



PLANNING COMMISSION

Minutes of October 29, 2014

Members present: Chair Christine Steel, Lorie Griffith, Nancy King, Jesse Knight and Ryerson Schwark
Members absent: Vice Chair Russell Axelrod
Staff present: John Boyd, Planning Manager; Zach Pelz, Associate Planner; and Megan Thornton, Assistant City Attorney

PREHEARING MEETING

Chair Steel convened the work session at 6:00 p.m. in the Rosemont Room of City Hall. Mike Robinson and Rob Morgan were present with the Commissioners and staff. Commissioners and staff discussed procedure related to admitting an additional item into the record that staff advised was not new evidence and how to respond to points of order. They also discussed the script and the right of other parties to be at the hearing recording it.

REGULAR MEETING - CALL TO ORDER

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

PUBLIC HEARING

ZC-14-01/PLN-14-01, Amend the Comprehensive Plan map designation from “Commercial” to “Medium-high Density Residential” and change the zoning map designation from “OBC” to “R-2.1”. Continued from October 1, and October 15, 2014.

Chair Steel opened the hearing. Ms. Thornton outlined the applicable criteria. There were no declarations of conflict of interest, bias or *ex parte* contact (including site visits) since the previous hearing. When invited to, no one challenged the impartiality of any Commissioner.

Staff update

Mr. Pelz discussed the October 29, 2014 staff memorandum regarding written testimony from Paul Olenginski and Jennifer Rupert, postmarked September 29, 2014, which had been inadvertently omitted from the October 1 hearing package. No one present objected to placing it into the record.

Commissioner Schwark **moved** [\[inaudible: likely moved to place the letter in the public record\]](#). Commissioner Griffith **seconded** the motion and it **passed** 5:0.

Rebuttal

The applicant’s team was Michael Robinson, Perkins Coie, LLP, 1120 NW Couch St., 10th Floor, Portland (97209); Rob Morgan and Mike Mahoney, ConAm Properties, LLC., 3990 Ruffin Rd., Ste. 100, San Diego, CA (92123); Brendon Buckley, Johnson Economics, LLC, 621 SW Alder St., Ste. 605, Portland, OR (97205); and Brent Ahrend, Mackenzie, 1515 SE Water Ave., Ste. 100, Portland (97214). Mr. Robinson talked about why the applicant asked for the zone change,

noting it was not an approval criterion, but seemed to be of high interest to the public. He advised the process allowed zone changes and such changes reflected changes in the economy, the neighborhood and the community.

In regard to the approval criteria in CDC 105.050 Mr. Robinson held the applicant had met their burden of proof. The OBC zone was very unlikely to be developed. The evidence showed that there was simply no demand for the vested 300,000 s.f. office project, that kind of use, and that kind of vertical mixed use in suburban areas (with the exception of one Hillsboro project). Another problem was that OBC zoning was ambiguous in terms of allowing multifamily uses with retail making a developer reluctant to try to develop a multifamily use with retail spaces that they were both uncertain would be approved and that they did not think make sense at that location. He indicated they wanted a dynamic retail development and having just a few live/work units or some retail on the ground floor did not work. He noted ConAm built apartment projects. They had provided the Site Map because someone said they thought they were trying to move it up the hill when they were not. He referred to the Site Map, noting it made sense and worked well to place the three acres of open space with mature trees at the top where it buffered single-family homes and leave about 1.2 acres of OBC down on the road.

Mr. Robinson summarized how the applicant had met the burden of proof. This was a great site for multifamily development as it had transit access; was next to a nice City park; was close to three shopping areas; was buffered from six single-family houses on the north by the open space and trees; and it was buildable for multifamily as they had showed. One could build smaller footprints that stepped up the slope instead of two massive buildings including office which required a lot of site work. The proposal reduced vehicle trips generated by the best office project by about two-thirds, which opened up capacity in the 10th Street corridor and at the interchange. The applicant had worked with ODOT and city staff prior to submitting the application to make sure they were in agreement that the application satisfied the TPR. The record showed that ODOT agreed with their analysis. CDC 105.050 required TPR compliance. The applicant had to show there was no significant effect. It was very clear under Oregon law that when they showed a reduction in trips they had satisfied the TPR and did not need to do a full study. When they applied for design review that process would require a full traffic study, which they would provide. CDC 105.050 allowed the Commission to consider the economic benefits to the City which were significant in terms of property tax and permit/SDC revenue, new jobs and new household spending at businesses. The School District had not appeared in opposition. The applicant had used the student generation tables to calculate 45 kids while others said it would be about 100, but the reality was the School District would find a way to serve the additional students whether they were generated by the proposed zoning or by multifamily development under OBC zoning.

