



22500 Salamo Rd.
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WEST LINN ECONOMIC DEVELOPMENT COMMITTEE

July 26th, 2013
8:00 AM
Bolton Room, City Hall

Summary Notes

Attendees:

Chris Kerr, Ron LeBlanc, Dan Gardner, Linda Neace, Gail Holmes, Rennie Muzii, Jesse Knight, Tom Waggoner

Meeting Time:

8:00am to 9:05am

Discussion:

- Broad discussion of importance of tourism; discussion about the Tourism Action Plan (TAP) and its inclusion into the comprehensive plan
- The group reviewed the EDC's recommended comprehensive plan edits
- Final review of the Cut the Red Tape amendments and their impact

Motions or Proposals:

- Ron LeBlanc made the motion to accept the comprehensive plan edits. The motion was seconded and unanimously approved.
- Ron LeBlanc made the motion to accept, adopt and formally recommend the July 10 recommended code amendments to the City Council. Tom Waggoner seconded. Approved 6-1. Gail Holmes dissented due to concerns about #1, and #12 relating to appeals and Planning Commission decision making authority.



CITY OF
West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of July 3, 2013

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

Members absent: Holly Miller

Staff present: John Sonnen, Planning Director; Chris Kerr, Director of Economic Development; Zach Pelz, Associate Planner; and Megan Thornton, Assistant City Attorney

CALL TO ORDER

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

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

Commissioner Martin **moved** to approve the Minutes of June 5, 2013. Commissioner Axelrod **seconded** the motion and it **passed** 5:0.

WORK SESSION

Cut the red tape project

Mr. Kerr presented the staff report (see his June 27, 2013 memorandum, "Cut the Red Tape" regulatory code streamlining project). The project goal was to modify codes and processes to remove inefficient and unnecessary regulatory barriers to development and doing business in West Linn. This was a cultural change toward inviting more, vibrant, economic development into West Linn that the City Council wanted to see. Mr. Kerr reported that the comments he and the Economic Development Committee received revealed that the some members of the development community felt they were not welcome in the city; the process set them up to fail; SDCs were very high; and it was a challenge for existing businesses to expand there. Mr. Kerr's memorandum summarized potential changes to consider. He pointed out he had highlighted the seven changes he thought were most vital under "Next Steps." They would just scratch the surface. More could be added. He invited comments.

Chair Babbitt referred to complaints about the process. He observed that West Linn did not want an auto row situation. He voiced concern about lowering SDCs. Mr. Kerr suggested they might be tweaked in order to offer the lower SDCs as incentives for those businesses West Linn wanted to see. Commissioner Martin held that City Council goals should be in the Comprehensive Plan. The Commissioners asked for clarification regarding the relationship

between City Council goals, Statewide Planning goals, the Comprehensive Plan, and quasi-judicial decisions. Ms. Thornton and Mr. Sonnen explained Comprehensive Plan policies were implemented by the Community Development Code, which the Planning Commission used in making decisions. The Plan had to be consistent with Statewide Planning Goals.

Commissioner Axelrod expressed concern about allowing increased heights (more floors) in residential areas. Commissioner Martin was concerned that making the proposed change to remove Conditional Use standards that called for an application to be 'consistent with the overall needs of the community' and 'consistent with applicable policies of the Comprehensive Plan' would mean that any use could be approved as a Conditional Use. Ms. Thornton explained the only uses that could be conditionally permitted were listed in zoning tables. Staff explained they proposed a change to clear and objective code criteria because staff and applicants were spending a significant amount of time going through the Plan and addressing every single goal in it. Ms. Thornton advised that if the CDC was correctly implementing the Comprehensive Plan one did not need to go back and address all the Comprehensive Plan goals. Chair Babbitt and Commissioner Martin indicated that the code did not fully support the Plan. Commissioner King questioned removing the current criteria before the code was updated. Commissioner Martin anticipated it would take years to rewrite the code. Mr. Kerr then suggested staff would look at how to write the criteria more clearly instead of removing it.

Commissioner Martin, Vice Chair Steel, Commissioner Axelrod and Chair Babbitt each expressed his/her concern that several of the proposals would take away the public's ability to participate in public review of development proposals, including suggestions to have the Planning Director review public projects that were part of an approved master plan; exempting public works projects in the public right-of-way from land use review; and limiting Planning Commission review to land use applications that required discretionary decisions. Commissioner Martin anticipated it would be harder for citizens to follow the process and the result might surprise them. Chair Babbitt and Commissioner Martin each indicated that the city had better parks when they had to be approved by the Commission in a public review; and that parks master plans were not specific enough. They did not agree with Mr. Kerr's assessment that the Parks and Open Space Master Plan were very specific.

Commissioner Martin suggested Mr. Kerr separate these proposals from the other proposals intended to improve economic development because they were not related. Mr. Kerr advised they were connected because both addressed inefficiency. He assured the Commissioners that when the Planning Director reviewed nondiscretionary decisions the process would include the same kind of notification and opportunity to comment and opportunity to appeal.

Mr. Kerr and the Commissioners discussed the value of having the Commission review proposals that required nondiscretionary decisions. He argued it cost more when the Commission did it and the result of the Planning Director making the decision by applying objective criteria would be the same. He said this was about balancing cost with results. Vice Chair Steel advised the value was transparency. People could feel that they could accept a

decision they had not wanted if they had an opportunity to share their opinion. She anticipated there would be a lot of resentment if people felt they had no opportunity for input.

2:06

The Commission took a short break and reconvened. The Commissioners observed what Mr. Kerr was going to propose would require a huge cultural shift. Mr. Kerr observed the community had already shifted during the past decade.

Mr. Kerr proposed to simplify the requirements related to neighborhood association/developer meetings and only require them for large-scale projects or items that required Planning Commission approval. The Commissioners had concerns about the changes. Ms. Thornton advised the notice would go out per public meetings law. She related that many people had asked her to clarify the code related to this procedure. Mr. Sonnen advised that the aspect of looking at large scale projects would not be consistent with recent resolution of neighborhood associations' concern about conflicting code related to notice for different sizes of development. Chair Babbitt counseled that the staff's verbal explanation made more sense than the written material, which gave people the wrong impression about what this change would do.

Commissioner Martin and Chair Babbitt each indicated that they thought the City Council supported the purpose of the project, but they did not think the Councilors would endorse the changes Mr. Kerr proposed. Mr. Kerr asked the Commissioners to tell him what changes in code and processes they thought would promote economic development.

Two proposals to allow more flexibility for modifications to an approved CUP and that specified that an approved Conditional Use was not subject to future non-conforming use requirements raised concerns. While Mr. Kerr explained they would make it easier for schools to make changes, Vice Chair Steel and Commissioner Martin were concerned how they would affect a water treatment plant expansion kind of situation. Mr. Kerr explained the flexibility was limited to very minor modifications. A larger change would trigger another full Conditional Use process. Mr. Sonnen, Mr. Kerr and Ms. Thornton discussed Mr. Kerr's reasoning that if something that had been built legally was nonconforming because the code had changed after the fact it was reasonable to consider it a legal, conforming, use after it got CUP approval. Then Ms. Thornton agreed the intent was actually what Mr. Sonnen described as current practice: If what was proposed did not increase the amount of nonconformance it would not trigger a requirement to retrofit to current code requirements.

Mr. Kerr discussed a proposed change in the Municipal Code. It provided that the staff would set committee agendas. That would ensure the committees were adequately staffed and everyone understood how what they were doing fit the bigger vision of the city. During this discussion he agreed to change the proposal so it was a joint staff/chair decision.

Several Commissioners were concerned about having a requirement that all applicants for City Commissions and Boards had to be in compliance with the Municipal Code and the CDC. They

felt it could serve as a way for the city to put pressure on them to vote a certain way if they opposed something staff wanted. Examples were that they might find that a board member's fence was not set back correctly or a retaining wall or stair railing might be determined to be too close to a property line when the board member was not aware of that. They questioned how this proposal was related to economic development; how staff came up with it; and if there had been a problem. Ms. Thornton recalled general conversation that members of boards and committees should be complying with the law and not be doing something they clearly knew was a violation of the law. She did not know if it was a problem. Mr. Kerr offered to look into the intent.

Mr. Sonnen advised that the proposal to amend the code to clarify circumstances in which poultry was allowed was a policy choice and might be outside the scope of the project.

Mr. Kerr and Ms. Thornton advised that the Planning Commission round table discussions (polling) prior to a motion used more staffing resources; put the city at risk on appeal; and was a slower and unusual practice when compared with other cities. The related proposal was for the Commission to adopt City Council rules. Commissioner Martin and Chair Babbitt held that polling was a more efficient way to get to consensus prior to a motion. It gave Commissioners more time to share and think about a decision so the result was better and more defensible. When Mr. Kerr asked for suggestions about what the Commission could do to be more efficient the Commissioners suggested shorter staff reports and presentations and better commissioner training regarding the scope of a hearing and focusing on the applicable criteria.

3:02

Chair Babbitt referred to the proposals to move stormwater regulations and design standards for parking lots from the CDC to Public Works Design Standards. He would keep them in the CDC because it was the Planning Commission's road map regarding process and criteria. It was in the city's best interest to keep them there. In administrative documents they would not be as accessible or transparent and the administrative rules could easily be changed.

Commissioner Martin referred to proposals to remove the requirements for boards and neighborhood associations to meet at specific intervals and only meet when necessary. He and Chair Babbitt were concerned that these would allow staff to control the agenda. Mr. Kerr offered to tweak the language to call for a joint staff/committee determination. Chair Babbitt reasoned that the value of the Planning Commission taking time to do its work was that the vetting provided by the Commission enabled the City Council to get through it more efficiently.

Commissioner Martin and Chair Babbitt expressed concern about the accelerated schedule. Mr. Kerr indicated he was confident he could draft the code amendments per the schedule the City Council had approved. The City Council was to hear it in September.

Mr. Sonnen clarified the Planning Commission had up to 60 days to make a recommendation, and during that period they could have as many work sessions as necessary.

Chair Babbitt cautioned that the proposal to address improvements and efficiencies went too far. In the past a lack of transparency had resulted in a previous council and city manager being booted out. Mr. Kerr talked about balance and tradeoffs. He asked the Commissioners to help him find balance. He did not consider any of the proposed changes to be egregious or reduce citizen involvement. He stressed that no rezoning or density increase was proposed. Commissioners cautioned that citizen involvement was important. The city was still building trust that had been lost. It would not help to rush this process. Commissioner Axelrod asked the staff not to bring the proposal back in its current form. He suggested economic development might not be citizens' number one priority as West Linn was a bedroom community. He wanted to hear whether the City Council believed the proposal met the overall objectives of efficiency and economic development. He asked for more information about aspects such as what the economic viability of West Linn was; how the changes would affect it; and what a hotel would mean.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Miller had emailed that Bolton Village had put up 'No Parking' signs again. Mr. Sonnen offer to look into it. Mr. Sonnen offered to look into a street extension related to a park that Commissioner Martin inquired about.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

Chair Babbitt suggested holding a CCI work session to review the citizen involvement aspects of the Cut the red tape project.

ITEMS OF INTEREST FROM STAFF

Mr. Sonnen advised that the Commissioners' digital tablets had been purchased.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 10:15 p.m.

APPROVED:



Michael Babbitt , Chair

9-4-13

Date



CITY OF West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of July 31, 2013

Members present: Chair Michael Babbitt, Vice Chair Christine Steel, Lorie Griffith, and Robert Martin.

Members absent: Russell Axelrod, Nancy King, and Holly Miller

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

CALL TO ORDER

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

PUBLIC COMMENT

Karie Oakes explained the neighborhood associations had not had enough time to consider and comment on the proposed “cut the red tape” amendments. She asked the Commission to slow the process down to allow time for that. Her neighborhood association had heard Mr. Kerr’s presentation on Tuesday, but they had not had the red-lined version the Commissioners were looking at that night. It was reasonable to expect them to know more about it so they could comment to the Planning Commission on legislative matters. She talked about notification. The process had begun in March. She knew the Planning Director had notified the neighborhood association presidents’ group at the end of the previous month. That was the first time she had heard of the proposal. She asked the Commission to remember the citizens were the biggest stakeholders and deserved better. She asked them not to make economic development a larger goal than maintaining quality of life. She related that the Savannah Oaks Neighborhood Association was going to discuss the proposal the following week. She reported that it had been a challenge to find the material on the website. Chair Babbitt said he appreciated her comments. He related that the Commissioners had just received the code package. The point of this work session was to take a first look at it prior to the hearing.

APPROVAL OF MINUTES

Commissioner Martin **moved to approve the Minutes of June 19, 2013.** Vice Chair Steel **seconded** the motion and it **passed 4:0.**

WORK SESSION

Review and discuss the proposed CDC amendments prior to the hearing on August 7

Mr. Kerr reported that in the past two weeks he had removed some items originally proposed to be included in the cut the red tape project because the Commissioners’ suggested the package should focus on amendments that were more directly related to the stated purpose. There had also been a City Council work session which resulted in elimination of some items.

The idea of a special waiver for commercial development the Commissioners had suggested had been well received by the Council. He clarified for Commissioner Martin that the proposed amendments did not propose a process that would allow the Commission to listen to and provide feedback to a potential applicant about their conceptual plan. Mr. Kerr was not sure how to achieve that. Ms. Thornton advised that type of process really did not give an applicant anything to hang their hat on and an application had to be complete before it came to the Commission. Commissioner Martin asked the Commissioners to think of other ways to remove some of the uncertainty for the applicant. Mr. Kerr added that he was scheduled to present the project at the Savannah Oaks and the Willamette Neighborhood Association meetings. Mr. Kerr clarified for Chair Babbitt that the list of potential amendments had been compiled by an Economic Development Committee work group that had surveyed the business and development community. He assumed neighborhood associations had gotten the information from people who saw the proposal on the agendas for all of the Committee meetings and five Planning Commission and City Council meetings; because they were among the 9,000 households on the mailing list and 2,300 people on Facebook; and via the e-blast.

Chair Babbitt clarified that the purpose of the work session was to look at and offer suggestions to the staff regarding the document that had been prepared for the public hearing. The Commissioners then discussed the following aspects.

Removing the City Council Goals from 2003 in the Comprehensive Plan. Mr. Kerr recommended deleting it. He related the Councilors had differing opinions about that. He and Ms. Thornton advised against having it in the Plan because then the Plan would have to be changed each year to reflect goal changes; it would be a moving target; it was not necessary to have them in the Plan; and City Council goals were usually meant to achieve some kind of specific, shorter-term, end result. Mr. Sonnen observed each Council reset its goals each year. It was not a long-term guidance document binding future Councils.

Commissioner Martin wanted to have the goals in the Plan so they could be used to influence development decisions; provided something to measure against; and offered the vision/direction the City aspired to go toward. He wanted, for example, to be able to base the determination regarding whether conditional use of the police station met the criterion that called for meeting a community need. He also wanted the goal to oppose urbanization of the Stafford triangle in the Plan.

Vice Chair Steel and Commissioner Griffith each indicated she could agree with deleting the goals section from the Plan. Commissioner Griffith considered the goals section more of a working document than a visionary document. Chair Babbitt anticipated it could be confusing if the goals changed during an application process. He noted they were so broad and generic that it would be messy and difficult to come up with facts and findings to support a decision. He advised that if there was a City Council goal that required a Comprehensive Plan change they could go through the public process to do it. Then it would be implemented in the CDC and could be used for Planning Commission decisions.

Vice Chair Steel suggested terms such as 'exemplary quality of life' and 'spread wealth' implied greed or an exclusive area and were not necessary. Ms. Thornton clarified the proposed modified definition for Conditional Use was the current CDC definition. They should be consistent. The Commission had to base its decisions on the CDC definition and the criteria in CDC 60.070, not the definition in the Plan.

Goal 9: Economic Development. Chair Babbitt objected to removing a paragraph that explained that the residents of the City had clearly expressed an interest in retaining the City's quiet residential character. Mr. Kerr indicated that could be elsewhere in the Plan but he recommended against having it in the Economic Development section of the Plan. He referred to the community survey where people indicated they wanted to see a mix of uses and more vitality in commercial areas along Highway 43 for example. Chair Babbitt commented that people would indicate they wanted economic development, but not at the cost of increased noise, traffic and pollution.

The Commissioners examined the economic development policies. Commissioner Martin suggested they should call for the City to provide high speed internet infrastructure as a public utility. It would be a bold step, but other cities were doing it. It would help West Linn attract more low-impact, home based, businesses. Chair Babbitt and Commissioner Griffith observed there were recommended action measures that would allow the City to explore the kind of thing Commissioner Martin was suggesting. Vice Chair Steel would keep the policies more general to avoid unintended consequences. She questioned whether what he suggested should be the City's responsibility. She recalled the challenge of approving a cell phone tower due to concern about the effect of waves on people. She liked the fact that staff had added a policy regarding promoting tourism.

1:07

LAND USE APPEALS

Mr. Kerr talked about a change in how to gain standing to appeal a decision. It meant that people would only have standing if they completed the Testimony Form. Chair Babbitt and Commissioner Martin noted that meant the Commission would need to change the chair's script to explain that.

The proposed amendments changed the type of appeal hearing from *de novo* to on-the-record. Neighborhood associations would no longer be able to appeal for free. They would have to pay the filing fee. Mr. Sonnen advised charging a fee would deter frivolous appeals. He recounted some egregious appeals that had cost the taxpayers and applicants a lot. It could be a nominal fee. The City provided a stipend to neighborhood associations they could use to pay the fee. Mr. Kerr asked why neighborhood associations should be allowed to appeal for free when homeowners associations could not. He advised neighborhood associations had another no-cost avenue if they could convince the City Council or the Planning Commission to revisit their decision. He and Mr. Sonnen explained that a \$400 fee would not come close to capturing the cost to the City. The intent was not to recoup the cost, but to try to avoid unnecessary cost.

Mr. Sonnen recalled a previous City Attorney had advised that *de novo* appeals were an anomaly. He anticipated an on-the-record appeal would encourage people to argue their best case at the Planning Commission level. He said staff would not be averse to having a lower appeal fee threshold for on- the-record appeals.

Commissioner Martin indicated he agreed with the change from *de novo* appeal but he was concerned it would discourage neighborhood association involvement if it was more difficult for them to appeal because of the fee and requiring the appeal to be based on specific criteria. Vice Chair Steel suggested cutting the fee in half for them. She indicated that changing to an on-the-record appeal might help. Commissioner Griffith indicated if the City wanted to cut red tape and tighten up in order to be more efficient and fiscally responsible closing loopholes people used to abuse the process would help. She noted a neighborhood association that did not have the funds to appeal could ask the City Council to waive the fee. Commissioner Martin cautioned they needed to create more opportunities for review and involvement, not lock people out. If an association did not have \$400 to pay for an appeal and the other avenues were not available to them they would have to get the money from their members. He would have it on the record that any neighborhood association that did not have \$400 to pay for an appeal could come to him and he would give them the money.

1:31

VARIANCES AND SPECIAL WAIVERS

Vice Chair Steel suggested making it clearer that the special waiver was for commercial planned developments.

