a poultry operation instead of a backyard chicken coup. Commissioner Martin referred her to the Municipal Code provision that 'No person shall keep or maintain livestock or poultry within the City.' Mr. Kerr indicated that staff would be glad to revisit the legal language in the light of Commissioner Martin's concern. He thought the CDC and Municipal Code would be aligned after the change because the Municipal Code had also been proposed to be amended and with the addition of the definition, Poultry. In the end what they were all trying to do was allow domestic chickens and regulate them under the Municipal Code. **The vote was conducted and the motion passed 5:2.** Vice Chair Steel and Chair Babbitt voted no.

3:19

MOTION

Vice Chair Steel **moved** to delete the Citizen Vision Goals recommendation. Commissioner Martin **seconded** and discussion followed.

Commissioner Axelrod said he agreed that City Council goals did not belong in the Comprehensive Plan, but these elements had been in the Comprehensive Plan for more than ten years and they were really beyond what he considered City Council goals. They had become key elements that citizens relied upon which reflected citizens' interests, the desires and aspirations of the City as he understood it, and they were what he had heard in public testimony. He held that goals of this nature were appropriate for a Comprehensive Plan and he would not want to lose them. He acknowledged that he had heard that they should not be making recommendations to the Comprehensive Plan that had not involved citizen input. He argued that citizens had been involved to some degree and the Commission was making all kinds of other changes to the Plan. He recommended keeping them as goals. He indicated that he was concerned that once they lost elements like this it would be very hard to bring them back.

Commissioner King recalled that a comprehensive plan was a long term document which was revised in a large community process and city council goals were kept outside of a comprehensive plan because they were short term goals that were changed frequently.

She indicated they should not just add back in citizen goals until they went through a process that affirmed they were the citizens' real goals. She would either leave the Comprehensive Plan the way it was until the Comprehensive Plan was redone, or strike the City Council goals.

Commissioner Martin indicated the idea of having citizen vision goals like this in the front of the Comprehensive Plan was a wonderful idea, but the goals should be developed through a process similar to the process that had created the city's vision document when they revised the Comprehensive Plan. One of the things he found offensive about the cut the red tape project was that it was staff's vision of what West Linn should be, not a product of citizen consensus, coming from the bottom up. The Planning Commission would be doing the same thing by putting their idea of citizen vision goals in the document. For those reasons he would leave the citizens vision goals out. He indicated he thought the other Comprehensive Plan changes were pretty innocuous but he would support a motion to remove them all because of the process. Commissioner Axelrod responded that the proposed vision goals were long term goals that had been in the Plan for at least ten years and were thus vetted; from what he had heard citizens liked the statements; and all they were doing was bringing them up to date as the Planning Commission could and should do periodically. He noted several of them were similar to statements in the West Linn Vision document, which did not carry the weight of the Comprehensive Plan in land use planning law.

Chair Babbitt said his understanding was that the 2003 City Council goals had been formally adopted into the Comprehensive Plan after a public hearing so he would hate to lose them. They might not belong in a summary list at the beginning of the document, but it was too late in the process to recommend incorporating them into appropriate goals and policies in the Comprehensive Plan. He indicated he thought that was a much larger job than the Planning Commission was prepared to do right now. He said he had originally been in favor of removing them, but now he favored keeping them where they were until the Comprehensive Plan was reviewed in the future. Commissioner Axelrod indicated he liked having them up front because they each reflected an element of a Comprehensive Plan section. They provided a sort of snapshot of what West Linn was interested in.

The vote was conducted on the motion to strike the Citizen Vision Goals from the beginning of the Comprehensive Plan and **the motion failed 4:3**. Commissioners Miller, Griffith, Axelrod and Chair Babbitt voted no. Commissioners King, Martin and Vice Chair Steel voted yes.

3:32

Commissioner Axelrod asked the Commission to revisit the proposed section 99.170 Hearing Procedures change from allowing two Councilors to call up a decision to requiring a majority. He said he understood a majority was necessary to make a decision, but he did not see how this could be a major problem for the City in terms of cut the red tape that two members could request a review.

MOTION

Commissioner Axelrod **moved** to restore 99.160.C.2 and 99.170.G.2 language to the original code language. Commissioner Martin **seconded** the motion and it **passed** 7:0.