In regard to neighbors' concern that they had not been able to access the first work session, Mr. Robinson advised that no decisions had been made at the work session and under Oregon law any error was cured when it was immediately followed by a *de novo* hearing.

Mr. Robinson concluded that the applicant had satisfied Comprehensive Plan policies. There was no evidence to the contrary in regard to the information regarding economic benefits they

had submitted. They did not have an adverse impact on surrounding properties. They satisfied the TPR. They satisfied public need by generating additional opportunity for multifamily development. Their economic study showed there was actually a lack of rental units. He responded to one of the letters suggesting that renters did not take care of their homes as well as owners by explaining that the apartment project had an owner who had to take care of it and they were not going to build a multimillion dollar project and let it decline. He indicated the applicant had supported all of the criteria the Commission had to consider with substantial evidence in the record and addressed the issues that had come up. He asked the Commission to recommend approval to the City Council.

Questions of applicant

Mr. Morgan confirmed that the same open space area the applicant showed on this site plan would also be shown in the development review application. They had no reason to change it and it served multiple purposes: that portion of the site was more steeply sloped than the rest of the site; it contained significant trees they wanted to preserve; the open space served to buffer the single-family area; and it provided a nice connection to a City park. The Parks and Recreation Advisory Board had voted to support setting it aside as open space.

Staff response/clarifications

Mr. Pelz highlighted the following points. Public comments raised concern that approval would result in detrimental traffic impacts or that the applicant's traffic impacts analysis was inadequate. The proposed use represented a substantial decrease in traffic from current zoning. The applicant's traffic analysis satisfied both the letter and the spirit of the Transportation Planning Rule and therefore met the burden of proof regarding traffic impacts. If this application was approved a further and more detailed analysis of traffic impacts and other impacts generated by the site would be reviewed during design review. In regard to testimony about impacts to schools, the School District had been made aware of the application and had not submitted an objection. They had heard emotional testimony that was not related to applicable approval criteria. Examples were testimony about support or opposition from neighborhood associations, or how multifamily use of the site would impact the values of surrounding properties which were not applicable approval criteria.

He noted that the staff report discussed the requirements in Chapters 55 and 99 in detail. He summarized why staff recommended approval. The proposal was consistent with applicable Comprehensive Plan policies and all applicable state and regional standards. The zone change was warranted because there was an abundance of office land in West Linn and the region and because the site was not suitable for other commercial uses allowed in the OBC zone. There was a public need for multifamily housing in West Linn. Multifamily use of the site provided economic benefits to the City, and particularly to adjacent businesses. A change from OBC to R2.1 would not adversely affect the health, safety or welfare of the community and was likely to provide benefits to both public health and the economy. The proposal was consistent with the state Transportation Planning Rule.

Deliberations

Chair Steel closed the public hearing.

Commissioner Schwark clarified they had to decide based on the law and the facts. He discussed some key issues. In regard to traffic he distinguished between a zoning view of traffic, which was how much traffic would be generated by a zone, and design review view of traffic. He said clearly the proposed zoning would reduce it. The Commission would look at traffic again and very closely during the design review process. He indicated that he appreciated that neighbors enjoyed the site because it was a beautiful green space, but that did not justify taking away the applicant's right to develop their property and they could not use the judicial system for that. He noted there was a remedy available to them which was to purchase the property from the applicant. He indicated the facts suggested the current zoning was a mistake. The site was in a prime location but had never been developed. The applicant had attempted to develop it to no end and had related that the neighboring property was not sufficiently occupied. They had made the case that there was no demand for this type of property in a suburban environment. For those reasons he was inclined to support the application.

Commissioners King and Knight each indicated she/he agreed with Commissioner Schwark. Commissioner Knight added that they had to compare the application with the criteria in the code, Comprehensive Plan and other applicable law and disregard personal feelings.

Commissioner King **moved** to recommend approval of ZC-14-01/PLN-14-01. Commissioner Griffith **seconded** the motion and it **passed** 5:0.

PUBLIC COMMENT - related to land use items not on the agenda

► **Karie Oakes, 1125 Marylhurst Drive – requesting to keep Public Comment at the beginning of each meeting agenda.**

Ms. Oakes advised that people would not know to comment on the public hearing and that they should not have to sit through the hearing in order to provide Public Comment.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

None.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Steel adjourned the meeting at approximately 7:08 p.m.

APPROVED:

Chair

Date