The Commissioners discussed Class II Variance Approval Criteria. Criterion (a) called for the variance to be *the minimum variance necessary to make reasonable use of the property*. It listed factors that might be considered in making that determination. The discussion was primarily focused on a factor that related to the economic impact on the person who requested the variance if the variance was denied. Ms. Thornton explained that when she crafted this section her goal had been to move away from 'economically viable use' being the smallest and least impactful use possible. The new language would give the Commission more discretion and flexibility in determining if something was reasonable use. The listed factors were just examples for the applicant's benefit of the kinds of evidence the Commission would be expecting to see that demonstrated the applicant proposed reasonable use. She offered the example of an applicant who had purchased a property for a restaurant to serve a certain number of patrons and then found they could not have that many of patrons. They could ask the City to allow them to seat a few more people in their restaurant. She clarified the applicant would have to show it was reasonable use in that zone and that they met all of the other criteria as well.

Vice Chair Steel and Chair Babbitt viewed this as too open-ended and problematic. She suggested the hypothetical applicant should have considered that before they bought the property or considered another type of restaurant or another kind of enterprise. Commissioner

Martin indicated he liked the concept of reasonable use, but he was not sure about the factors. He recalled when the Commission looked at economic viability as just the minimum economic use allowed to avoid a taking, a hotel and an office building applicant had each stated what they proposed was the smallest hotel or office building they could build. He referred to the factors and commented that the City should not be in the business of subsidizing bad decisions. Commissioner Griffith questioned why a purchaser should get a Go Card because they had not done due diligence when they bought the property. Vice Chair Steel characterized it as using a sob story as a trump card. Mr. Sonnen observed that the basic idea with the current code was to avoid a taking and allow some minimal economic use that would hold up under a legal challenge. He noted that was very different from trying to provide a lot of flexibility.

Chair Babbitt was concerned every applicant would start asking for waivers if it was easier to get a waiver than a variance. The result would be subpar development. He preferred the concept they had put in the PUD code. It offered flexibility if the applicant proposed a design that was superior to what could be built under the code and met the intent of that code. Commissioner Martin suggested having waivers negotiated through the Economic Development Department before they came to the Planning Commission. Mr. Kerr explained he was not sure how to incorporate that component into the code. Commissioner Martin suggested that if waivers served no constructive purpose they were better off just staying with variances. Mr. Kerr distinguished between waivers and variances and explained the variance criteria were about hardship - not a better design. He planned to work on language that called for a design that furthered the intent and purpose of the regulation being waived so it was better than what would result under the code. The Commission then took a five minute break.

2:06

Commissioner King's comments. Chair Babbitt called attention to comments Commissioner King had emailed. One was that she still wanted to get a sense of where the vision for development would be focused. He agreed with her that a lot of what they were doing was related to streamlining the process and making it easier for commercial development. He noted some of it would definitely save the City money, but saving money and economic development almost seemed like two different things. He noted businesses were constantly failing down in Willamette and on top of the hill because they could not afford the high rents. He hoped in all of this they tied economic development to helping the City's businesses and residents prosper and it was not just about fast-tracking to save money and get more development. Mr. Kerr agreed to explain the bigger picture that this was about removing regulatory barriers and adding more flexibility to the code; and, yes, it would make it easier to do things. There was not much land available for commercial uses, so the City could expand the development potential on the land it had to provide a greater variety of services and more opportunity for businesses.

Commissioner Martin was concerned the City would get the kinds of businesses it did not want, such as auto repair and used car sales. Ms. Thornton and Mr. Kerr advised that the code specifically listed permitted uses and uses that could be permitted with a conditional use permit for each zone. If a use was not listed it was not allowed in that zone. They clarified that

variance criteria were not for use so there was no way to get a variance to have a use that was not allowed in a zone. Mr. Kerr agreed with Chair Babbitt that the City could use waivers to encourage developers to provide a superior design and benefit to the community. One past situation where waivers might have been used, for example, was Chase Bank's request to have a water feature in front. Mr. Kerr agreed to work on the language so it was clearer that a waiver was for an applicant who could meet the code, but wanted to do something differently. Commissioner Martin inquired how that would bring businesses to the City that had not considered coming or were not able to come today because of the code.

2:30

APPROVAL AUTHORITY

The proposed amendments would give the Planning Director authority to decide some types of applications the Planning Commission currently decided. Commissioner Martin was concerned that made the applications subject to much less public scrutiny. He would continue to have the Commission hold public hearings when parks were proposed, for example, because people were passionate about them and that kind of scrutiny resulted in better parks. He would have the Planning Commission do design review, because they caught errors. He questioned how this change related to Economic Development. Ms. Thornton advised the director would decide cases when there was little or no discretion involved. The applicant (even if it was the City) would either have met the criteria and the application had to be approved, or they would have not met it and it could be denied or conditioned to meet the criteria. The Planning Commission would still hear applications that required more discretion, such as requests for variances, conditional use, and PUDs. Vice Chair Steel had similar concerns as Commissioner Martin. She did not support the change that would allow the Planning Director to review subdivisions with as many as 25 lots. That was too large to not be decided in a public hearing process. Chair Babbitt agreed with Commissioner Martin and Vice Chair Steel. He recalled that citizens at public hearings had charged that the Commission was letting the staff make the decisions. The City had been trying to regain citizens' trust. Giving the decision-making power to one person could violate that trust. He agreed errors got caught in public hearings and sometimes the result was better development. When applicants knew they were going to be in a public hearing with an audience and public testimony they tended to put their best foot forward. He observed the majority of Commissioners were concerned about the proposed change.

2:55

BUILDING PERMITS FOR AN APPROVED CONDITIONAL USE

Approval criteria A.3 and A.7 were proposed to be changed as follows:

~~3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community. The proposal will not have significant adverse impacts on the livability or usability of nearby properties due to issues such as, but not limited, to: noise, glare from lights, late-night operations, odors, litter, or privacy and safety issues.~~

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

Vice Chair Steel observed the two versions of A(3) were completely different. She would keep the current one. Chair Babbitt recalled in the water treatment plant case the City Council had disagreed with the Planning Commission's definition of what overall benefit to the community was. The proposed criterion was more specific. Vice Chair Steel recalled the City Council's interpretation was that the 'community' was a larger community than just West Linn. She felt the intent of the existing language was that the neighborhood that was hosting the utility would also benefit from it on a day-to-day basis.

Ms. Thornton offered a legal perspective. The existing language was incredibly nebulous and could be interpreted a number of ways. After all of the water treatment plant hearings and in preparing the LUBA documents she still did not know that there had been an interpretation of or full agreement about exactly what 'community' meant. The proposed language had been prepared to get away from the issue. It was not quite so open to interpretation and offered some grounding as to what it was looking for without losing the discretionary ability to decide if something was a good fit, which was the ultimate goal of the conditional use process. She thought the proposed language for A(7) got at exactly what the Comprehensive Plan was trying to do but was more straightforward about what they were looking for.

Vice Chair Steel explained she felt the concept in the existing A(3) language was that there was an advantage to (a trade-off for) the disadvantage being imposed on the community. That concept would be lost if they removed the existing sentence. Perhaps they could keep it and try to replace 'community' with some other word that was more specific. Commissioner Martin interpreted the existing language as saying, "Do no harm, but also do some good." He contrasted that with the proposed language that indicated just, "Do no harm." They would not be able to require anything beyond that. Chair Babbitt noted that schools, churches, and fire and police stations were conditional uses that implied benefit to the community. He tried to think of some that did not have that implied benefit. Mr. Sonnen suggested major facilities like water or transmission line that crossed jurisdictional boundaries and provided a benefit to some other community. If the Commissioners wanted to consider that approach staff would re-craft the language to be more explicit about it rather than having this so broadly interpreted. Chair Babbitt asked staff to work on recommended language.

Commissioner Martin was concerned about loopholes in the CDC that would require the Commission to allow uses (such as a used car lot on Highway 43) that were not on the list and not wanted. Ms. Thornton advised a use would never be allowed that was not on the list of uses in each zone in the CDC; and a use had to be listed as a conditional use before the conditional use criteria were applied. She and Mr. Kerr advised if the Commission did not want to see a particular listed GC use along Highway 43 they should strike that use from the list so it

could never be there. She advised the Commissioners against trying to use the Comprehensive Plan instead of the CDC to get out of something they did not like.

3:11

GREATER FLEXIBILITY

Permitted Uses. The proposed amendments listed uses that would be permitted outright and uses that would be permitted as conditional uses in the GC zone. Extended-hour businesses were currently permitted (with CUP required if new a building was constructed or an existing building was expanded). Staff proposed to strike the CUP qualifier. They also proposed to change hotel/motel to permitted use. They noted the City was interested in having a hotel. At the end of this discussion Mr. Kerr observed the Commissioners wanted staff to craft language that made all extended-hour businesses get conditional use permits, with the exception of a hotel/motel.

3:20

Dimensional requirements. Mr. Kerr pointed out the proposed height limits in some multifamily and commercial areas were going to be expressed as number of stories. Developers had suggested that. They had explained it was important to increase the density in corridors and town centers in order for developments there to be successful. Chair Babbitt and Vice Chair Steel were concerned that 'stories' did not really define the height. Mr. Sonnen related what he had read. Measuring height to the top of the roofline encouraged people to build flat roofs. The City currently measured height that way. Allowing three stories, for example, with a kind of lofting on top, would make a building look more architecturally interesting. He understood that an elevator had to be put in at some point and the building would have to be of sufficient size to justify that cost. What was proposed allowed a development to hit the 'sweet spot' where it penciled out at five or six floors. He suggested the City could be selective about where that was allowed to occur. He related that in the past a mixed-use development had been considered at Central Village that he believed everyone would have been pleased with but the application had never been submitted. Being allowed to build 35' to the eave would have satisfied that developer. Chair Babbitt suggested that 'story' should be defined and it should be clear if the underground level was counted as a story. Mr. Kerr anticipated the language could say something like, 'four stories, not to exceed x feet'.

Commissioner Martin was concerned about what kind of lots neighborhoods would see if the standard that prescribed relative proportions of lots was struck. Without it, there was nothing the Commission could do to prevent incompatible infill the neighborhood did not want. Mr. Kerr clarified for Chair Babbitt that he had not received much feedback on the issue of transition area height. Mr. Kerr related that builders had asked for relief from prescribed lot depth because it was a very restrictive requirement. His goal was to allow more flexibility. He clarified the existing standard did not keep houses from being really close together because people could build to the minimum setback from the property line no matter how large their lot was. Chair Babbitt indicated he did not want to remove the standard entirely. He suggested staff look for language that did not require perfectly rectangular lots but did not allow lots that were especially narrow and deep either.

At 10:20 p.m. the Commissioners agreed to end the work session and looked forward to the hearing on August 7.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Mr. Sonnen clarified that a recommendation forwarded by the Planning Commission would be a separate, stand-alone document. If staff wanted to recommend alternative code language it was to be forwarded in a staff memorandum. He confirmed IT had received the electronic tablets. He and Mr. Kerr reported negotiations over Library offsite parking were ongoing and the contract to build the new Library parking lot had been let. Ms. Thornton confirmed she was working on legal aspects of the Trails Master Plan. Vice Chair Steel asked if any Commissioners had gone to the open house. None of them had.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Mr. Kerr confirmed that all neighborhood associations had been notified and had a copy of the draft amendments.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 10:30 p.m.

APPROVED:



Michael Babbitt, Chair

10-16-13

Date



CITY OF
West Linn

PLANNING COMMISSION

Minutes of August 7, 2013

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

Members absent: None

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

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:02 p.m.

PUBLIC COMMENT

Roberta Schwarz, 2206 Tannler Dr., announced the upcoming Concert for the White Oak Savannah. It was one of the fundraising events being planned to raise money to supplement Metro grants to restore the Oak Savannah. She invited everyone to give what they could. Commissioner Axelrod thanked the volunteers for their work.

PUBLIC HEARING

Proposed amendments to chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 31, 33, 34, 37, 41, 42, 46, 52, 54, 55, 57, 60, 65, 66, 67, 68, 75, 81 and 99 of the Community Development Code and various sections of the Comprehensive Plan for the purpose of eliminating ineffectual and inefficient regulations to encourage positive economic development.

Chair Babbitt opened the public hearing. He announced the Commission had received a request for a continuance, so there would be a second hearing. No conflicts of interest were declared. No one present challenged the Commission or an individual Commissioner's right to hear the matter.

Staff Report

Mr. Kerr presented the staff report (see his July 26, 2013 Memorandum). He noted that economic development was a key component, but not an end in itself. It had to be balanced with quality of life. He outlined what had led up to the current City Council mission to keep West Linn on the path "to becoming the finest community in the state to live, work and play – both for ourselves and future generations." A change in how the City viewed economic development had begun in 2009. Since then the City Council had created economic development goals; adopted an economic development plan; formed an economic

development advisory board; and created the economic development director position. There had been the Highway 43/Willamette Falls Drive visioning process. The Council had established economic development as one of its top priorities based on a survey of the citizens that showed that 90% of the respondents agreed that West Linn should be actively encouraging economic development in its existing commercial areas. Mr. Kerr had outlined an economic development strategy that had four parts. This proposal was one part: to work on regulatory barriers and other incentives to bring positive economic development into the community. In April 2013 the City Council had established two specific priorities for the year. One was a master plan the Arch Bridge area. The other was to seek proactive, immediate, recommendations to the City's regulations, fees or practices to promote business activity and economic development in the community. The latter effort was to be focused on achieving the most impactful changes possible in the allowed time frame.

Mr. Kerr pointed out the staff report described the related outreach efforts since April. The City Council had formally adopted the list of items to be considered for code amendments in July. Generally, what they trying to accomplish was to put a clear path with more predictability into the land use approval process for those who might consider making investments in the community; and cut red tape, inefficiency and waste by streamlining unnecessary processes. The proposed changes were in the following categories:

- Comprehensive Plan amendments
- Land use appeals
- Variance/special waivers
- Procedural amendment
- Greater flexibility
- Removal of ineffective /redundant code

Mr. Kerr highlighted what was proposed to be changed.

- The City Council goals section would be removed from the Comprehensive Plan.
- Conditional Use would be clearly and accurately defined in the Comprehensive Plan.
- The Comprehensive Plan would recognize that Goal 9 economic development was a priority.
- Land use appeal hearings would be on-the-record instead of *de novo*. That would result in significant cost savings. The City Council could reopen the record if they discovered a factual or procedural error. Neighborhood associations would no longer be allowed to appeal for free
- Class II variance criteria would be clearer about what a variance should accomplish. Minor variances for commercial, non-residential properties would be grouped and meshed with variances for residential properties.
- Special Waivers would be available to applicants who wanted to use them when they did not have a hardship and could build to code, but wanted to propose something better than what they could build under the code.
- Procedural amendments would simplify the applicant's requirements for neighborhood association/developer meetings. A meeting would not be required if the development was

less than five units. That matched the related single-family threshold. There would be no recording requirement in order to allow more free-flow discussion. The Planning Director would conduct non-discretionary reviews (where the decision related to whether or not the application clearly met the code). The Planning Commission would conduct discretionary reviews, including variances, rezoning, conditional use permits; PUDs; certain types of minor appeals; and subdivisions with 25 lots or more. When the Planning Director made the decision, the current requirements related to notification; opportunity for input; and opportunity to appeal would apply. Certain minor improvements would be exempted from Class I design review and they would simply have to meet the standards in the code that related to them. Staff proposed to change the overly broad and subjective, difficult to interpret, Conditional Use criteria related to the "overall needs of the community"; and compliance with "the applicable policies of the Comprehensive Plan" to clearer standards that reflected the real purposes of the criteria and review. A full-blown review process would no longer be required in order to make a small modification to a CUP.

- A number of changes were proposed that would make the code more flexible. That would encourage people to invest in West Linn; make the best use of existing land; and create the types of development the community wanted to see. Those included changing some uses currently listed as conditional uses to permitted uses (a hotel or community center, for example), and changing the CUP requirements related to certain extended hour businesses. Development in existing commercial- and multifamily- zoned areas would be allowed to have expanded building envelopes so they could make the best and most efficient use of that land. The intent was to get some mixed-use developments (such as residential units above ground floor commercial) in those areas. That was accomplished through changes such as allowing more stories. Parking requirement changes would count on-street spaces; encourage shared parking; and lower the requirements so there were not seas of parking lots in front of shopping centers. Tree protection requirements would be less confusing and save 20% of particular trees, not an area of the site. That way the most significant trees and tree clusters would be better protected and more land would be available for the development. A-frame signage restrictions would be changed in order to incentivize pedestrian traffic. Although no issue had been raised in regard to domesticated chickens, the proposed changes would legalize the City's current informal policy allowing them. Any related problems after the change would be dealt with as a Nuisance code issue. Ineffectual and redundant language in the Code would be removed, including requirements that were already in Public Works standards and were reviewed by Public Works. For example, the CDC did not require detailed, engineered, stormwater plans. They were still subject to permits issued by the Engineering Department.

Questions of staff

Commissioner Martin asked staff to reconcile the list of chapters in the hearing notice with the proposed amendments. He could not find what was being changed in Chapters 24, 25, 34,37, 41, 42, 54, 57, 66, 67, 68, and 81. He saw proposed amendments that would change chapters that were not listed, which were Chapters 27, 28, 32 and 85. Mr. Kerr explained some

proposed changes related to the Municipal Code and did not have to be cited in the Planning Commission hearing notice. He had included them so the Commissioners could see what they were. Staff discussed the list of chapters after public testimony (see below). Mr. Kerr clarified for that the staff report considered the results of historic surveys as well as the results of the more recent online survey. He acknowledged that the staff report showed selected summary results. Sixty-one people had responded to ten questions. Chair Babbitt asked him to provide all of their answers.

1:01

Public Testimony

[Please note that written testimony submitted during this period of public testimony can be found at:

http://westlinnoregon.gov/sites/default/files/projects/testimony_8_7_2013.pdf]

Ed Schwarz, 2206 Tannler Dr., President of the Savannah Oaks Neighborhood Association, reported that the Association had heard Mr. Kerr's presentation the previous evening and then passed the three resolutions he had submitted for the record. He testified that although Mr. Kerr's July 4 memorandum to City Manager Chris Jordan reported that the Commissioners had recommended not making any changes that would reduce the City's current citizen involvement practices, his Association was concerned there was a lot that would impact the public review process. He then discussed each of the resolutions.

Resolution 1 started with not eliminating *de novo* appeal hearings. That had been the practice for many years. The hearings were not about just correcting mistakes because the new information could become a deciding factor. They would not require a neighborhood association to pay an appeal fee. The money would come from the City anyway, so they could not see the reason for doing that. They did not support the change that meant that subdivision applications smaller than 25 units and design reviews would no longer be heard in public. There were developments happening in the neighborhood now that were 5, 11 and 18 units. Residents wanted to be able to talk to the developers about the details at a neighborhood association/developer meeting. The association anticipated that if the current 20% tree protection area requirement was changed to protecting 20% of the trees the developer would have an opportunity to build more on the site and some of the protected trees would probably die. The Association was concerned that the change in the number of Commissioners or Councilors required to call up a decision would not reduce cost or streamline the process and could lead to questions about whether a quorum had met behind the scenes.

Resolution 2 questioned what the ultimate goals of the proposal were. They wanted to know what the impact of all the proposed changes would be on the City. There were already a lot of traffic problems on Salamo, Highway 43, and 10th street. This could open the community up to more and more tightly packed development that would generate more traffic. They were concerned about aesthetics. Several association members questioned the need for six-story buildings. Mr. Schwartz asked the Commission to take a hard look at whether that was really necessary.