MOTION

Chair Babbitt **moved** to continue the meeting to 11:00 p.m. Commissioner Martin **seconded** the motion and it **passed** 7:0.

3:37

*Commissioner Griffith left the meeting

Commissioner Axelrod referred to the Greater Flexibility topic section where a proposed change to 19.030 Permitted Uses would make the following permitted uses in areas of the General Commercial zone: (27) Lodge, fraternal, community center, and civic assembly along Highway 43 and along Salamo Road; and (28) Religious Institutions within the commercial districts along Highway 43 and along Salamo Road. He did not recommend making them outright, permitted, uses because he felt the city should develop plans for various commercial areas and address it then. Chair Babbitt recalled the two uses had to be addressed together and pointed out the proposed change would only permit them outright along Highway 43 and Salamo Road. In other areas they were conditional uses. Commissioner Axelrod clarified that his main objection was permitting them along Salamo Road.

MOTION

Commissioner Axelrod **moved** to strike the recommendations to allow lodge, fraternal, community center, and civic assemblies and religious institutions as permitted uses. He indicated that allowing them on Highway 43 might make better sense than allowing them on Salamo Road, but a process should evaluate where it was appropriate to put them. The motion **failed for lack of a second**.

MOTION

Commissioner Axelrod then **moved** to allow lodge, fraternal, community center, and civic assemblies and religious institutions as permitted uses along Highway 43 but not along Salamo Road. Vice Chair Steel **seconded** and discussion followed.

Chair Babbitt observed that removing 'along Salamo Road' meant those uses would not be permitted along Salamo Road - they would be conditional uses there. Commissioner Miller questioned whether there was any land left to build out along Salamo Road. Commissioner Martin asked Mr. Kerr to explain why this was proposed and what the impact of each choice was. Mr. Kerr said he understood the proposed change had been proposed by the Commission and not the staff. Part of the rationale might have been that it was not necessary to go through a conditional use process to locate a community center along Salamo Road into an online commercial center. He noted the youth center was located in that shopping center. He asked

the Commissioners to consider that a Mexican Restaurant was a permitted use in the center and why a community center should be treated as a conditional use.

3:43

Commissioner Axelrod indicated that he felt it was appropriate for the community center [to be permitted there], but he did not feel it was appropriate for religious institutions to be permitted use because of the impacts to the community they had because of their size and aspects such as the traffic they generated. However, his motion lumped them together because of the attorney's advice that they should be treated the same. The vote was conducted and the **motion failed 5:1:1**. Commissioners Miller, Griffith, King, Vice Chair Steel and Chair Babbitt voted no. Commissioner Axelrod voted yes. Commissioner Martin abstained, explaining that he did not sufficiently understand the implications.

3:45

Commissioner Axelrod referred to the proposed change to strike the following provision related to Lot Dimensional Requirements in various residential zoning district:

~~4. The lot depth comprising non-Type I or II lands shall be less than two and one half times the width, and more than an average depth of 90 feet.~~

He recalled that he had asked for some analysis because he had concerns about the implications of infill in existing neighborhoods and along the river. He recalled the Commissioners had determined that having this provision made no sense in R15 and larger lot zones, but it did have an effect on smaller lots.

MOTION

Commissioner Axelrod **moved to not make the proposed change to strike provision 4 in the R10, R7 and R5 zoning districts. The motion failed for lack of a second.**

3:47

Chair Babbitt indicated he was concerned about the proposed change to 46.080 Computation of Required Parking Spaces and Loading Area which would count on-street parking as part of the minimum parking requirement. He indicated that this would worsen the existing parking problem. He related that consultants had advised that parking would be an important economic aspect to be looked at in the Arch Bridge/Bolton area. He related that he sometimes took his family to dinner outside the city after they could not find a place to park near a restaurant in West Linn. He was concerned that as the city grew some road segments on which on-street spaces counted toward the parking requirement would be widened and those spaces would go away.

MOTION

Chair Babbitt **moved to reinstate the old language of 46.080.E. Commissioner King seconded and the motion passed 5:1:1**. Commissioners King, Martin, Miller, Griffith and Chair Babbitt voted yes. Vice Chair Steel voted no. Commissioner Axelrod abstained.