Resolution 3 asked for a one-month delay in the process so the Association could continue to take a look at the proposed changes. Somehow this had flown under their radar. Mr. Schwarz concluded that the Association's perspective was that this was more than just streamlining the code. It would gut the opportunity for public input. That was not consistent with Statewide Goal 1. During the questioning period Mr. Schwarz clarified he had submitted Resolution 1 the previous evening and Resolutions 2 and 3 that afternoon. The Commissioners identified where they were in the agenda packet.

Roberta Schwarz, 2206 Tannler Dr., held that the economic development committee had not followed the Municipal Code, which called for them to work in close partnership with the West Linn Chamber of Commerce, neighborhood associations and the general public. She charged the proposal was being fast-tracked. She said there was no reason to gut citizens' rights and not let them know what was happening. She suggested if this had not been tabled just before the election it would have affected the election. She submitted a photograph to show that people from four other neighborhood associations had attended her Association's meeting the previous evening because their associations had not had time to meet and discuss the proposal. She asked the Commissioners to consider that Mr. Kerr did not live in West Linn and that he had worked for developers for six years. She said this was an important decision: the Commission would decide whether to go with the rights of the citizens or to go with the rights of the developers. She related that the results of surveys conducted three and five years ago showed that the majority of residents lived in West Linn because it was a bedroom community. 75% of them had specified they did not want further development and the problems connected with it. She anticipated the results of the proposal would make West Linn look like California. She noted the people Mr. Kerr had met with were developers. They were 61 people contrasted with West Linn's 25,000 population. That was not polling the people. If people had known what he was up to in advance they would have said "Hell, no!" Fast-tracking was doing it under the table so people would not know about it in time. The Commissioners had stood for the people in the water project decision and they should say "Hell, no!" in this case too.

Questions

Ms. Schwarz confirmed that her neighborhood association felt that whether or not the planners lived in West Linn was an important issue. That the city manager lived in Lake Oswego and the assistant city manager's spouse worked for Tigard had created a conflict of interest in the water treatment plant case. She clarified that members of five neighborhood associations had attended the Savannah Oaks meeting the previous night from Savannah Oaks, Robinwood, Barrington Heights, Willamette and Marylhurst.

Brenda Perry, 2286 Haskins Rd., testified that she and her husband had moved to West Linn three years prior because of the wonderful community it was. She questioned completely writing off City Council goals. She characterized what she had read as a "contractor's dream" that would result in overcrowding, traffic issues, high buildings and a different West Linn. She observed that Salamo, Highway 43, 10th Street and Willamette Falls Drive were already packed.

Allowing extra development would exacerbate it. She did not want someone to be able to move in next door with chickens or other livestock. She questioned how allowing chickens cut red tape or made things financially feasible. She asked the Commissioners to listen to the people in West Linn who cared about West Linn. She clarified that she found out about the proposal at the Savannah Oaks Neighborhood Association meeting the previous night.

Ron LeBlanc, Bluegrass Cir., related that he served on the Economic Development Committee but he was testifying as an individual. He indicated the purpose of the proposed version of the Comprehensive Plan was to take a negative Plan and make it a positive document. He explained his experience working in courtrooms made him opposed to *de novo* appeal hearings. Any applicant could present whatever they wanted at the Commission hearing because they knew that they could appeal and go to the City Council with a whole new plan. He advised they should have to bring the Commission the best plan they had and have to appeal on the record. The notice requirement was still the same. He asked the Commission to leave its comfort zone and approve what was proposed.

Questions

Mr. La Blanc confirmed that he supported the recommendation to not have *de novo* appeal hearings. Chair Babbitt asked Mr. LeBlanc how much of the proposal had actually been produced by the Committee. Mr. LeBlanc related that he had gone out with the packet to talk to businesses about it and some of what they said was in the document. He indicated the Committee had worked on the Comprehensive Plan to make it positive rather than negative document. After that he assumed lawyers had worked on the code and Plan language before it came back to the Committee, which had then massaged it.

Jenne Henderson, 4130 Mapleton Dr., offered testimony on the following items. She opposed changes that would weaken protections for neighborhoods. She was concerned that the neighborhood associations had not been involved in a process that had been going on since April. The proposal showed a big shift in philosophy. The current code focused on economic development to retain the quiet, residential, character of West Linn. Planning was to focus on keeping the current employment base and not on commercial infrastructure. The proposed version talked about "tourism" and "hotels," and "maximum building height of six stories." She was not sure that was the direction the citizens of West Linn wanted to go. She wanted to keep the conditional use criterion, "consistent with the overall needs of the community." Removing it could invite development by businesses whose purpose did not meet the community of West Linn's needs.

Scott Gerber, 3940 Kenthorpe, had emailed his August 4, 2013 letter to the Commission. He questioned that what Mr. Kerr proposed was "cutting red tape." He questioned how cutting the City Council goals from the Comprehensive Plan would help promote economic development; maintain West Linn's quality of life and livability; maintain trust and credibility of city government; or help oppose urbanization of the Stafford triangle. He reasoned if the intent

was to open the door to Stafford development, then the document should just say so, instead of removing the goals. He noted that might not be very popular with citizens. He questioned whether the ability to build to six stories was really necessary to promote economic development. It was not what most people who chose to live in West Linn wanted to see. He referred to redefining conditional use criteria. He questioned whether it was necessary to make it easier to allow uses that were not intended for a zone. He questioned whether there was really a problem with the concept of overall benefit to the community. He took issue with the idea that definitions used in the Plan were only applicable within the Plan and not to other city documents. He held the Comprehensive Plan should be the definitive document. He recalled a LUBA decision that when something was allowed by local ordinance but prohibited by the Comprehensive Plan the Plan was the controlling document. Land use regulations were subordinate to the Plan.

Mr. Gerber indicated he agreed with Mr. Schwarz' testimony. He did not support the proposals to no longer allow neighborhood associations to appeal at no cost; to no longer have subdivision applications and design reviews heard in public by the Planning Commission; to no longer require applicants to meet with the neighborhood association if the development was less than 25 units; to change the requirements for applicants to call a neighborhood association/developer meeting; and to ease the requirements for protection of the tree canopy. Mr. Gerber said the bottom line was that too many items were being bundled in a grand concept of promoting economic development. He urged the Commission to slow the process down and take a hard look at each and every proposed change. He held that promoting economic development did not necessitate many of the proposed changes. It did not equate to reducing citizen involvement in the land use process. He clarified he was not anti-development, but he had learned it was good practice to maintain some controls over the people who had the keys to the bulldozers.

Questions

Mr. Gerber confirmed that it was his understanding from reading LUBA documents that land use ordinances were subordinate to the Comprehensive Plan. Commissioner Martin asked if he was referring to a specific case. Mr. Gerber indicated he did not have the citation in front of him, but he would be glad to research it. Commissioner Martin related that the Commissioners had been getting the advice that the Comprehensive Plan was really irrelevant and only the CDC applied to land use decisions. He asked Ms. Thornton to clarify that. She advised the Comprehensive Plan was a series of goals and policies and the CDC implemented it. When the City Council and Planning Commission considered adopting a CDC provision it was supposed to meet the goals and policies in the Plan. When the Commission was making a land use decision they applied the CDC criteria to the application. The application had to meet the CDC criteria in order to approve it. Ms. Thornton suggested Mr. Gerber might be referring to a case where there was a conflict because a code amendment was not in line with the goals and policies of the Comprehensive Plan. In that case the goal in the Comprehensive Plan would override it.

Mr. Gerber confirmed that was his understanding. He planned to research that further and let the Commission know what he found.

Dr. Ramiah Ramasobramanian, 1995 Alpine Dr., related that he had read the document and been surprised at the character and extent of the proposed changes. It was clear that West Linn was moving away from the Plan statement that West Linn was a community with essentially a quiet residential character. He did not see any evidence that citizens wanted such a dramatic change. In the interest of transparency and full disclosure the document should have a disclosure section that identified the people who contributed ideas to and wrote the document and their relationship to the development community.

Karie Oakes, 1125 Marylhurst Dr., read aloud her July 31, 2013 memorandum, "Re: 'Cutting the Red Tape' Draft Amendments" (emailed on August 7, 2013). In it she expressed concern that the economic development committee had not included neighborhood associations in its work even though the Municipal code called for it. She charged that the staff and the EDC had solicited and received input weighted towards business and development and left neighborhood associations scrambling to understand the draft amendments and make their concerns heard. She held this opportunity to provide public testimony had been made available too late in the game. At the July 31 work session she had asked the Commissioners to delay the public hearing. Now she asked the Commission to at least hold a second hearing in about another month to give neighborhood associations time to participate.

Ms. Oaks then read aloud her second letter to the Commission (she planned to submit it later). She indicated the proposal would make changes to the Comprehensive Plan, CDC, Municipal Code and fees that went further than the goal of economic development and would weaken citizen involvement and oversight. It was an overall shift from anti-development to pro-development. She advised the purpose of land use planning should not be to promote special interests, but to ensure the best planning for the City. They should consider that West Linn was more of a bedroom community; had a great proportion of home based businesses; had very little existing commercial and industrial land; had nearly reached build-out; and much of its remaining undeveloped land was constrained. She asked who would benefit from the changes; why the Arch Bridge project was specifically named in the proposed amendments; if cutting the red tape to make it easier for development was setting the City up for expansion into Stafford; and how the proposed amendments would affect the Blue Heron property. Since she had only recently become aware of them she was not going to speak about specific amendments yet. She asked the Commission to direct Mr. Kerr to post documents that were not on the website that related to his report, such as the interviews, surveys, emails to businesses and postcards to the public. She asked them to ask the EDC to update its webpage with its agendas and minutes and post the Economic Development Plan and its resolution approving the amendments.

Questions

Chair Babbitt agreed with Ms. Oakes that neighborhood associations and citizens should have been involved earlier in the process. However, it was not too late. The reason the Commission had decided to hold this hearing and then continue it was in order to solicit citizens' input before they made any decisions. Commissioner Miller assured Ms. Oakes that the Commission was not moving on a predetermined path. She had an open mind and wanted to hear public testimony. She was in no rush. The Commissioners had serious reservations about some of the proposed amendments and wanted to work through them. Commissioner Martin pledged to not let the issue of the EDC not working with the neighborhood associations and general public fall by the wayside.

Teri Cummings, 2190 Valley Ct., noted that it appeared involving the neighborhood associations had been largely overlooked. She advised against cutting the citizens out of the process. Many of them were business owners and very business friendly. Both the Municipal Code and Oregon Statewide Planning Goal 1 required the process to include the neighborhood associations. They were also a means of free exchange of information and ideas between residents and local officials in order to develop the best community possible for everybody's common good. She recommended that the Planning Commission wait two months to hold another hearing because neighborhood associations typically did not meet during August. She recalled work on the existing Comprehensive Plan had taken almost two years. She explained that a *de novo* appeal hearing did not mean starting from scratch because the CDC limited the extent that applications could be amended. The application remained intact, but the information was allowed to be as full and developed as possible. Citizens were not professional planners and developers. They found out about things at the very last minute and they did not always know what the codes and processes were. It was very important for the decision-makers to try to get the most complete set of information they could before they made a decision. There should be no doubt that there had been sufficient opportunity for people to learn more about this proposal and comprehend it. She suggested having a table of contents and making it clearer which goals were or were not being addressed. Everyone needed to be on the same page.

Chair Babbitt ended public testimony for the evening; announced a five-minute recess; and thereafter reconvened the hearing.

2:19

Mr. Pelz reported the list of chapters in the notice failed to include Chapters 27, 28, 32 and 85. The associated amendments were on pages 62-65 of the hearing package. They all had to do with reducing the number of copies of the application that an applicant had to submit from three hard copies to one hard copy and an electronic version of the document. He noted that several chapters were listed but there were no amendments associated with them. That could have been because at one time staff planned to propose associated amendments; or, staff might have anticipated amendments to those chapters might be necessary due to something that might come up during the hearing. Mr. Kerr recommended proceeding without addressing the four chapters not on the list and their associated amendments. He advised all four chapters were affected by a single change (in the required number of copies of an

application). Ms. Thornton and Mr. Kerr explained that no notice was required regarding the Municipal Code changes that Mr. Kerr had put in the packet. He had put them and the change in the master fee schedule in the packet so the Commissioners could see them and offer recommendations about them that he could forward to the City Council.

Commissioner Martin pointed out a conflict between the language in CDC 08.050, Uses and Development Permitted Under Prescribed Conditions (language starting on page 58 related to chicken/poultry and livestock) and the Municipal Code about what was allowed or not. He also noted the proposed code language might not convey what it was intended to convey, and it might prohibit people from having parakeets, for example. Mr. Pelz advised there was an existing discrepancy between the codes and this proposal would not change that discrepancy. Staff planned to continue to work on the language and to address the discrepancy.

Chair Babbitt then polled the Commissioners regarding how to move forward. All but Commissioner Griffith were in favor of re-noticing. She indicated she did not think it was necessary. The others' reasons included that it should be re-noticed in order to be accurate and transparent; it was worth re-noticing in this case; re-noticing offered staff an opportunity to involve neighborhood associations; re-noticing would ensure the process was procedurally correct, even if it was not a significant issue; re-noticing would show the accurate list of chapters being changed; and re-noticing was the Commission's opportunity to show the citizens it was going to do it right and neighborhood associations could trust the process. Vice Chair Steel favored the idea of adding a table of contents with a brief explanation of what the proposed changes were intended to cure.

Chair Babbitt polled the Commissioners and observed the consensus was to make modifications at an August 14 work session that would be incorporated into the public hearing draft in time for it to be distributed ten days prior to a hearing on September 4. Commissioner King suggested the Commissioners focus on the aspects they thought were the highest priorities. Commissioner Axelrod expressed frustration that the process was not allowing the Commission enough time. Commissioner Martin suggested they could meet more than once before the hearing in order to get the work done.

Commissioner Martin **moved** to schedule the initial work session on August 14, 2013; revise the draft code to reflect the testimony and their concerns so it would be something they would want to approve; and, when they felt it was ready, (hopefully by ten days before September 4) they would notice it. Vice Chair Steel **seconded** the motion and it **passed** 6:1. Commissioner Axelrod voted against.

3:02

Chair Babbitt polled the Commissioners regarding whether to accept public comments at the August 14 work session. He would not be able to attend, so it would be up to Vice Chair Steel to decide. The consensus was to not take public comments. The Commissioners wanted to be able to use the time to quietly work on producing a document that would better serve public testimony at the hearing and that would serve the community better. They noted the public

could attend the work session and the public could also submit written comments for the work session. Ms. Thornton summarized that the Commission was done taking public comments on this draft. They had decided to re-notice and provide a new draft. Chair Babbitt closed the public hearing.

Questions of Staff

Mr. Sonnen advised the Commissioners could ask questions to inform their formulating a public hearing draft. Ms. Thornton clarified that a *de novo* hearing was a new hearing where new information could be taken into the record but the application could not be completely or substantially changed and there could not be a change such that new criteria would apply. Mr. Kerr agreed to provide an estimate of the amount of buildable commercial land in West Linn. Commissioner Axelrod asked how the EDC had come up with their approach. Mr. Pelz advised the City Council had made it a goal to promote economic development and instructed staff on what they wanted them to do right now to promote it. The scope of the project did not include whether economic development in general was viable. They were trying to address whether or not there were ineffectual and redundant regulations, procedures, etc. that they could address to promote the City's goals. Mr. Kerr had printed out the rest of the survey and distributed copies of it.

Commissioner Axelrod suggested things were not in the right order. Master-planning of three key areas (Arch Bridge, Blue Heron and Highway 43) should be done before code amendments were considered. Mr. Sonnen advised the Highway 43/Willamette Falls Drive vision basically identified an overall strategy for dealing with the Arch Bridge area, Robinwood, Bolton, Willamette, and the connections between them. There would be detailed master plans for each focus area followed by detailed regulations and design guidelines to implement them. The Arch Bridge effort would be paid for by a grant. This proposal was a disconnected, parallel, effort. Mr. Pelz indicated it was important for the City to do both at the same time so there was some predictability for potential future owners of property that was not yet under a master plan regarding what they could conceivably do with the property. If the City did not allow development on properties that did not have a master plan it might impinge on individuals' property rights. He observed more development was being encouraged in existing commercial areas, which would preserve the rest of the City at the suburban bedroom level they were accustomed to. His opinion was it would be a win: win situation and promote business to put a lot of people in a small area where they could walk to the businesses. He was asked to provide a map so people could see what areas would be impacted. Commissioner King noted that he had just offered an explanation of what they were talking about when they talked about economic development that had been missing in this process that people needed to hear. Mr. Kerr confirmed for Commissioner Griffith that the current proposal was one part of the larger plan for economic development. The Department was also working on retaining existing business and actively marketing vacant West Linn buildings and land to other businesses and developers. They were reaching out to the Chamber and Clackamas County; working with the main street groups; creating other business districts; doing shop local

programs; figuring out vacancy rates; putting things online to help business be successful; looking for grants; etc. Commissioner Griffith suggested that message needed to get out.

Mr. Pelz assured Commissioner Axelrod that Public Works would review an application for conformance with things like stormwater detention and erosion control standards. The plans that the Planning Commission saw would still have to have to show those facilities. Commissioner Axelrod asked staff to clarify why they were changing from a height in terms of feet standard to a floors standard. Mr. Pelz explained staff had learned that it was common today to have a 20-foot high first floor for ground floor retail. It made those spaces more flexible and thus helped reduce vacancy rates. That approach would also increase the number of people within walking and biking distance of commercial centers to promote economic development and improve the traffic situation. He acknowledged the proposed change would result in taller buildings. Commissioner Axelrod asked what the arborist had problems with that made him support the proposed change related to tree preservation. Staff explained the arborist thought more trees could be saved by looking at the condition and situation of each individual tree and evaluating how to save the tree rather than just applying a blanket 10 ft. radius around every tree. The current requirement to protect up to 20% of the area did not necessarily protect 20% of the trees.

Commissioner Axelrod asked Mr. Kerr if he believed the qualitative vision or value statements in the Comprehensive Plan should not be used in land use decisions. Mr. Kerr advised the law required land use decisions to be based on objective criteria. He agreed the objective criteria were based on the wishes and desires of the community in the Comprehensive Plan. He clarified the planning decision process did make some qualitative, discretionary, decisions. Examples included special waivers, CUPs and elements of variances.

3:38

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Mr. Sonnen offered to request that the Commissioners be invited along on the City Council tour of the potentially redevelopable Oregon City area across the Arch Bridge.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

Chair Babbitt viewed the decision regarding how to move forward with the economic development proposal as in the best interest of the City because the proposal was being perceived negatively by the citizens.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the meeting at approximately 10:40 p.m.

APPROVED:



Michael Babbitt, Chair

10-23-13
Date



CITY OF West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of August 14, 2013

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

Members absent: Chair Michael Babbitt

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

CALL TO ORDER

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

WORK SESSION

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

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

City Council Goals (2003)

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

Goal 9 - Economic Development

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

50:44

Goals

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

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

54:29

Recommended Action Measures (RAM)

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

LAND USE APPEALS

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

1:25

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

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

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

1:55 to 2:07

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

END 1 CD/START 2 CD

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

2 CD /4:00

75.040 Time Limit on a Variance and Special Waivers

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

60.070 Approval Standards and Conditions

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

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

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

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

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

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

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

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

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

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

2 CD/42:39

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

2 CD/51:33

Process

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

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

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

2 CD/1:24

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

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

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

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

ITEMS OF INTEREST FROM STAFF

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

ADJOURNMENT

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

APPROVED:

Christine M. Steel

Christine Steel, Vice Chair

10-30-13

Date



CITY OF
West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of August 19, 2013

Members present: Vice Chair Christine Steel, Lorie Griffith, Nancy King, Robert Martin, and Holly Miller
Members absent: Chair Michael Babbitt and Russell Axelrod
Staff present: Megan Thornton, Assistant City Attorney

CALL TO ORDER

Vice Chair Steel called the meeting to order in the Bolton Conference Room of City Hall at 5:00 p.m.

WORK SESSION

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

Vice Chair Steel recalled that the Commissioners had previously decided to replace the outdated City Council Goals section with a vision goals document that Commissioner Axelrod had drafted.

Public Testimony

The Commissioners confirmed they had received a packet of citizen testimony over the weekend (see the August 16, 2013 Testimony Packet). It contained submittals from Karie Oaks, Tony and Brenda Perry, Julie Simpson, Teri Cummings and Scott Gerber. They referred to Karie Oakes’ August 14, 2013 letter and asked Ms. Thornton for advice regarding whether the process had to start over if the EDC had not involved neighborhood associations. Ms. Thornton advised there was no actual, concrete, violation of Chapter 2 of the Municipal Code that would need to be remedied by starting the process over.

The consensus was to move forward by sending their recommendation with a memorandum to let the City Council know the Commissioners were concerned about the way public outreach had been done; that neighborhood associations had been shortchanged; and that the process did not meet the Commissioners’ interpretation of the intent of the Municipal Code. Points raised during the discussion were that the city needed to do a better job of communicating how a city project would affect citizens; the City Council wanted the project to move forward timely; the process the CCI asked for of identifying and including stakeholders and submitting a minority report had not been followed; some neighborhood associations were not active or were dysfunctional; and the Commissioners did not want to be intimidated by some strong

language in testimony. There were differing opinions about whether the flawed process was due to mistake or was intentional. Ms. Thornton advised that if the Planning Commission decided not to forward a recommendation because it wanted to start the process over, the City Council could decide to take action after 60 days.

43:57

Definition: Conditional Use

Ms. Thornton confirmed the definition in the Comprehensive Plan was proposed to be changed to be consistent with the definition in the code. 'Conditional Use' was used once in the Comprehensive Plan. The CDC used it more often so it seemed to make more sense to use the CDC definition and the context that came with it in the Comprehensive Plan. Another alternative would be to simply delete the definition from the Comprehensive Plan. The Commissioners planned to continue to discuss this later.

The Commissioners continued examining the proposed amendments from where they left off at the last work session.

Variances and Special Waivers

CLASS II VARIANCE APPROVAL CRITERIA

- a. **The variance is the minimum variance necessary to make reasonable use of the property. To make this determination, the following factors may be considered, together with any other relevant facts or circumstances:**
 - iv. **The economic impact on the person requesting the variance if the request is denied.**

Ms. Thornton recommended eliminating factor iv. Vice Chair Steel observed consensus to delete it.

- b. **The variance will not result in violation(s) of any other adopted ordinance or code standard, and the variance will meet the purposes of the regulation being modified and will not conflict with the goals and policies of the West Linn Comprehensive Plan.**

The Commissioners added the underlined language to end of (b.) that they had taken from another item (C.) which was struck in the draft document.

Ms. Thornton confirmed that Mr. Kerr planned to make it clearer that Special Waivers were meant for commercial development. She explained the proposal would put a limit (2 per 12-month period) on the number of Class II variances for one lot because variances were supposed to be for very special cases and if people needed more than two perhaps the site was not the right location for their structure. The Special Waiver would be available for those who thought they could design a better development than the code would allow. Vice Chair Steel observed consensus to recommend these changes.

Chapter 99 Procedural Amendments
Neighborhood Contact

The Commissioners wondered how this section would look if neighborhood associations had been involved in the process. They decided to skip it until they knew what neighborhood associations wanted in order to do no harm. One suggestion Commissioner Martin had was to require minutes from the developer/neighborhood meeting for the record.

1:16

Approval Authority

The Commissioners did not favor giving the Planning Director the authority to decide the following:

- h. Enlargement or alteration of a non-conforming structure or use.
- k. Class II Parks Design Review
- l. Class II Design Review
- li. Subdivision of 25 or fewer lots (the Planning Director should not decide any subdivisions)

During this discussion Commissioner Martin suggested removing (r.) water resource area permit because the new WRA code would have a new discretionary component. Ms. Thornton advised them not to remove (r.) until the new code was adopted. Commissioner Martin agreed. Ms. Thornton advised that design review was not supposed to be a discretionary decision. A project either met the letter of the code and was approved, or it did not meet it and was either conditioned so it met the code or it was not approved. There was not a lot the Planning Commission could do to change the application. It was cheaper and more efficient for the applicant and the city when the Planning Director made those decisions. Commissioner Martin and Vice Chair Steel each related the benefit of having the Planning Commission hear an application was because the Commissioners had caught staff errors and because a Planning Commission public hearing got citizens more involved in the matter.

The Commissioners looked at the list of things the Planning Commission would decide. they agreed to wait to make a recommendation regarding the proposed removal of the following two items until Mr. Kerr could explain them:

- ~~d. Enlargement of a non-conforming use or alteration for a structure containing a non-conforming use.~~
- ~~e. Enlargement or alteration of a non-single family residential non-conforming use.~~

The Commissioners would recommend that the Planning Commission decide all subdivision applications; Class II Design Review; Class II Parks Design Review; and any matter not specifically assigned to another approval authority. *Commissioner Griffith left the meeting.

START OF 2 CD

The Commissioners planned to ask Mr. Kerr to explain 50.050 Building Permits for an approved conditional use.

60.070 Approval Standards and Conditions – Conditional Use Criteria

Commissioner Martin recalled Commissioner Axelrod did not want to make any changes to criteria 3 and 7. Vice Chair Steel suggested keeping them and making the proposed new language for 3 and 7 into two additional criteria. There would then be a total of 9 criteria. Ms. Thornton discussed the idea that there should be a criterion that the proposal was consistent with the Comprehensive Plan. She explained the Comprehensive Plan was their base and they built their code on it. There was no need to go back to look at the Plan. The benefit of that was it did not require rehashing of every Comprehensive Plan goal and policy for every conditional use request and it reduced the legal risk of review by LUBA. She suggested the best and easiest way to remove uses they did not like in a particular area was to take them off that zone's list of permitted and conditional uses in the CDC. She advised that if the city kept the old language and added the two new criteria there would be no gain in efficiency and it would require more staff work.

Commissioner Martin noted that 'schools' was on the list, so if someone applied to have a truck driving school the Commissioners would be forced to approve it unless the criterion to be consistent with the Comprehensive Plan gave them a basis to deny it. He asked how the proposed changes would have prevented the McDonalds on Highway 43, which adversely impacted the character of the area. Vice Chair Steel asked how the criteria related to public testimony that West Linn was a quiet bedroom community. Ms. Thornton advised they did not have to approve a use that did not fit. The use would be subject to enough discretionary criteria that the Commission could decide if it was the right fit. She pointed out the criteria related to things like adequate area and aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses. The proposal could not have significant adverse impacts on the livability or usability of nearby properties. The proposed criteria would also provide more certainty to applicants because it was more objective and less subjective. She advised the city had a lot more discretion when it came to conditional uses than under standard Class II design review. She advised that the criterion regarding the 'overall needs of the community' was too broad. No one knew exactly what it meant. The applicant did not know exactly what they were going to be required to prove. They would take their best guess as to what it meant to the Planning Commission and hope they got it right.

Vice Chair Steel was concerned about the list (and the code, in general) not keeping up with the times. She noted 'community' needed to be defined. Commissioner Martin was concerned the criteria would not handle all situations. The Commissioners then agreed to send this section to the City Council as nine criteria (as Vice Chair Steel had suggested) and let the City Council strike what it wanted to. They also agreed to write a commissioners' report to forward to the City Council with the staff report.

Greater Flexibility

The Commissioners discussed the following uses on the GC Zone Permitted uses list:
Hotel/Motel. This use was proposed to be added.

Extended-hour businesses. Commissioner Martin did not want to strike language that a CUP was required when an extended-hour business was to go into a new building or an expanded building. West Linn should be careful about the number of extended-hour businesses it had. As a conditional use it would be reviewed. Ms. Thornton advised the current language was confusing and odd. It was about the structure the use was in. It did not limit extended-hour businesses in an existing building. To keep the struck language would mean the hotel/motel use they had agreed should be permitted use in GC zone because it was desired, would have to get a CUP or be limited in hours of operation. She advised if the Commissioners wanted to make extended-hour businesses conditional use they should think of businesses they would want to be able to be open for 24 hours and exempt them from having to get a CUP. The Commissioners decided to make Extended-hour businesses conditional use and create a list of exceptions.

Lodge, fraternal, community center and civic assembly use. Ms. Thornton recommended adding 'religious institutions' to this item in the GC zone and in the Office Business Center Zone. The majority of Commissioners agreed to that. Commissioner Martin was concerned it would have a detrimental impact on a commercial area to have an often-empty church there.

1:00

Residential Lot dimensional requirements.

Commissioner Martin held that removing the requirement to have proportionality of lots was not a good way to solve the problem of how to use marginal land and could create other problems. Commissioner King acknowledged she had no way of knowing if the result would be good or bad. The Commissioners agreed to wait and ask Mr. Kerr to explain it.

Number of Stories

Ms. Thornton advised this would allow six stories in the GC zone and transitions would be required. The Commissioners decided to talk about this later after they asked Mr. Kerr to explain the rationale for the changes. They recalled Kruse Way had multistory buildings. They took a short break and reconvened.

3 CD

Parking, Loading and Reservoir Areas

Ms. Thornton explained the proposed changes would allow both on and off-street parking to count towards the parking requirement and would make it easier to have shared parking. She clarified the number of spaces requirements for specific uses had not been changed. Commissioner Martin indicated he had no problem with this section but he questioned how it related to economic development. Vice Chair Steel suggested a developer might factor the parking requirements into a decision to build or not. She commented that in a bedroom community people expected parking. Commissioner Miller indicated she could agree to the changes, but she was not sure how neighbors would perceive parking on the street. The Commissioners agreed to continue from this section at their next meeting.

Chickens

Commissioner Martin asked staff to make sure that the definitions in the Municipal Code were also in the CDC.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Martin noted that a street expansion that was a condition of approval of Mary S. Woods Park had never been done and was not needed. He wanted to know if the Planning Commission could remove that condition. Ms. Thornton advised the applicant could decide to apply for modification of the conditional use permit. The Commissioners discussed how a recent training session had been handled.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

The Commissioners talked about acknowledging public testimony when it came in.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

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

APPROVED:

Christine M Steel

Christine Steel, Vice Chair

11-6-13

Date



CITY OF
West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of August 21, 2013

Members present: Chair Michael Babbitt, Vice Chair Christine Steel, Nancy King, Robert Martin and Holly Miller
Members absent: Russell Axelrod and Lorie Griffith
Staff present: John Sonnen, Planning Director; and Chris Kerr, Economic Development Director

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 5:24 p.m.

WORK SESSION

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

Commissioner Martin acknowledged receipt of additional submittals from Teri Cummings (August 16); Gary Hitesman (August 16); and a resolution from the Savannah Oaks Neighborhood (August 15).

The Commission and staff continued their discussion of the July 26 Public Hearing Draft. Mr. Kerr announced he was going to remove the amendments that would allow increases in height and lot coverage from the package. It would make more sense to consider them next year when the City updated the Transportation System Plan (TSP). He was working with ODOT and Metro to determine how to analyze what the related impacts could be. He confirmed he would provide a map that called out the impacted areas. He recalled he had handed out the complete survey results at a previous meeting.

The Commissioners and staff discussed what kind of document should be distributed to the public prior to the September 4 hearing. They agreed that it would be a track-changes version that also distinguished what were staff recommendations if those were different than what the Commission recommended.

Lot Dimensions

- ~~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.~~

The above requirement was proposed to be struck under R40, R20, R15, R10, R7 and R5. Mr. Kerr explained the goal was to allow more flexibility of lots. The Commissioners noticed the diagrams did not match the language above them. Mr. Kerr offered to provide better examples. He clarified this restriction applied to the buildable portion of the lot. On lots that had steep slopes, the buildable portion would be smaller than the lot. He agreed with Commissioner Martin that this provision would have more profound effects on smaller lots in the higher density zones than on the larger lots in the lowest density zones (R40, R20 and R15). For that reason he could agree not to strike E.4 in the lowest density zones. He spoke about flexibility on smaller lots. E.4 limited lot depth on the buildable portion of all of those lots which were already subject to a minimum lot width requirement; a minimum overall lot size requirement; setbacks; and frontage requirements. It was an additional constraint when someone was considering doing a subdivision and trying to work around trees, WRAs and steep slopes. He noted the zones typically required 35 ft. frontage. He noted there were deep lots all over the City that he did not think were problematic. During this discussion Commissioner Martin indicated they should have done an economic development plan first (with public input) and then looked at the impacts and considered related code changes. He questioned how the proposed change could encourage economic development. Chair Babbitt commented it would impact redeveloped infill lots as well as new land that was going to be annexed. He asked Mr. Kerr to provide examples showing how it would affect lots in various zoning districts (just as Mr. Kerr had provided examples when they were looking at PUD code). He polled the Commissioners. They agreed with the proposed changes (to strike requirement 4) under R40, R20 and R15. They agreed to leave requirement 4 in the code under R10 and higher density zones at least until Mr. Kerr presented his new examples and helped them understand what the proposed change would do and where the impact would be.

The Commissioners suggested it was important to find out about any potential conflict between the proposed amendments and the pending PUD and WRA codes. Mr. Sonnen confirmed the staff planned to discuss that with them. The Commissioners wanted to know how large lots could be in the City. Mr. Sonnen advised that Metro required cities to establish minimum densities as well as maximum densities. In West Linn subdivision lots could be up to 30% larger than the zone's minimum lot size. There was no limit on the size of lots created by partitioning. He advised that the 60,000 s.f. lots Commissioner Martin saw along the river predated the current zoning code. If they were redeveloped the lot size requirements would apply. He advised the Commission that there were three subdivisions currently under review and there had been a handful of partitions in the past few months. People were dealing with small, irregular, infill properties where they were demolishing an existing structure. There would probably be some variance requests. If requirement 4 were eliminated he did not think they would see a lot of abuse because people trying to meet the market in West Linn would likely try to have standard lots.

Building heights

1:03

Mr. Kerr reiterated that he was no longer proposing increased heights or expanded lot coverage in this proposal. They could be considered during the TSP update process. He did not expect underground area to be considered a 'story,' but that would be decided later.

Potentially require 50-foot buffer in Neighborhood Commercial / General Commercial / Office Business Center zones.

Mr. Kerr advised that staff did not know what the language 'and in addition, a buffer of up to 50 feet may be required' meant or where it would apply. It was proposed to be struck. Without it they would rely on the required setbacks; noise, light and odor standards; landscaping and parking requirements; and requirements to mitigate impacts. Chair Babbitt indicated he was concerned about protecting residences from impacts. Mr. Kerr questioned whether a little convenience store in the NC zone should have to provide a 50 ft. buffer on two sides. Chair Babbitt suggested this was where the applicant could use the special waiver. Mr. Kerr observed that would make the process harder. The Commissioners agreed to Vice Chair Steel's suggestion to keep the struck language and revise it to incorporate: "in addition a structural or landscaped buffer to mitigate impacts may be required." Chair Babbitt observed it allowed the Planning Commission to weigh all of the options.

OBC Setbacks

Commissioners and staff discussed where buildings should be required to be pushed up against the street. The current language would require that along arterials. Mr. Kerr thought the only two arterials in the City were Highway 43 and Willamette Falls Drive. Mr. Sonnen advised that buildings were usually up against the street to create a pedestrian environment where pedestrians browsed store windows and were enticed into the stores. Pedestrian environments were typically along lower volume roadways. The Highway 43 consultant had advised that was a traffic count under 12,000. Highway 43 volume was higher. Mr. Sonnen suggested basing the setback requirement on the traffic volume of the street instead of the street classification. The Commissioners agreed to that. They would have at least a 20 ft. front setback on higher volume streets.

During this discussion the Commissioners considered the safety risk of having buildings up at the street at intersection corners. One way to address that was that building corners had to be lopped off so they were outside of the sight triangle. Chair Babbitt did not think that was enough. He suggested there should be some minimum front yard setback when cars were going past at 30 mph. Staff pointed out where were two small pieces of OBC along Highway 43 and there was OBC parcel on Blankenship across from Albertsons that might be developed soon. They asked the Commissioners to think about what might be there. They asked the Commissioners to think about Central Village and Willamette where buildings were right up against the sidewalk; and vibrant, walkable areas like NW 21st and NW 23rd Streets in Portland and Orenco Station in Hillsboro. They suggested pushing the buildings back would look more like Kruse Way. It would diminish the pedestrian atmosphere. Mr. Sonnen suggested that if the Commissioners were going to require a front setback along Highway 43 they should allow

those who wanted to build next to a development that was already built to the street to do that too. At the end of this discussion the Commissioners asked staff to revise the OBC, Campus Industrial and GC sections. They were to incorporate the concept of using a traffic volume threshold to determine when there was to be a 20-foot maximum setback. It would be imposed on the higher volume streets. On higher volume streets they would allow parking in the setback. On lower volume streets they would require the setback area to be occupied with certain types of pedestrian oriented features. They seemed to agree that if someone wanted to build to the build-to line on Highway 43 next to other buildings that were close to the street they would allow that instead of making them set back 20 feet.

Commissioners Questions

Mr. Kerr answered some questions the Commissioners had posed at the previous work session. He said special waivers were only applicable to commercial areas. He offered clarification regarding Conditional Use Permits. [Mostly inaudible – apparently related to the school district]

2:28

Parking

Mr. Kerr explained the City did not currently allow applicants to count on-street parking to satisfy parking requirements. The proposed changes would allow it to count under certain circumstances. It would not apply in a residential zone. It only applied to frontage. Engineering Department approval would be necessary. They would compare the request with the longer term TSP and not allow it if they knew that in the future there was to be a turn lane, for example, where the parking was located now. Mr. Kerr clarified there was no parking requirement for businesses in Willamette. He advised that just a couple of spaces could make the difference between a business moving in or not moving in. He advised those in the business of building retail/commercial buildings tended to want to overbuild parking on their sites. Chair Babbitt commented that this was not helping the issue that there was more and more traffic and need for parking. Mr. Kerr clarified for Vice Chair Steel that the City did not track the entire supply of parking spaces. Staff looked at the spaces immediately in front of a business when a new tenant applied for a permit. Some businesses did not have any frontage. Mr. Kerr confirmed the overall change in parking requirements was downward. Commissioner Martin observed there was little mass transit in West Linn and walking was not a good alternative due to aspects such as topography. He wondered if the amount of parking had been part of the reason a number of businesses had gone out of business in Central Village, where it was difficult to find a parking place at noon. He commented that although this moved West Linn in the direction they wanted to go it was a perilous path unless they got some form of mass transit. Later he clarified that he supported the proposed parking section as a good change. Mr. Kerr advised this would be counting spaces the way Metro was going to require anyway. The concept of shared parking better utilized existing spaces.