3:54

MOTION

Commissioner Martin **moved** to recommend that the City Council adopt CDC-13-01 with all of the changes to the November 20, 2013 public hearing draft the Commissioners had voted on during the hearing incorporated. Commissioner King **seconded** and the motion **passed** 7:0.

3:56

The Commissioners then discussed their recommendation on how to move forward prior to the City Council hearing. Commissioner Axelrod suggested the City Council should do additional outreach and make the project's objectives very clear to the public. He encouraged them to ask for more analysis. He recommended they look at the whole issue of whether the survey supported the proposed changes. Commissioner Martin would put the Commission's and the staff's recommendations on the website so the public could compare them and be informed at the City Council hearing. Commissioner King recommended that the City Council actually go out and meet with the neighborhood associations and other organizations and educate everyone about what the code changes meant prior to the public hearing. Vice Chair Steel recommended that when the Council picked up some of the items that had been tabled because they were controversial they should ask a task force or group of citizens to ensure there was full representation of what the citizens would like to see. Chair Babbitt suggested they ask the neighborhood associations to get together and formulate a recommendation regarding those things. He suggested calling the project what it was. It was not 'economic development' but land use regulations and policies. They should be clear about what the Planning Commission was recommending as contrasted with what the staff was recommending. He hoped that if the City Council involved neighborhood associations they would now have been involved for long enough that they would recognize the differences between the two documents and discuss them. Vice Chair Steel suggested if the Council re-labeled the project they should stipulate "formerly known as cut the red tape amendments."

Commissioner Axelrod suggested the Commissioners should positively address how to move forward with some elements they had left on the table because they disagreed with the staff approach. He remarked that if the Council was interested in economic development there might be other approaches that they take toward economic development. Chair Babbitt indicated he would rather focus on a recommendation to move forward to get the best document possible and fix the process.

The Commissioners considered various suggestions to write a letter to the City Council with their recommendations; discuss the differences between the Commission's and the staff's recommendations at a joint meeting of the City Council, Planning Commission and involved citizens; and recommend that the City Council create a task force of involved citizens and neighborhood association representatives. Commissioner Miller recalled the CCI had previously sent the Council a recommendation about input from stakeholders. She would recommend that the City Council sit down with (at a minimum) the neighborhood associations, with both documents in hand, when they were going to put things that had been taken out of the document back into it. Then they should come to the Planning Commission for its recommendations.

MOTION

Chair Babbitt **moved** to recommend that prior to the City Council hearing on this project there should be a joint work session of the Planning Commission, City Council, and stakeholders in the city. Commissioner Miller **seconded** and discussion followed.

Vice Chair Steel questioned what there would be to talk about because they had taken pretty much all of the teeth out of their recommended draft. She suggested the time to hold a joint work session and bring in members of the community was when the City Council wanted to take up the things that had been tabled. Commissioner Martin suggested they invite the neighborhood association presidents and compare the differences between the two draft proposals at the session. Chair Babbitt clarified that 'stakeholders' included everyone who had been involved in the Planning Commission process from the very beginning.

MODIFICATION OF MOTION

Chair Babbitt **modified his motion** to a motion to recommend a joint meeting of the Planning Commission, City Council and citizens who had been involved in the process (those who had "standing" and not limited to neighborhood association officers) and let the City Council decide how they wanted to go about it. Commissioner Miller **seconded** the motion.

Commissioner King observed that there had never been a conversation about the project between the City Council and the Planning Commission and there had to be one. **The vote was conducted and the motion passed 6:1.** Vice Chair Steel voted no, explaining that it was only because she thought the group would be too large to be productive. Chair Babbitt closed the hearing.

WORK SESSION

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

This session was to be rescheduled.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Martin thanked Mr. Kerr for his pleasant demeanor and positive attitude while enduring a lot from the Commissioners over the past six months and for helping them get through it all. Commissioner Miller announced that her term was ending in December. She had enjoyed serving on the Commission but she had not reapplied.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Chair Babbitt announced the CCI meeting would be held on December 4. He encouraged everyone to come and bring their ideas.

ITEMS OF INTEREST FROM STAFF

None.

4:26

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 11:45 p.m

APPROVED:

Christine M Steel
for Michael Babbitt, Chair

3-5-14
Date