Vice Chair Steel suggested the Commissioners add an aspect to their memo to the City Council about the competition for parking and ask the City Council to consider a shuttle service

between the business centers. Mr. Sonnen suggested the City could specify what minimum on-street parking was. For example, **'For purposes of this section 20 feet of frontage equals one space.'** They might want to add, **'with the approval of the City Engineer consistent with the TSP.'** Mr. Kerr suggested that the parking requirement could be expressed as follows when a business, such as Adult foster care, had 24-hour operations: **'One off-street space for each three units, plus one space for each employee working during the time period with the greatest number of employees on site.'**

2:50

Tree Protection

The Commissioners discussed the following proposed provisions.

55.100(B)(1. Tree Protection)

- b. **Significant trees on Type I and II lands shall not be removed, except as permitted elsewhere in this code. The City Arborist may authorize the removal of significant trees on Type I and II lands if they are determined to be diseased or hazardous to public health.**
- c. **New development shall preserve existing trees where feasible and shall plant new trees if needed.**
 - b. **Where it is determined by the City Arborist that 20 percent of the significant trees on non-Type I and II lands cannot be saved, the applicant shall mitigate for the difference between the required 20 percent and the trees being saved. Mitigation shall consist of replacing trees on an inch-for-inch basis (e.g., the removal of a 24-inch tree requires replanting of (6) 4-inch, (8) 3-inch, etc., trees of a species acceptable to the City Arborist).**

The Commissioners agreed with Vice Chair Steel's suggestion to allow off-site mitigation planting in order to prevent overplanting a site if the inch-for-inch replacement would result in overplanting. On-site mitigation was to be to the level specified by the City Arborist. Off-site mitigation would be paid for by the developer. The Commissioners did not support a fee in lieu of mitigation. They did not support the alternative to simply allow developers to pay per inch for tree removal so the City could plant trees where it wanted them. Mr. Kerr related the City Arborist recommended charging around \$100 per inch. He advised most replacement trees were 3-inch caliper. Vice Chair Steel suggested requiring mitigation trees to be 'as large a caliper as possible,' or, as an alternative, half the removed tree's size. Chair Babbitt suggested that could be too costly. He recalled the Commission had previously allowed off-site planting. The condition said replacement had to be inch for inch. In the past there had been an issue related to how to calculate a fee in lieu. The fee never seemed to be used in a reasonable amount of time. Mr. Sonnen suggested another approach would be to require significant trees that would be compatible with the potential development to be planted on a percentage of the site or in a separate tract (some jurisdictions said it should be 5%). Trees could be planted in the islands in the middle of streets, for example.

Commissioner Martin observed the Commissioners agreed to Mr. Sonnen's suggested changes to 1.b.: **'Significant trees on Type I and II lands shall not be removed except as permitted in CDC Chapter 8 of the West Linn Municipal Code.'** After the words, 'are determined to be diseased' add **'hazardous to public safety, inappropriate to the site at maturity, or not likely to survive construction impacts.'**

Commissioner King recalled Commissioner Axelrod had an issue with the change from preserving 20% of significant trees to preserving 20% of the area. The Commissioners decided to wait to discuss this when he was present.

Domesticated Chickens

- *Municipal Code – Chapter 5, Nuisances 5.416 Domesticated Chickens*
- *CAC 08-050 Uses and Development Permitted under Prescribed Conditions*

Commissioner Martin observed the Commissioners favored removing all of the related CDC provisions because they had no meaning given the Municipal Code, which specified:

5.415 Livestock and Poultry (1) Except for domesticated chickens, or as otherwise permitted by the WLMC or CDC, no person shall keep or maintain livestock or poultry within the City.

Mr. Sonnen confirmed the City had allowed people to use goats to clear areas, but just for several weeks at a time. Vice Chair Steel referred to **Municipal Code 5.416 Domesticated Chickens (5): Enclosures must be located at least 20 feet from all neighboring residences.** She commented that 20 feet was too close.

Removal of Ineffectual and Redundant Code

99.030 B. Pre-application conferences

5. At such conference, the Planning Director or designee shall:

- ~~Cite the applicable federal and State laws and rules and the Comprehensive Plan policies and map designation;~~**

Commissioner Martin would have (a.) call for citing 'the applicable Comprehensive Plan policies and map designation.' That was because he understood the Commissioners would look to the Plan any time the decision was discretionary. Chair Babbitt suggested not including the word, 'applicable' so staff would not have to interpret a lot of Comprehensive Plan aspirational statements to find which would apply. He anticipated staff could tell the applicant that if the Commission had to interpret a CDC provision they would look to the Plan. Commissioner Martin agreed with Chair Babbitt's suggestion. During the discussion Mr. Kerr questioned why they would need to go through the Comprehensive Plan policies during a preapplication conference. Mr. Sonnen advised that in interpreting the CDC the Commission first looked at the purpose statements. If that was not sufficient then they looked for guidance from the Comprehensive Plan. They could directly apply the Comprehensive Plan if it was clear enough

to constitute objective criteria. Under the current language for conditional use they would be obligated to cite the applicable Comprehensive Plan policies so the applicant would know.

Class II Design Review Process (in Chapter 55)

55:030 Administration and Approval Process C. (page 61) was proposed to be struck. Staff advised it was redundant because they would consolidate the all approval processes in Chapter 99.

Definitions

Mr. Kerr noted the definition **Transient Lodgings** was struck and replaced by 'Hotel/Motel.' This definition would be placed in Chapter 2.

GC Permitted Uses

Vice Chair Steel recalled at their previous work session the Commissioners had added Hotel/Motel to the permitted uses list; moved Extended-hour businesses to the conditional uses list; and excepted Hotel/Motel from the Extended-hour businesses CUP requirement. Staff advised Measure 56 notice would be required before the hearing to advise the property owners in the GC district that what was being proposed was to take a permitted use and make it a conditional use and that might diminish their property rights. Mr. Kerr suggested if the Commissioners decided to wait until after the next hearing to propose this change he would revise the existing CUP language under the permitted use, Extended-hour businesses, in the hearing draft to clarify it. Chair Babbitt was concerned this did not address that a new, permitted use, extended-hour, business moving into an existing structure was not required to apply for a CUP. At the end of this discussion the Commissioners agreed to Mr. Sonnen's suggestion to add language at the beginning of **19.030 Permitted Uses: "The following uses are permitted outright in this zone, provided that extended-hour businesses are subject to..."** to make the readers of the permitted use list aware of that.

Special Waiver

Mr. Kerr proposed to change some of the proposed Special Waiver language in order to address Chair Babbitt's concern that it did not require superior development (which was design beyond what the code would require).

The existing proposed language was:

- C. **Special Waivers. Special Waivers are only appropriate where it can be shown that the proposed development provides an alternative or superior means of furthering the intent and purpose of the regulation to be waived. A Special Waiver involves a waiver of a standard to permit a specific proposed development. It does not require demonstration of a hardship. It is a request to modify specific requirements in order to**

provide an alternative design which would not otherwise be possible under the standard requirements of the Code.

Mr. Kerr suggested revising the above language as follows:

- C. Special Waivers. Special Waivers are only appropriate in mixed-use and non-residential zoning districts. Special Wavers may be granted by the approval authority where it can be shown that the proposed site design provides a superior means of furthering the purpose of the regulation to be waived.**

Existing proposed language said:

- 1. The Planning Commission may approve a Special Waiver due to the unique nature of the proposed development if it finds that there is sufficient evidence to demonstrate that the proposed development:
 - a. Provides an alternative means of furthering the intent and purpose of the regulation to be waived; and,****

Mr. Kerr would change 1.a. to:

- a. Demonstrates the proposed development can comply with the regulation to be waived, but the waiver will provide an alternative means of furthering the intent and purpose of the regulation to be waived; and,**

Mr. Sonnen explained why an applicant would apply for a special waiver instead of a variance. The variance process granted a variance because it addressed a hardship in meeting the code. A special waiver was granted to those who could meet the code, but had a better way to achieve the intent of the code.

3:53

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

The Commissioners asked staff to load the CDC, Comprehensive Plan, Statewide Planning Rules, PC Rules, the Municipal Code, and all master plans on their new electronic tablets and grant each Commission administrative rights to make changes on his/her own tablet to make them more functional.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

The Commissioners and Mr. Sonnen discussed the procedure for forwarding citizens' emailed testimony to the Commissioners. The Commissioners wanted to ensure receipt was acknowledged. Commissioner Martin suggested if staff was already posting the packets of emails on the website the Commissioners would read them there.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the meeting at 9:35 p.m.

APPROVED:



Michael Babbitt , Chair

11-20-13

Date



CITY OF
West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of September 4, 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: John Sonnen, Planning Director; Chris Kerr, Economic Development Director; Zach Pelz, Associate Planner; and Megan Thornton, Assistant City Attorney

PREMEETING WORK SESSION

Chair Babbitt called the work session to order. Mr. Sonnen and the Commissioners discussed emails and an upcoming planning commissioners training session. Mr. Pelz pointed out recent written testimony that had been received. He confirmed the City had notified DLCD as it was legally required to. Staff clarified that the Savannah Oaks, Marylhurst, and Robinwood Neighborhood Associations had submitted resolutions opposing proposed changes. None had submitted information indicating they were in favor of it. The group of neighborhood association presidents had not submitted testimony, but Mr. Sonnen understood they had indicated their opposition to the proposal at a recent meeting. Commissioners asked what the process would be if the Commissioners were not ready to forward a recommendation. Mr. Sonnen advised that after 60 days the City Council could move forward with its hearing. Commissioners and staff discussed the format of the document to be forwarded to the City Council (how it distinguished between changes initiated by staff and changes initiated by the Commission; and how it showed language that had been dropped). Staff confirmed they were prepared to talk about ORS 197.319 at the hearing if asked. The work session was adjourned at 7:00 p.m.

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:04 p.m.

PUBLIC COMMENT

Alice Richmond, 3939 Parker Rd., announced the upcoming September 11 ceremony at Willamette Park and the Oktoberfest on September 27/28.

Roberta Schwarz, 2206 Tannler Dr., announced a September 14 fundraiser for the White Oaks Savannah.

Gary Hitesman, 2188 Clubhouse Dr., advised the City and everyone to plan to be ready for a natural disaster.

APPROVAL OF MINUTES

Vice Chair Steel **moved** to approve the Minutes of July 3, 2013. Commissioner Martin **seconded** the motion and it **passed** 5:0:2. Commissioners Miller and Axelrod abstained.

PUBLIC HEARING

Amendments to chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 27, 28, 31, 32, 33, 46, 52, 55, 56, 60, 65, 75, 85 and 99 of the Community Development Code and various sections of the Comprehensive Plan for the purpose of eliminating ineffectual and inefficient regulations to encourage positive economic development.

Chair Babbitt opened the public hearing. He outlined the applicable criteria and procedure. He asked the Commissioners to declare any potential or actual conflicts of interest. None were declared. No one present challenged any Commission member's ability to participate in the decision. Chair Babbitt related that the Commissioners had considered the public comments that had been received at work sessions after the initial hearing. The current draft [dated August 23, 2013 for the September 4, 2013 hearing] reflected that. He noted the Commission had decided to re-notice to show the correct chapters and to hold this new hearing.

Staff Report

Mr. Kerr talked about the yellow-highlighted, strike-out/underline format. It incorporated changes made by the Commissioners during their work sessions. The highlighted boxes showed the staff recommendations. He reported that the most significant recent change was that staff now proposed and had completely removed provisions which would have allowed additional floors in some multifamily and commercial areas and which would have expanded allowable lot coverage in commercial areas.

Chapter 75 Variances and Special Waivers, Class II Variance Approval Criteria

- b. **The variance will not result in violation(s) of any other code standard or conflict with the goals and policies of the West Linn Comprehensive Plan, and the variance will meet the purposes of the regulation being modified.**

Ms. Thornton explained this part of the document did not include the staff's alternative recommendation, which did not include the words, 'or conflict with the goals and policies of the West Linn Comprehensive Plan.'

Goals, Policies and Recommended Action Measures, Recommended Action Measures

- ~~14. Explore the availability of high-speed data connections for voice and data transmission to all homes.~~

Commissioner Martin indicated he thought the Commissioners had agreed not to strike the above RAM. Vice Chair Steel, Commissioner Axelrod and Chair Babbitt recalled they thought it was captured in another RAM; they had observed it was somewhat dated and there were other elements and services they wanted to support so it would be better to be less specific; and in general, they wanted to be more generic and there were other RAMs that covered this.

Commissioner Axelrod explained that the currently proposed draft amendments document was not necessarily the language the Commissioners agreed to. They viewed it as a working draft.

Commissioner Martin advised the public that there was no need to comment on the 'chicken code' under CDC 08.050. Staff had only removed part of it, but the Commissioners had decided to remove all of it because there was a Municipal Code ordinance which prohibited poultry and livestock.

Commissioner Axelrod wanted staff to explain which roadways were referred to when the draft said, 'street sizes greater than 18,000 per day.' Mr. Kerr recalled the Commissioners had discussed how to identify extremely high use roadways in terms of traffic volume. This referred to Highway 43, which was typically 19,000 to 20,000 trips per day. None of the other roads had volume that high.

25:11

Public Testimony

Proponents

None.

Opponents

*Written testimony submitted during this part of the public hearing can be found in the September 6, 2013 package of public testimony regarding CDC-13-01 received at the September 4, 2013 hearing, entitled, "Testimony in Opposition to 'Cutting Red Tape' amendments to the CDC and Comprehensive Plan for the City of West Linn."

Scott Gerber, 3940 Kenthorpe, indicated he viewed the whole 'cut the red tape' effort as an indicator that something was not right in the City. It was not the right program for economic development or what needed to be done to help the businesses of West Linn. He did not think most of the citizens wanted to see huge economic development in the sense of bigger buildings or easier ways for developers to get around the rules. He indicated the citizens of West Linn did not want to see what they saw along Highway 99 going through Milwaukie. He had been glad to hear Commissioner Axelrod say this was not the Planning Commission's final decision on this. The Commissioners had offered a lot of good input. His recommendation was for the Commission to send it back with a great big 'X' on it and recommend starting over. This was not the right direction for the City.

Beverly Burke, 19110 Suncrest Ave., explained she was there to clarify the recommendation from the Marylhurst Neighborhood Association. She explained that some of the original wording had been changed in the version that had been sent to the Planning Commission. The Association had approved its recommendation unanimously on August 17. She submitted a copy of the original recommendation.* She testified that, in general, the Association was not supportive of the proposed amendments document for many of the same reasons Mr. Gerber had related. She indicated she was shocked to think she was being asked to accept some very vague statements that would affect her residence. She asked that Definitions be placed at the beginning of the document. She asked to have the minutes of Planning Commission meetings available at least a week before the next meeting. Mr. Sonnen related the videos of the meetings were posted online. The written minutes were posted online after they were approved. Commissioner Martin explained the minutes were not available yet because the Commissioners had been meeting once a week because there was so much pressure to get the document to the City Council. Vice Chair Steel pointed out that Definitions had been moved to Chapter 2.

Questions

The Commissioners inquired whether the one page summary of the Marylhurst meeting of August 27 signed by MNA President Jeff Treece on 8/30/13 that was in the hearing package was valid (see the September 4, 2013 package of public testimony, "CDC-13-01 – Email testimony regarding proposed 'Cut the Red Tape' amendments to the West Linn Community Development Code ." Ms. Burke clarified she had not seen it so she could not compare the documents. She had been informed it was a 'secondary document.' She recapped that the neighborhood association had met to discuss the proposal. They had worked on it that night to some degree. Then two women had been tasked with cleaning it up and providing it to the Association president. The women had informed Ms. Burke last week that they understood the president had modified the original document. They had asked her to attend this hearing and provide the original document. Ms. Burke clarified that the secondary document had not been presented to the rest of the neighborhood association.

Brenda Perry, 2286 Haskins Rd., pointed out she had submitted an email* with questions that Mr. Kerr had not been able to answer at a meeting she had attended. She listed concerns and questions related to the following aspects:

- Survey. How many and which businesses had been surveyed and what were the questions?
- Shared parking. The proposed changes raised questions about what happened if one of the business left and the premises could not be leased to a business that had the same suitable hours. There needed to be enough parking for whatever business was there.
- Retail space. How much existing retail space was vacant; how long had it been vacant; and why would the City want to build more if it could not rent what it already had?
- Business opportunities. What business opportunities had been lost because of so-called 'red tape'? It seemed businesses still came to West Linn. What was the City looking for?

- Type of businesses. What specific types of businesses did the City want to bring in? Was it light industry, commercial, retail? They should be the types of businesses that fit the community.
- Areas of benefit. What areas would benefit from the changes? Was it just the Arch Bridge area? A lot of Highway 43 was already built out. Where would the potential development the City wanted to accommodate be that meant the City had to rush to make all the changes?
- Fiscal responsibility. It did not make sense for the City to be talking about fiscal responsibility while they were talking about a large aquatic center that they knew would run at a loss.
- Type of employment. What type of employment did the City want to increase? Was it going to be minimum wage retail, skilled labor, or what type? Most people commuted.
- Infrastructure. The city could not do a lot of business development without improving the roads and they needed to look at the infrastructure necessary to support the changes.
- Planning Director authority. Ms. Perry did not support giving the director the authority to decide what happened on quite large amounts of land without going through the Planning Commission and neighborhood associations.

Ms. Perry testified that what was proposed what not what they wanted for West Linn. She suggested if this had a lot of problems the City should throw it out and start again. She agreed to submit her list of questions as additional written testimony.

43:30

Ed Schwarz, 2206 Tannler Dr., President of the Savanna Oaks Neighborhood Association, read aloud written testimony from Dr. Mark Gilbert, 2594 Bronco Ct.* Dr. Gilbert wrote that he was concerned that the proposed changes would undermine the qualities he had moved to West Linn for, lower real property values, and potentially threaten health. He cited a study done for the City of Portland Bureau of Planning and Sustainability called the "SE 122nd Avenue Study." It was a health impact assessment of the built environment of the SE Powellhurst-Gilbert neighborhood. It was a blueprint for developing a livable, sustainable and healthy community. Study conclusions relevant to the West Linn effort addressed:

1. The importance of streetscape with trees and green medians with plantings.
2. Parks and open spaces that provided active recreation opportunities for health and provided a quality appearance for residential and commercial development.
3. Douglas fir trees were a character defining asset. They were often lost in the development process. The recommendation was a tree policy to help preserve more trees in development.
4. A key finding was to include the community and its organizations in all aspects of development and planning.

Dr. Gilbert recommended the Commission vote 'no' on the proposed amendments and recommend further study and the participation of grass roots organizations. Mr. Schwarz pointed out Dr. Gilbert had followed up with an email with a link to the study:

<http://www.portlandoregon.gov/bps/55598?a=263935>. Mr. Schwarz recalled that Dr. Gilbert had advised the Savannah Oaks Neighborhood Association that he was aware of about a dozen

doctors who had moved to West Linn for the livability. Several of them were concerned about the proposed amendments.

Mr. Schwarz reminded the Commissioners that the Savannah Oaks Neighborhood Association had presented three resolutions at the last hearing. The Resolution dated August 6, 2013 listed eight things they wanted to be removed from the draft before it was forwarded to the City Council. Another resolution addressed Municipal Code 2.085S2, which required the Economic Development Committee to work in close partnership with the West Linn Chamber of Commerce; neighborhood associations; and the general public. As far as his Association could tell they might have only involved the Chamber. The neighborhood associations had not been engaged up front. They had been chasing this ever since they learned about it before the previous meeting. Mr. Schwarz indicated he was not so sure how involved the general public had been. Commissioner Miller asked what the City of Portland had decided to do with the study Dr. Gilbert referred to. Mr. Schwarz indicated he did not know.

Roberta Schwarz, 2206 Tannler Dr., submitted written testimony as well as a copy of "Demographic data and urban tree canopy" from Appendix F of Metro's Nature and Neighborhoods code (2007).* She read her written testimony aloud. In it she asked the Commission to reject the amendments the neighborhood associations and citizens had brought to their attention. She argued those items were not about cutting red tape, but about making the City bend to the will of the developers. It would fundamentally reduce the quality of life the citizens had moved there to enjoy. She reported that four neighborhood associations had already passed resolutions against those amendments and more were planning to do so. She charged the amendments had been fast-tracked. She reported the majority of neighborhood association presidents had met the previous week and submitted a resolution to not go forward until the neighborhood associations and citizens could be involved in drafting of the amendments (as was required under Municipal Code 2.085). She then discussed the information in the table in Appendix F, which showed the amount of urban forest cover protected by each Metro jurisdiction. West Linn had one of the highest percentages of mostly and partially protected tree canopy in the metropolitan area. That was because its code was clear and effective. The tree canopy was one of the biggest reasons people wanted to live in West Linn. Tree canopy was about more than just aesthetics. It was also about other services trees performed related to addressing ozone, water purification, flood control, and climate regulation. She advised protecting natural resources made good financial sense and helped retain the City's value. She cited a 2005 United Nations' Millennium Ecosystem Assessment, which warned that many of those services were being undercut by ill-advised development. She asked the Commission not to approve tree protections being diminished or any of the other amendments cited by the neighborhood associations' resolutions.

Kathleen Larson, 6126 Irving St., offered an historic perspective on planning for West Linn based on her experience as a former mayor and city councilor. She had been one of the original authors of the City's Comprehensive Plan in 1982. They had been guided by the need for citizen involvement; the desire for open space and neighborhood parks; and the desire for

trees, especially street trees. She advised the best decisions were made when all of the people were at the table. She asked the Commission not to change some of the things that were important in 1982 because they were still important today: citizen involvement; an open process for development decisions; and the importance of trees and the tree canopy. Those things made it a livable community with a heart. She related they did not want Highway 43 to become another McLoughlin Boulevard. The existing Highway 43 with pockets of development for commercial and parks and neighborhoods had not developed that way by accident. Commissioner Martin thanked her for what her work had produced.

Julia Simpson, 1671 Killarney Dr., Chair of the Willamette Neighborhood Association, testified that her association had adopted a similar resolution after they saw the Savannah Oaks Neighborhood Association's resolution. They had been shocked to see their rights as citizens were possibly being taken away. They certainly wanted to see economic development, but she was not sure some of the things proposed were going to result in saving any money or helping. In fact there might be some unintended consequences. She indicated it would be interesting to hear what the planners thought would happen after the changes were made. She talked about the proposed deletion of the standard related to tree protection which set the protected area as the dripline, plus ten feet. [See 55.100(B)(1) Tree protection, page 49.] She recalled when they worked on the tree protection code ten years ago they had gathered a huge amount of information. There was a reason for setting the protected area. It was very important during construction because a tree could be destroyed by equipment going over its roots.

Robert Jester, 3475 Riverknoll Way, testified that seven neighborhood association presidents had met and passed a resolution that asked for the Commission to hold a meeting with the neighborhood association presidents prior to considering the proposed changes. The vote had been six in favor, with one abstention. He said he did not know who in the City had received it or what the response to it was. He said the issue they had talked about related to the spirit of the document. He indicated he found it stunningly arrogant to eliminate the role of the neighborhood associations. He pointed out 2003 City Council Goals was proposed to be eliminated (page 3). Goals 1, 2 and 3 called for the City to 'Maintain and protect West Linn's quality of life and livability'; 'Actively support and encourage West Linn's neighborhood associations and promote citizen involvement...'; and, 'Maintain and strengthen trust and credibility in city government.' That meant that all references to requiring or even desiring the input of neighborhood associations in the process of economic development would be eliminated. The established process of neighborhoods coming together and meeting in a formalized way and then forwarding that information to city government would be gone. He noted Goal 9: Economic Development Policies (page 6) talked about reaching out to organizations such as TriMet, but did not mention neighborhood associations. The proposed changes did not reach out to neighborhood association presidents in any formal way. They had been presented with the proposed changes instead of being asked to contribute during the process. Mr. Jester indicated he thought the vast majority of residents in West Linn actually favored economic development because it strengthened the City's tax base. He said neighborhood associations and their presidents were fairly savvy when it came to issues like

that. He thanked the Commissioners for their service. He said it would be nice if neighborhood associations and their presidents had also received some appreciation by the group that put the document together.

Questions

Commissioner Miller acknowledged that the format of the document was very confusing because of all the revisions. She pointed out the Planning Commission proposed to insert Citizen Vision Goals (page 2). Mr. Jester noted Goal 2 just said 'Support the City's neighborhood associations.' The words 'actively' and 'encourage' were gone. The tenor of the document had definitely been changed as if reaching out would be some sort of obstruction to economic development. He did not think that was the case.

Lamont King, 4257 Kenthorpe Way, commented that they might be better off to strike the entire document and start over again. He contended that staff had used a shotgun approach and hit and missed pretty badly; and that the document was 50% in error or controversial, or just not well thought out. He indicated he was concerned about the process. He understood that City Manager Chris Jordan had given the Commissioners a pep talk before a Planning Commission meeting. He recalled Vice Chair Steel had related that Councilor Mike Jones had talked to them at one of the meetings and said if they got through 50% of it they were good to go. He cautioned that the push by the City to get this passed raised a red flag. He asked why they were in such a hurry. He suggested that the staff wanted to strike 'actively support and encourage West Linn's neighborhood associations and promote citizen involvement' in order to sidestep neighborhood associations. He saw that the Commissioners were trying to modify it, but one of the arguments he had heard was that if there were only 20 to 30 persons at a neighborhood meeting that was not representative of a neighborhood. He had gone door to door in his own neighborhood. He explained that he understood that there was a lot of busy people and there was apathy. But generally, the people who participated in neighborhood associations were probably the best informed in the City; cared about what was going on; and spent an enormous amount of time to try to work with the City to make things better. To ignore them, as staff seemed to be doing, was an insult to the people of West Linn.

Mr. King then discussed the proposed striking of the criterion 'overall benefit to the community.' He suggested the intent might relate to the Lake Oswego-Tigard Water Partnership application, where the applicant could not prove overall benefit to the community. He was concerned that what was proposed would leave them open to having additional industrial plants being put into neighborhoods. He recalled City staff fully endorsed that for some reason. He held that if it did not benefit the neighborhood maybe they ought to take a second look at it and at least hear the different arguments and view this like the Planning Commission did during that hearing.

Questions

Commissioner Martin clarified that City Manager Jordan had not offered a 'pep talk' prior to a meeting. He had come to ask the Commissioners for their help in ensuring that when people testified they respected staff as professionals and treated them with respect. Commissioner Martin said he thought that was a very legitimate request for Mr. Jordan to make. They had been lax and a little tolerant of people talking somewhat abusively to the staff. It had become a trend. The Commissioners realized how emotional it was for people to testify and they had given them a chance to vent. Sometimes that had been to the detriment of the staff. Mr. Jordan was asking them to please not do that and to establish and maintain a certain decorum. That was all. That was what the meeting had been about. Mr. King said he appreciated that. They had not been allowed in the meeting, so they had to do some conjecture regarding what was going on. He knew staff had an interest in the outcome.

Vice Chair Steel clarified that when Councilor Jones said, 'We do want to move this along, and if you only give us a percentage of it, that's fine' she had interpreted that to mean that that if some of the amendments were just thrown out then that was fine. She noted that was what had actually happened. She acknowledged it was hard to see from the current document format what had been simply taken off the table. One of the things she wanted to discuss as they moved forward was having some kind of addendum or appendix or something that showed the things that had been deleted wholesale from the document. One of the examples that Mr. Kerr had mentioned was the removal of amendments related to having six stories in general commercial. She recalled the Planning Commission had addressed the whole change related to neighborhood involvement by just recommending not even going there and not making any changes. Mr. King clarified that he was not talking about Mr. Kerr personally. He was referring to the product that he produced.

Alice Richmond, 3939 Parker Rd., held the City was supposed to work for its resident taxpayers. She indicated she trusted that the majority of Commissioners would listen to the people and advise the City Council accordingly. She advised them to look at what was good for West Linn, not other cities. She mentioned considering the topography and the financial burden of a new aquatic center and police station.

Gary Hitesman, 2188 Clubhouse Dr., explained he had come to mourn the death of community involvement; public participation in land use; and healthy and sustainable small business in West Linn.

Sandy Greenwald, 3680 SW Fir Grove Rd., asked the Commission to consider that at the national and state levels and as a society they were struggling to find the proper balance between economic development and corporate power and the rights of citizens. That extended to their rights to privacy, and bailing out banks versus people who were underwater in their mortgages. She saw the same parallel in this document: balance between cutting some red tape (which was certainly a good goal) and rolling the red carpet out to development at the expense of the citizens. She asked the Commission to protect the quality of life of the residents

as the number one goal. She questioned that the current rules had discouraged development. She said they had certainly done a good job of protecting the quality of life of the residents.

1:28

Questions of Staff

Commissioner Martin recalled he had asked staff to separate things that were going to create economic development from things that had nothing to do with economic development. He recalled that staff had based some things on claims of efficiency in internal processes that would save the City money. He noted those were loosely coupled goals. After Mr. Kerr confirmed for Commissioner Martin that when the Planning Director made a decision staff still had to do noticing and produce findings Commissioner Martin questioned how the change could result in savings to the City. Mr. Kerr talked about preparing for and staffing Commission meetings in terms of real and opportunity costs to the City and the applicant. The additional costs related to things such as the fact the Commission usually met at night; that the Commission often met more than once to decide an application and staff prepared for each of the additional meetings; the applicants were paying their attorneys and traffic consultants to prepare and be present at the meetings and they were charged for staff time. He noted most applicants were property owners in the city. The cost to the public was they came to the meetings when a non-discretionary decision was to be made thinking they could make a real difference when the City could not legally deny the project. He noted staff and the Planning Commission could be working on other things. The Commission could be working on things on their agenda that would make a real difference instead of spending time on non-discretionary decisions. He questioned that the current process was making the best and most efficient use of city time and tax dollars for a decision that was non-discretionary.

During the discussion Mr. Kerr clarified that some staff got paid over time for being at evening meetings and some did not. It took a long time for everyone to prep for the meetings. Commissioner Martin recalled the Commission often modified the conditions of design review approval that staff proposed and they had found things staff had overlooked. He held there was a value to having seven pairs of eyes on the quality of work that came from staff. Mr. Kerr agreed. He clarified his proposal would still let the Planning Commission review all of the applications; see all of the testimony that came in; make all the comments they wanted to make; point out mistakes when they found them; and even recommend conditions of approval to the Planning Director. Commissioner Martin questioned how the cost would be reduced if staff still did that work. Mr. Kerr clarified the Commission would be provided with the same information that was going to be in the record and reviewed. It would just not be a glossy presentation in front of an audience. The process he had described was not in the code, but he would write it in the code if the Commission recommended that. He recalled staff and the Commissioners had discussed how it would work at a work session. Commissioner Martin said he was still not convinced that anyone had demonstrated (and they certainly had not quantified) an economic benefit or an efficiency from moving decisions to the Planning Director. He anticipated that the consequence of the new code would be that the process

would actually be less efficient and could put the City in danger of not meeting the 120-day rule.

Mr. Kerr advised that even today the Planning Commission could call up a Planning Director decision if at least two Commissioners wanted that. The draft proposal would make it three and staff recommended requiring a majority. The code also allowed the Planning Director to forward something he would otherwise review to the Planning Commission. Commissioner Martin noted when there was a more controversial design review decision to be made having a Planning Director review, a Planning Commission review and a City Council hearing would be more work and less efficient than it was when it just came to the Planning Commission (and could be appealed to City Council). Mr. Kerr agreed it would be if the Commission called up the Planning Director decision. Commissioner Martin suggested they could count on those being called up if they were that controversial. Chair Babbitt commented that he did not pay as close attention to the notices of preapplication conferences or announcements that the Planning Director had made a decision if they were not about something the Commission was actually going to hear. The Commissioners could be missing information and possible Planning Commission decisions. He indicated that the argument that the Planning Commission could be working on other things did not seem valid because the Commission had not been able to take up certain projects because they did not control staffing resources.

Commissioner Martin was concerned that when a Planning Director decision was appealed to the City Council people might not be able to offer additional testimony because the City Council would hold an on-the-record hearing. Ms. Thornton advised that a record was created when the Planning Director decided. That record would go to the City Council. The City Council could re-open the record if they thought facts were missing they needed. It would usually be the applicant who appealed. In their notice of appeal they would have to state the exact grounds they based their appeal on.

Mr. Sonnen explained the process of making a Planning Director decision today. When the application came in it was circulated with the notice. People could offer their comments. He reviewed those comments along with the staff report before he made a decision. The decision was distributed to the public. That was the first time they saw the full analysis and the proposed conditions of approval or the basis for denial. At that time they could appeal it. The record would not contain any public testimony as it was currently structured. The Commission recessed for five minutes and thereafter reconvened.

1:55 to 2:05

Questions of Staff (continued)

Commissioner Axelrod indicated he respected the work of staff but he was frustrated with and embarrassed by the document that was before them under the premise of economic development. He recalled that the Commissioners had asked Mr. Kerr to parse out what were really critical elements of economic development and come back with a revised document. He noted that some things had been removed and some adjustments had been made, but by and

large what he saw in the document now was it was loaded with items that he did not see as vital to economic interests. The public testimony raised more questions about the motivation for the revisions. He acknowledged that he had missed a work session.

Commissioner Axelrod related that he had looked at the April 9 survey results to see if they offered a compelling reason for the proposed changes. He noted 59 people (compared to a population of over 25,000) had been surveyed. 28 of 59 had no direct experience with West Linn. That meant 31 of them had experience with West Linn. He summarized what they said:

Issues: Parking. Less paperwork. The will and the voice of the West Linn people are disregarded and we have too many police. Good experience, the only exception was signage. Protect the residential area business from trespass of noise and light. Rezone to smaller lots and get rid of self-serving sector. No problems, no issues, no complaints. Make rules business friendly. Extend open time for planning staff to 8 or 9 at night. West Linn should use local businesses, put its money where its mouth is. Make the application process easier for home businesses, especially regarding signs and parking. Scale the review process to reflect the scale of the proposal. How much easier could it be? Be flexible regarding requirements and needs that are business specific. Upgrade the website. Reduce regs, permits and licenses. Increase thresholds for permits. Combine permits. Shorten the turnaround time for permits. Inspection should be more reasonable than rigid.

Commissioner Axelrod noted there were some issues to address and there were always some efficiencies to be made, but he did not see a compelling reason or directive from the survey that supported the proposed, major, code revisions. He noted that not one business had come forward to testify to the need for code revisions. He said he was struggling with trying to reconcile how it was they were looking at the code revisions under the premise of the survey. It seemed inconsistent to him. He asked Mr. Kerr to comment on aspects of the survey that might shed a different light on it.

Mr. Kerr explained the survey Commissioner Axelrod talked about was not the impetus for the proposal. The survey was just one of the outreach methods they had used after the decision had been made to work on the project. It also involved one-on-one discussions with businesses, the school district, planners and others, and people who actually did work in the City about what worked and did not work in West Linn and other places and about what was effective or not. It involved meetings with the EDC, the Main Street group, Clackamas County Economic Development; the West Linn Chamber of Commerce and other groups. In those discussions he had picked up things to be addressed that hindered development and redevelopment in the community that ranged from minor changes, such as the A-frame sign issue, to things such as an on-going issue related to joint parking. The survey he had talked about was not the survey Commissioner Axelrod had read from. It was the survey he had discussed in a PowerPoint presentation that was about the broad surveys and the City Council priorities that had changed over the past four or five years, making economic and business

development in the City more important. The elected City Council had established economic development priorities and this was a small part of the related strategy. That was where the project started.

Commissioner Axelrod indicated he did not see the strategy for economic development reflected in the current proposal. He advocated having a master planning process to determine how it would be integrated into West Linn. He could not really understand or support this approach. He thought it focused on the Arch Bridge area to the detriment of other areas, such as Highway 43 and small neighborhoods. He thought they needed a comprehensive strategy that supported planning for economic development with analyses. This was nitpicking on some process elements and eliminating people's involvement in a lot of that process.

Mr. Kerr clarified the current proposal was one of four components of the City Council-to develop an overall economic development strategy. This piece dealt with regulatory barriers and ways to incentivize redevelopment to keep their commercial areas from turning into Gladstone. They were not intended to be colossal, wholesale, changes, but important, incremental changes that could be done immediately in the commercial areas. Generally speaking these were applicable to all of the City's commercial and multifamily areas. The master plan and the things being done related to the Arch Bridge would benefit from some of this. But it was not designed to make the Arch Bridge the recipient and not focus on all the rest. They just could not focus on all of them at the same time. The clear desire that came out of all the work and surveys and inputs was to make the Arch Bridge the first focus of real economic development.

Commissioner Axelrod asked how changes like reducing the number of Commissioners/City Councilors who could order a review of a Planning Director decision was critical to economic development. Mr. Kerr clarified these were not just about economic development. That change was something the City's attorneys had asked for to address a clear inefficiency. They thought the Commission should have a more transparent process to overturn a lower level decision.

E. Not more than two (2) Class II variances may be approved for any one lot in a continuous 12-month period. [See 75.050 Application, page 18.]

Commissioner Axelrod asked Mr. Kerr to explain the reason for this change and if someone could continue to submit two each year for their development on one property. Mr. Kerr explained the City currently had no cap on them. This would force applicants to try to meet the code and not get half dozen variances to get what they wanted.

~~**B. Any change in the conditional use plan or conditions of approval shall require a new application and hearing pursuant to the provisions set forth in this chapter and CDC 99.120(B).**~~ [See 60.050 BUILDING PERMITS FOR AN APPROVED CONDITIONAL USE on page 29.]

Commissioner Axelrod referred to the above provision and wanted to know if the code still captured the critical changes in use they wanted to review. Mr. Kerr advised that any change to a conditional use approval required a new application. The applicant had to go through the entire conditional use review process for what could be a very minor change. In contrast, the current design review process allowed minor changes without having to go through the entire review process again. This change would mean that the process would treat changes to approved conditional uses the same way it treated every other shopping center in the City. Other Commissioners advised Commissioner Axelrod they had discussed this at a work session.

Commissioner Axelrod questioned permitting Hotel/Motel use in any commercial area. Mr. Kerr reported hearing the number one thing the community wanted was to get a hotel built. Moving Hotel/Motel use from conditional use to permitted use would hopefully make it easier and encourage hotel development.

Commissioner Axelrod related he was struggling with adding religious institutions to the permitted use list because they already had a lot of churches and the community was small and might be a little overrun with religious facilities. It might not be wise to permit them outright in all commercial areas. Perhaps they should remain conditional use so they could be evaluated for appropriate siting. Ms. Thornton explained 'religious institutions' was proposed to be added because of the change to permit 'Lodge, fraternal, community center, and civic assembly' which was a similar use. The Commission could decide to move them both out of permitted use, but not one or the other.

Commissioner Axelrod indicated he opposed the changes to zoning, including the narrowing of lots and parking on the street. That was not the kind of growth he wanted to see in West Linn. He liked the concept of mixed-use, but he did not want to see and he was not sure the people in West Linn wanted to see skinny little houses with a lot of cars on the street even if it would expand the tax base to some degree. He had looked at others' codes. The City of Portland allowed some pretty narrow lots and skinny houses, but that was not what people moved to West Linn for. Commissioner Martin and Chair Babbitt related the Commissioners had discussed the proposed removal of the lot proportion requirement at a work session. They decided to remove the requirement from the three lowest-density residential zones but leave it in R10 and higher density zones until they could see new diagrams from staff at a work session. The draft in front of them did not show that. Mr. Kerr clarified the changes that allowed people to count on-street parking in the parking requirement only applied to commercial properties – not in residential areas.

Commissioner Axelrod did not support changing the provision that protected trees in a development. He indicated he felt the current approach was well founded and protected trees while at the same time allowing a reasonable or appropriate development of property. He recalled when tree protection issues had come before the Commission they had addressed them pretty well under the existing code. In the Bland Circle case they had dealt with conserving trees in conservation areas and integrating it with the development design. He felt

the current code met or exceeded Metro Title 13, as it should. He noted the Commission had not heard the City Arborist explain why they needed to change it and the Commission had heard testimony regarding the basis for the current sound approach. Mr. Kerr advised the current code was confusing regarding things like how much pressure the arborist could apply to save trees. There was an issue that the City had been historically misinterpreting that code and requiring 20% of land area to be dedicated to the City. The County Assessor did not like to put trees in easements. The City had a tree protection code that applied to every tree in the city. What was proposed would allow the City Arborist to determine what kind of development was or was not appropriate near individual trees. It would result in a win: win situation in that it would save more trees on a site while it opened up more land on the ground to be developed in accordance with best practices and the approval of the City arborist. Commissioner Axelrod asked to see an analysis.

Commissioner King related she felt they were missing the communication of some top level goals to work with. She was not sure what each proposed code change was trying to accomplish. She wanted to know what end would be achieved. That was the disconnect for her and it might be for the citizens who came to testify. They were not sure what they were trying to accomplish. Commissioner Griffith indicated she would like to hear the overall plan for economic development, with all of its components. She noted citizens were very concerned about citizen involvement. She asked if the public would still be noticed regarding developments the Planning Director reviewed. Mr. Kerr confirmed that. Commissioner Martin also wanted to see the overall Economic Development master plan that supported the need for the changes. He asked if there was one. Mr. Kerr advised the City Council had approved an economic development plan/strategy about three years ago. He had some specific, targeted goals for his department that he would be happy to share.

Vice Chair Steel suggested creating something similar to an index to serve as a road map. It would cite the code being changed; the general subject (for example, 'fees'); provide a one-sentence rationale (for example, 'streamlines for the applicant'); and then show the page number. She related that she had talked with Ms. Schwarz at the break. Ms. Schwarz had agreed to tell the Commissioners specifically what she saw in the proposed changes that would be detrimental to the tree canopy. Commissioner Griffith said it would help if the Commissioners understood the benefit of each proposed change.

Chair Babbitt noted Mr. Kerr had been attempting to explain what the benefits were, but the hang-up was there was no research analysis. There was no analysis, for example, related to whether changing tree code protection or on-street parking would be more beneficial and promote businesses. Each of the Commissioners was disagreeing with things Mr. Kerr said. They were all asking staff to show them the research, the analysis. Mr. Kerr offered to organize the information so it showed a clear path; provide a presentation on the overall strategy; and provide more information about the more contentious changes so the Commissioners understood what they meant. He recalled they had already discussed the change to de novo hearings a lot and the report talked about it. Chair Babbitt clarified he would prefer more

information and less commentary. Commissioner Axelrod hoped Mr. Kerr would not be offended to find he had to back away from some of the things he proposed. It was a laundry list. They would not look upon him less if things disappeared for some reason. Mr. Kerr said many had been removed.

Commissioner Axelrod offered to provide printouts of the 'Vision for the Future' chapter of a book by Ed McMahon called The Secrets of Successful Communities. It listed eight things that were vital to successful communities.

1. Have a vision for the future
2. Inventory community assets
3. Build plans on the enhancement of existing assets
4. Use education and incentives, not just regulations
5. Pick and choose among development projects. (we have heard that from citizens)
6. Cooperate with neighbors for mutual benefit.
7. Pay attention to community aesthetics.
8. Have strong leaders and committed citizens.

Commissioner Martin observed the project had not followed the citizen involvement in land use guidelines the CCI had recommended which had been made Administrative Procedure 20-1201. He charged the project had essentially talked to the businesses and not the other stakeholders. The after the fact communication with the neighborhood associations did not count.

Mr. Kerr recalled he had discussed all of those checkpoints for citizen engagement with the City Council and Planning Commission when he presented to them on April 1. He listed what had been done, including newsletters, post cards, emails, and notices in homeowner's utility bills. Every single homeowner in the City had been provided with a brief summary of the project; a link to how to get involved; and a schedule for how this was going to move forward. All those things had been done before they even started the public hearing process with the Planning Commission. He reasoned that because every member of a neighborhood association had been notified about the project if the neighborhood association presidents lived there, read their utility bills or the Tidings, or paid attention to the Planning Commission and City Council agendas they had been notified. He recalled the City Council identified the EDC as the key stakeholder and asked the Committee to take the lead. After the EDC had identified the bullet points it wanted in the first draft and the Planning Commission had looked at it, Mr. Kerr had edited the draft and sent it to the City Council. It had been sent out to every neighborhood association president together with the agenda for the Planning Commission meeting ten days before the meeting with a link to the site that contained the proposal. He indicated he could not understand why neighborhood associations said they had not been notified or involved in the process. He had met with several of them. He noted the testimony they had just been hearing was from neighborhood associations and their presidents. He held the outreach had been far more extensive than was typical. He agreed the project was being done in an abbreviated time frame, but he did not think the project was moving fast. Commissioner Martin explained identifying and actively involving stakeholders and people with opposing

points of view was not just sending an email or putting a notice in the newspaper. He said he was not sure Mr. Kerr had involved the EDC in the creation of the changes. He described the process as fatally flawed.

3:00

Chair Babbitt indicated he agreed with Commissioner Martin to the extent that even the Planning Commission did not have the code changes until right before the hearing, so even if there was a lot of outreach there had been no draft code to share. That was the major disconnect. There had been outreach, but it did not meet the intent of the CCI. He recalled the issue that the first time Savannah Oaks Neighborhood Association was presented with it was the night before the first Planning Commission hearing.

Commissioner Miller explained that as an involved citizen when she heard the term 'Cut the Red Tape' it had not occurred to her that meant tree canopies and parking spaces. That was what the citizens were saying. They did not really understand the scope of the project: that it was not just about economic development, but also about streamlining processes. The Commissioners had been sitting through hours of work sessions to try to understand it. If Mr. Kerr wanted this to move forward more fluidly she would suggest he needed to do a better job of capturing it.

Mr. Kerr related that the day after the bullet points in the first draft of things to address were prepared it was put in an agenda package and sent to the neighborhood association presidents. As soon as the draft code language was prepared and given to the Commissioners it was sent in an email to neighborhood association presidents. That was 45 days ago. He recalled there was a resolution opposing the project on the first week of June. Chair Babbitt clarified what Mr. Kerr was hearing was that all seven members of the Planning Commission were saying there was a failure in the process. Mr. Kerr needed to understand that. Mr. Kerr stated for the record that the Planning Commission was in a work session with the City Council when he laid out the schedule. He clarified for Chair Babbitt that the specific code language was in the staff report for the first public hearing. It had been addressed at the April 1 meeting that the survey, outreach, EDC work and discussions had to be started before they could write the code. Then it was presented to everyone.

Commissioner King recalled during the meeting with the City Council she had asked the City Council what the vision for this was and where were they going with it. What was missing for the Commissioners and the community was how it all tied together.

Vice Chair Steel **moved** to hold a work session on September 11, 2013 at 5:30 p.m.

Commissioner Axelrod **seconded** the motion and it **passed** 7:0. Chair Babbitt announced the public was invited to attend the work session, but would not be allowed to testify.

Vice Chair Steel **moved** to continue the hearing to October 2, 2013 and hold the record open for written testimony until 2:00 p.m. on October 2, 2013. Commissioner Miller **seconded** the motion and it **passed** 7:0.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Axelrod announced the ribbon-cutting ceremony for the Rosemont Trail would be held on September 7 at Luscher Farm. Chair Babbitt asked staff to ensure the Commissioners' electronic tablets contained all the documents related to a project. Commissioner Miller had a suggestion related to page numbering the agenda packet.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

Mr. Sonnen observed the Commissioners did not seem to all be in agreement about how to handle correspondence related to the matters they were reviewing. The current process was to mail what they had to the Commissioners ten days in advance of a meeting; the Friday before the meeting; and then offer everything they got after that on the day of the meeting. He could email it or put things into their electronic drop box.

Chair Babbitt suggested the Commissioners schedule a CCI meeting to revisit the CCI guidelines for citizen involvement and formally adopt a process for projects like the 'Cut the red tape project' after they were done with it.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the meeting at 10:29 p.m.

APPROVED:



Michael Babbitt , Chair



Date

Economic code amendments for 9/4/13 hearing:

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



CITY OF
West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of September 11, 2013

Members present: Russell Axelrod, Lorie Griffith, Nancy King and Robert Martin
Members absent: Chair Michael Babbitt, Vice Chair Christine Steel and Holly Miller
Staff present: John Sonnen, Planning Director; and Zach Pelz, Associate Planner

CALL TO ORDER

The Commissioners convened in the Council Chambers of City Hall at 5:42 p.m. Commissioner King **moved** to designate Commissioner Martin to serve as chair for this work session. Commissioner Axelrod **seconded** the motion and it **passed** 4:0. Acting Chair Martin then called the meeting to order.

APPROVAL OF MINUTES

Commissioner King **moved** to approve the Minutes of July 17, 2013 with changes by Commissioner Axelrod. Commissioner Griffith **seconded** the motion and it **passed** 4:0.

WORK SESSION

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

The Commissioners discussed the August 23, 2013 version of the proposed amendments [also referred to as the September 4, 2013 hearing draft]. Commissioner Axelrod had missed two prior work sessions. During this work session the Commissioners considered his questions, suggestions and comments. He indicated he disagreed with the overall approach. He preferred to take a targeted approach to individual districts rather than a one-size-fits-all approach. He noted areas such as Arch Bridge, Robinwood, and Willamette would need to be addressed differently. Commissioner King was concerned they did not know if a code change would be good for one district and bad for another. Commissioner Martin suggested they craft the proposed amendments the best they could and then each write to the City Council expressing their concerns. Commissioner Axelrod suggested Citizen Vision Goals should be identified as something the Planning Commission was proposing.

GOAL 9: ECONOMIC DEVELOPMENT

Under Background and Findings the Commissioners considered removing a specific reference to the Arch Bridge on page 5, but did not after noting it was just used as an example. Commissioner Axelrod suggested ‘within 20 minutes of the Portland International Airport’ was actually more like 30 minutes. The Commissioners discussed the paragraph on page 5 to the

effect that 'the residents of the city have clearly expressed an interest in retaining the city's quiet residential character.' Staff had recommended deleting it. Commissioner Martin would retain it because it reflected the values of the citizens in that it reflected the results of the last real survey in 1998. The more recent survey of 60 business owners was not a real survey of the citizens. Mr. Pelz advised that a professionally conducted, statistically valid, survey had been done to gauge public opinion before the City Council set priorities. Economic development was the second of the four top priorities of residents. The Commissioners asked for the details of that survey. Commissioner Martin recalled the survey he had cited asked them where they were on the trade-off between economic development and preserving the character of the City. They said they wanted to concentrate on existing businesses and preserve what they had.

Policies

- 4. Provide adequate commercial and industrial land for a range of employment opportunities in the City.**
- 5. Make the most efficient use of our existing commercial and industrial lands.**

The Commissioners asked if staff intended these policies to mean rezoning. Mr. Sonnen advised that state law and Metro required the City to demonstrate it had the capacity to satisfy metropolitan housing and employment projections. Typically that meant maximizing the utility of existing spaces. He advised there was no harm in removing the goal that just parroted state law. Mr. Pelz advised rezoning was not part of this proposal. Commissioner Martin observed the Commission would keep this language.

Recommended Action Measures (RAMs)

RAM 9: 'Develop and maintain a good working relationship with the West Linn-Wilsonville School District.'

Commissioner Axelrod noted this was one of the old City Council goals. Mr. Pelz explained staff's objection to having City Council goals in the Comprehensive Plan was strictly a matter of legal technicality. They supported the ideas, but thought they were in the wrong place. The Commissioners did not change this RAM.

RAM 12: 'Create a special mixed-use zone and framework plan for the Arch Bridget area.'

The Commissioners agreed to add a similar RAM to do that in the City's other commercial centers as well.

37:02

LAND USE APPEALS

This version of the draft amendments required three members of the Commission to request a review of a planning director decision. The staff recommended requiring a majority. Mr. Sonnen and Mr. Pelz recalled Ms. Thornton had pointed out the Commission could not make a decision without majority agreement on any other matter. She was concerned the existing provision that required two members was not legally appropriate. They asked the

Commissioners to think pragmatically about what the chances were of a director's decision being upheld when an individual Commissioner asked for the review, but the majority of Commissioners did not support having that review. Commissioner Martin recalled the Commissioners had made it three, rather than 'a majority' due to the difficulty of communicating with the majority within the 14 day time period. He indicated he would now agree to say 'a majority' because the planning director himself had the ability to send the matter to the Commission if a Commissioner asked for that; and because if most were not inclined to hear the matter there was no sense in hearing it. Commissioner Martin polled the Commissioners and observed unanimous agreement to make that change.

Commissioner Axelrod suggested appeals of a planning director decision should be *de novo* hearings. Commissioner Martin noted if appeals of a Planning Commission decision were on-the-record hearings and appeals of a planning director decision were *de novo* hearings then all decisions would at some point have been made in a *de novo* type hearing by elected or appointed officials. Mr. Sonnen acknowledged there was no opportunity for a public hearing with oral testimony when the planning director made the decision. He felt that was a deficiency if the planning director was going to decide projects on the scale of a 25-unit subdivision. He would either want to have a public hearing by the planning director or cure the deficiency with a *de novo* appeal hearing. Mr. Pelz pointed out the planning director decided only non-discretionary matters. He cautioned that a *de novo* appeal hearing would give the applicant a 'do-over' at the City Council where they could totally revise their application. Commissioner Martin asked staff to insert language in the document calling for a *de novo* appeal hearing of a planning director decision and an on-the-record appeal hearing of a Commission decision.

VARIANCES AND SPECIAL WAIVERS

Commissioner Axelrod referred to criteria under Classification of Variances and suggested D. Landscaping requirements, 3. 'Will have no adverse effect on adjoining property' might not be strong enough. Points raised during that discussion were that 'no adverse effect' would not allow even an insignificant effect; and what was 'adverse impact' could be interpreted very broadly.

57:00

C. Special Waivers

This section listed what the applicant would have to demonstrate to be granted a waiver:

- a. **Demonstrates that the proposed development can comply with the regulation to be waived, but the waiver will provides an alternative means of furthering the purpose of the regulation to be waived; and,**
- b. **Will not be materially detrimental to the public welfare or injurious to other property in the area when compared with the impacts of development otherwise permitted; and,**
- c. **Provides adequate area for aesthetic design treatment to mitigate potential visual impacts from the use on surrounding properties and uses; and,**

d. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

Commissioner Axelrod held the Commission should also be able to look at whether the waiver that was requested was compatible with Comprehensive Plan goals and policies. He would incorporate that into the language. He referred to (c.) and commented that there were more impacts to be considered than just visual impact. He referred to (b.) and commented it would be a challenge for the Commission to determine what was 'materially detrimental' and 'injurious'. Staff explained the change he was suggesting would make the City more vulnerable to overturn on appeal. The staff would have to go through the Comprehensive Plan and use a lot of staff interpretation and discretion to produce findings about which goals and policies were applicable. Commissioner Martin supported Commissioner Axelrod's suggestion because he wanted the Commission to be able to look at the Comprehensive Plan, which was the expression of the community's values. When Mr. Sonnen advised the language under (a.) 'furthering the purpose of the regulation to be waived' was comparable to the purpose of the Comprehensive Plan, Commissioners Martin and Axelrod agreed that was the link they needed.

A proposed Chapter 75 provision (E.) would not allow more than two Class II variances to be approved for any one lot in a 12-month time period. Commissioner Axelrod questioned why the code should allow two per year. He held the applicant should only get one shot. Mr. Pelz advised current code did not place any limit on the number of variances an applicant could get. Mr. Sonnen related that a proposal had come in that asked for a variance that affected several lots. He suggested this was too arbitrary and recommended eliminating it. He recalled Mr. Kerr's intent was to make people build to code by putting a cap on the number of variances. Commissioner Martin recalled when the Commissioners had previously discussed this they had agreed to the change.

PROCEDURAL AMENDMENTS (Chapter 99)

Commissioner Martin confirmed for Commissioner Axelrod that the Commission was not recommending any changes to the provisions related to neighborhood association involvement. He noted the EDC had not involved neighborhood associations in the process so it seemed inappropriate to recommend the changes now. Commissioners King and Griffith agreed. Mr. Pelz explained staff felt there were procedural hang-ups in the current language that opened the door to appeals. There were aspects of the noticing requirements that an applicant could easily miss. Commissioner Axelrod suggested providing them with a checklist. Commissioner Martin commented that he would include a requirement that the record of the neighborhood meeting had to be included in the hearing materials. That had been very helpful to the Commissioners because it showed what issues had come up that the Commission should focus on. Commissioner Axelrod did not support reducing the Commission's approval authority at all. Commissioner Martin recalled they had unanimously agreed it was not in the public interest to do that.

1:25

GREATER FLEXIBILITY

General Commercial Permitted Uses (Chapter 19)

Commissioner Axelrod questioned permitting 'Hotel/Motel' in every commercial area. He would remove 'Lodge, fraternal, community center, and civic assembly' and 'Religious Institutions' from the Permitted Uses list and make them conditional uses. At the end of this discussion Commissioner Martin observed all four Commissioners present (who were a majority of the Planning Commission) agreed with that. Points raised during the discussion were that those uses might be allowed if they met the vision for some of the targeted areas [referring to Commissioner Axelrod's earlier suggestion to establish special districts]; and as conditional uses the Commission could evaluate each proposal as it came forward and decide if it fit the proposed location. Mr. Sonnen distinguished between Highway 43, which was auto-oriented, Willamette, where people parked and walked to businesses. He advised if a use created a dead area it weakened that commercial area. Mr. Pelz recalled the rationale for making those permitted uses had to do with impacts. Their impacts were similar to the impacts of other uses in the commercial areas.

1:33

Zoning / Lot dimensions

~~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.~~

Commissioner Axelrod asked the Commissioners to discuss keeping this requirement. At the start of the discussion Commissioner Martin clarified for Commissioner Axelrod that this draft needed to be corrected to reflect that the Commissioners had previously agreed to take (4.) out of the lowest density zones, because the math did not work, but retain (4.) in higher density zones starting with R10. At the end of the discussion Commissioner Martin summarized they would retain (4.) in zones R10 and below until the next round of EDC proposed code because it needed to be looked at in greater depth. Points made during the discussion were that a one-size-fits-all approach could allow uncontrolled skinny lot development where the residents did not want to see it; an analysis was needed to show what areas would be affected and how; there might be cases where this might make sense and the result might be compatible; it might fit the vision for some special districts with mixed-use; the City should not use this to see how loaded it could make the tax roll; and a developer could apply for a variance.

Staff's rationale for the change was that it would allow a little bit more flexibility in the configuration of subdivisions. Mr. Pelz explained it allowed a narrow average lot width but the width could not be less than the minimum allowable frontage and the developer had to meet the existing lot square footage and setback requirements. Mr. Sonnen advised that many jurisdictions focused on the width at the street and not the width further back on the lot because it was the spacing of houses along the street that was important to the character of the neighborhood; developers tried to create marketable lots that had a shape that would accommodate most building plans and was relatively flat; and there were existing zero lot line

developments. Mr. Pelz and Mr. Sonnen discussed example situations involving parcels constrained by Type I and II lands or infill between two streets. Mr. Sonnen advised if they retained (4.) they should include some specific exceptions for situations where the lot creation was constrained by things like existing road alignment. He suggested the Commission could look at where to allow smaller lots in certain areas in a separate effort. Commissioner Axelrod asked for an analysis. He explained he was concerned about the combined impacts on neighborhoods of this change together with the proposed changes related to parking and tree management. He noted in higher density zones, starting with the R7 zone, minimum lot width would go from 50 ft. to 35 ft.

1:49

Parking (Chapter 46)

Computation of required parking spaces and loading area

Commissioner Axelrod was concerned about on-street parking. He noted the proposed Minimum Parking Space Requirements for Multi-family residences could mean that a 20-unit complex of two bedroom apartments whose residents might have a total of 40 cars would require ten cars to be parked on the street. He was also concerned about the change that allowed stacking one car behind the other when the parking spaces were allocated to specific apartments. He advised that should depend on them being appropriately designed for aesthetics and safety.

Mr. Pelz clarified the on-street parking change would not apply in any residential zone, but it would apply to commercial/residential buildings in mixed-use zones. He noted the current code did not allow any on-street parking to count toward the parking requirement. The current requirement for a mixed-use building was the sum of the parking requirements for all of its uses. Adopting this proposal would mean the residential portion of a mixed-use building would have to have enough off-street spaces but the commercial portion could count on-street spaces. He noted the City could not guarantee that its residents would not park on the street. He advised there were existing parking design standards that would apply. He noted some townhouses with garages on the first floor featured stacked parking. Commissioner Axelrod inquired about the reason for the proposed rate changes. He commented they did not leave much room. Mr. Pelz explained the proposed rates in this section were consistent with Metro's Regional Transportation Plan, which required one parking space per 1,000 s.f. of gross leasable area. He advised the regional goal was to reduce the amount of land dedicated to parking. The calculations were typically based on Institute of Transportation Engineers (ITE) calculations. The Commissioners recessed for about 14 minutes and then reconvened the work session.

2:11

Tree Protection (Chapter 55)

Existing language (proposed to be struck) under 55.100(B):

~~PROTECTED AREA = DRIPLINE + 10 FEET~~

~~b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be~~

~~significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this "dripline plus 10 feet" measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.~~

Proposed language:

- c. New development shall preserve existing trees where feasible and shall plant new trees if needed.**
- a. At least 20 percent of the significant trees on non-Type I and II Lands shall not be removed, unless the City Arborist determines these trees are hazardous to public health, safety or welfare. The City Arborist shall identify the tree(s) to be preserved.**

At the end of this discussion the Commissioners agreed to retain the existing code but asked staff to work on language to the effect that *the tree protection set-aside was to be at least 20% of significant trees or 20% of the area, whichever was more ecologically beneficial, at the discretion of the City Arborist.* During the discussion the Commissioners looked at the City Arborist's memorandum and table. Commissioner Axelrod advised tree protection was about more than just protecting isolated trees. It was about preserving other aspects such as habitat, understory, and the soil quality of undisturbed lands. He said the existing code recognized that. He recalled Julia Simpson's testimony that they had compiled a lot of research and it was the basis for the current code. He suggested the Commissioners look at it. He asked to see an analysis of whether saving 20% of the trees or saving 20% of the area of the trees would preserve larger areas. He assumed the objective of the proposed change was to expand the area of developable land. He did not support making the change if that was the basis for it. He advised that protecting the root zone was very important. The zone might be a little different for some trees, but for the most part the existing protection area protected the roots of the kinds of trees that comprised the majority of trees in West Linn's tree canopy: firs, oaks, maples and alders. He was concerned about the combined impact on neighborhoods of this change and allowing skinny lots. He would keep the existing code. He noted an applicant could

apply for a variance to address a hardship and then the City Arborist could provide an evaluation and a potential alternative approach.

During the discussion Mr. Pelz clarified the proposed code would potentially apply on any lot that was large enough to partition or subdivide. He advised regarding the statewide mandate to protect rural farmlands and focus development within the Urban Growth Boundary. He advised there would be a million more residents in the metropolitan area by 2035. To accommodate those people and take pressure off of areas outside the UGB they had to think about ways to make development of land less restrictive. Staff's perspective was that setting aside wholesale areas of a site to protect trees might not be the most efficient use of that land. He noted in certain cases what was proposed might better protect trees. He related that staff had seen developers work hard to keep trees even when they were not required to because they knew that the presence of trees on a property added value to it. He showed aerial photos of the metropolitan area's existing tree canopy and advised that a large portion it was protected in parks and natural areas. He confirmed that West Linn had the highest percentage of total acres consumed by tree canopy of all cities in the region. 33% of West Linn's canopy was within the City's parks and open spaces and 7% of the City's total canopy was in Mary S. Young Park. Additional canopy in WRAs and on steep slopes was protected by other city regulations. What was proposed would not change that. It would give the City Arborist more opportunity to pick and choose which trees should be protected. Mr. Pelz showed a graphic to illustrate that because some trees had deep roots and required a smaller protection area than the current code prescribed, what was proposed could actually result in protecting a larger area when trees were scattered around a site. He advised the proposal gave the City a legal basis for protecting trees. Staff had historically misinterpreted the existing code, which specified the set-aside was 'up to 20% of the site for tree protection.' That did not necessarily mean 20% was required. Many applicants had not understood that. Some who did suggested saving a lower percentage during preapplication conferences. But they were usually willing to work with staff because they understood trees added to the value of the property. The proposal was to change the code to indicate that the City Arborist could require at least 20% of the trees to be set aside. He noted that an applicant would tend to save whatever 20% worked best for their development. It might not include trees the City Arborist had determined were extremely significant.

2:28

The Commissioners indicated this change and how it was related to economic development was hard for them to understand and explain to citizens. There was a need for better communication. Staff clarified the protections for WRA areas would remain. They discussed the details of the 'hardship' provision that allowed encroachment of up to 5,000 s.f. into a WRA and displacing whatever trees were necessary for that. They discussed the details of how the City would avoid 'taking' property ['taking' was a legal term meaning not allowing owners minimal use of their property]. Mr. Sonnen assured Commissioner Griffith that if allowing minimal use of WRA property would have disastrous implications on an entire canyon the City would buy the property instead of allowing it. He related that other jurisdictions had found it was necessary to identify contiguous areas of connecting habitat corridor to protect because

patchwork protections did not save the kinds of sensitive-intolerant animals they wanted to save. He advised from the hydrological standpoint the layer under the trees provided a drainage benefit that they could not get from a lawn.

Commissioner Martin offered the points that the City Arborist understood the natural areas system and what was necessary to sustain the tree canopy as older trees died over the years. The Arborist could help manage it so the City always had a tree canopy. Commissioner Martin suggested at the very least the Commissioners should fix the existing code to mean what it was clearly intended to mean: that a minimum of 20% was to be protected. Commissioner Axelrod noted preserving 20% of the area would preserve both big and small trees so the small trees would grow to replace the big ones when they died.

The question of whether Measure 56 notice would be required for that was discussed. Mr. Sonnen suggested it could be required. He noted the intent was not to make the code more burdensome on properties, but what was proposed had the potential to be more burdensome if it would require protecting a bigger area. He clarified the notice would be necessary when the next draft went to the City Council level. It was not required at the Planning Commission level.

The Commissioners then looked at the existing code language to determine how to modify it to fix it (close the loophole) and give the City solid legal grounds for protecting trees. Commissioner Martin recalled the Commission had struggled with the 20% language for years and had applied it as 20% of the area. The Commissioners discussed the City Arborist's suggestion to save trees based on a priority ranking (which was trees next to WRAs; tree clusters; then individual significant trees) and that he might identify an area to be protected that was different from the area the applicant proposed to protect. Perhaps the code should specify that the City Arborist had to concur with their plan. The Commissioners then agreed to retain the existing code but ask staff to work on language to the effect that *the tree protection set-aside was to be at least 20% of significant trees or 20% of the area, whichever was more ecologically beneficial, at the discretion of the City Arborist*. Commissioner Axelrod suggested providing the information in Ms. Simpson's notes to the City Council.

2:59

REMOVAL OF INEFFECTUAL AND REDUNDANT CODE

Grading Plan (55.130)

The grading and drainage plan shall be at the same scale as the site analysis (CDC 55.110) and shall include the following...

Commissioner Axelrod advised that often the scale of the site analysis was not detailed enough for a grading plan. He would incorporate language calling for it to be of sufficient scale and detail to evaluate all aspects of the proposal, including the grading plan.

TIMING OF DISTRIBUTION OF THE STAFF REPORT

The current code called for the staff report in a quasi-judicial process to be distributed ten days in advance of the hearing. The Commissioners had previously asked for it to be distributed 21 days in advance because the public had asked for more time to read it. Mr. Sonnen advised that based on his analysis regarding the average timing of the process in past cases and based on current staffing levels they could distribute the staff report up to 15 to 16 days prior without jeopardizing the process under the 120-day rule. Commissioner Martin indicated he could agree to a compromise of 15 days.

3:09

HOW TO PRESENT THE PLANNING COMMISSION RECOMMENDATIONS

Commissioner Martin stressed that it was important to format the document to make it clear to the City Council what the Commission recommended and what the staff recommended. He did not think it was appropriate for staff's recommendations to have the same weight as the Commission recommendations. Mr. Sonnen said they could provide the City Council with both a "pure" document from the Planning Commission and one that had embedded links to the staff recommendations.

COMMISSIONERS' POINT OF VIEW

Commissioner Martin asked the Commissioners to be thinking about how to communicate this to the Council and discuss it at their next meeting. He noted they did not support the scope of the amendments, but the amendments were still on the table. Some would dramatically change the role of the Planning Commission. Mr. Sonnen suggested the City Council might agree to hear the Commissioners' point of view at the briefing before the Council hearing, or they could send a transmittal letter signed by the chair that presented the perspectives of the voting majority (and also perhaps any perspectives of a strong minority) of the Commission.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

The Commissioners and Mr. Sonnen discussed the future schedule. The next hearing on the proposed code amendments was on October 2. The written record was open until 2:00 p.m. that day. Commissioners were advised to forward related emails they got to Mr. Sonnen for the record. Staff would post the most recently revised draft on the website. The Trails Master Plan was ready to review. Mr. Sonnen would poll the Commissioners and then set the date for it. WRA and PUD codes were not ready for review. They would be considered together so overlapping provisions could be addressed. *Commissioner Griffith left the meeting.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

None.

ITEMS OF INTEREST FROM STAFF

None.

3:40

ADJOURNMENT

There being no other business, Acting Chair Martin adjourned the meeting at approximately 9:22 p.m.

APPROVED:



Robert Martin, Acting Chair

11/20/2013

Date

Cut the red tape project website: <http://westlinnoregon.gov/planning/economic-development-code-amendments>



PLANNING COMMISSION

Minutes of Wednesday, October 2, 2013

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

Members absent: Lorie Griffith

Staff present: John Sonnen, Planning Director; Chris Kerr, Economic Development Director; Tom Soppe, Associate Planner; Khoi Le, Engineering Department

PREMEETING WORK SESSION

Vice Chair Steel convened the work session at 6:30 p.m. in the Rosemont Room of City Hall, 22500 Salamo Road, West Linn, Oregon. The Commissioners discussed a letter from the City Manager suggesting a way to move forward on the Cut the Red Tape project. Mr. Kerr clarified a document the Commissioners had received in their drop box was the City's notice to the state. Mr. Soppe pointed out the subdivision applicant had submitted two changes to the recommended conditions of approval. A neighbor had written about his concern regarding where the trail near his property was to go.

The Commissioners and staff talked about the procedure for putting material in the Commissioners' electronic drop box. Vice Chair Steel reported that the recent commissioner training session had been useful. She congratulated Chair Babbitt on the great job he did at the seminar and as a panelist. She offered to provide copies of the handout to Commissioners who had not gotten one. Mr. Sonnen announced that there would be another training in November. The Commissioners used the remaining five minutes before the regular meeting convened to read the written materials.

CALL TO ORDER

Chair Babbitt called the regular meeting to order in the Council Chambers at 7:02 p.m.

PUBLIC COMMENT

Roberta Schwarz, 2206 Tannler Dr., announced the next fundraiser for the White Oaks Savannah was a craft fair on November 22/23. Commissioner Miller asked her how much they had raised so far. Ms. Schwarz related they had received a \$500,000 grant from Metro; a pledge for \$200,000; and their partner, the Trust for Public Land, was applying for a grant from Oregon Parks and Recreation and for Bonneville settlement money of \$6,000 per acre. They had until June 2015 to raise the funds.

PUBLIC HEARINGS

SUB-13-02/VAR-13-05/VAR-13-06, 11-lot subdivision with Class II Variance for two lots with depth more than 2.5 times their width. Site location: 23150 Bland Circle. See the October 2, 2013 Staff Report and the October 2, 2013 Staff Memorandum.

Chair Babbitt opened the hearing and outlined the applicable procedure and criteria. Each of the Commissioners present reported making a site visit. No one present challenged the right of the Planning Commission or any individual Commissioner to hear the matter.

Staff Report

Mr. Soppe referred to the aerial photograph, site plan and photographs of the site. He pointed out the site was located at the Tannler Drive/Bland Circle intersection and adjacent to the City pump station site. He pointed out Sunbreak Lane and Crestview Drive were currently stubbed. The applicant proposed to extend them through the subject site. The applicant was requesting a variance to the lot depth: width requirement for Lots 3 and 4, which faced Sunbreak Lane. The request stemmed from the distance between the streets; having them connect to Bland Circle; and getting zone density.

Staff discussed how the variance request met Chapter 75 variance criteria. They found this was an extraordinary circumstance created by the trajectory of the two streets to be extended. Zone density would fit on the site with those trajectories. The proposal complied with the Comprehensive Plan, the Savannah Oaks Neighborhood Plan and other codes. The applicant proposed the minimum variance necessary as the two lots were only a few feet short of meeting the zone requirement. This was not requested in order to address a past violation. It did not affect the develop-ability of other properties.

Mr. Soppe pointed out and discussed the potential utility/trail easement route. He advised it could eventually be connected to property to the north when that property was developed. Mr. Soppe advised the applicant met Subdivision Approval Criteria. All lots met the area requirement and the subdivision met the minimum density requirement. The variance was for two of the nine lots that did not meet the lot shape standards. Sewer/water/storm facilities were available and adequately sized. Street improvements and dedications met the code for a collector street (Bland) and for the local streets going through the subdivision. All significant trees were preserved except those to be removed for street grading. The proposal met the tree preservation criteria as long as there were easements for the ones that remained and mitigation for those removed.

Staff recommended conditions to address the visual impact of a large wall on Bland and to require fencing along the trail. They had consulted TVF&R regarding fire access. TVF&R would agree to the applicant's proposal to provide the access via the driveway to the west if it was gated access. The applicant was to dedicate land for their half of the Sunbreak extension and pay a fee in lieu in preparation for some future time when the parcel on the west side of it as annexed and developed and would be responsible for the other half. Water lines were to be looped through the easement or right-of-way between streets. There was a condition that

addressed the locations of utility vaults. The staff recommended approval subject to the recommended conditions.

Mr. Soppe advised staff could agree to two changes the applicant had just requested. One was to clarify that trail fencing along each lot was required 'Prior to occupancy' of that lot. The other would allow the water line loop to go either between Sunbreak and Bland, or Sunbreak and Crestview, whichever was required by Engineering. The Engineering staff had agreed to that. Neighbor Charles Matthews (who lived on Crestview next to the site) had indicated he would prefer that the trail route be where he recalled a past trail plan proposed it along the edge of the site. Mr. Soppe related that he had not been able to find a plan for a trail through the site.

20:03

Questions of Staff

Mr. Soppe confirmed the easement was both a utility and trail easement. He delineated its route through the subdivision. He confirmed that the fencing condition would apply to every lot that bordered the trail. He confirmed that staff anticipated that another extension of Sunbreak would eventually be done so it would serve the property to the west, but they did not know when that might happen. He clarified TVF&R did not favor using bollards for a turnaround at the end of the street, but they could agree to a locked gate access. The applicant would have to negotiate an agreement to use that easement. He confirmed the idea was that the Fire Department would be able to come in, turn around, and go out on Sunbreak. He clarified that the applicant could decide if they wanted to satisfy the fire access requirement by sprinklering houses or by using the easement. They did not have an easement agreement yet.

Vice Chair Steel inquired who maintained the three tracts and what they were for. Mr. Sonnen said Tract A (stormwater) would be maintained by the City. The homeowners association would be responsible for maintaining Tracts B and C. The applicant had added Tracts B and C in order to shorten some lots so they satisfied the lot shape requirement. That meant they only had to ask for a variance on two lots, not five lots. Condition 12 would allow them to eliminate those two tracts in the event the City changed the code and eliminated the lot width: depth requirement. Staff clarified they understood that some marketing material that said this was a 10-lot subdivision was old material that had been around for years. They were not sure the applicant had anything to do with it.

Applicant

Andrew Tull, Senior Planner, 3J Consulting, Inc., 10455 SW Canyon #245, Beaverton, Oregon 97005, spoke for the applicant, JT Smith Companies. He explained the applicant would locate the trail between Lots 9 and 10 instead of the western boundary of Lot 9 in order to avoid a significant tree at the northwest corner of Lot 9; to better align it for visibility reasons for people who would be using the trail; and because where it was proposed was where engineers could best address the steep grades. He advised the fire district was often willing to waive turnaround requirements for fire trucks if the homes featured sprinklers. The applicant had no

problem with being required to sprinkler the homes along the Sunbreak extension. He said the applicant would prefer not to have Tracts B and C as it complicated ownership and maintenance and the code might be changed. They had initially applied for five variances for lots which exceeded the depth standard by a couple of feet. That was because the site was a remnant infill parcel. He said he believed the Commission had the authority to approve the original plat the applicant had submitted, which showed those lots extended and did not show the tracts. He referred to the marketing materials the Commissioners had asked about. He explained it was difficult to determine exactly what subdivision density was going to be until the property was surveyed and lot configuration was considered. He pointed out the proposed configuration of lots was similar to that of adjacent Florendo's Hideaway which had spaced Crestview and Sunbreak. That spacing and the grades meant the streets in the applicant's subdivision were far enough apart that the applicant's lots were too deep.

Questions of Applicant

Vice Chair Steel inquired if moving the existing utility vaults would disrupt other properties. She inquired if a gravel driveway would accommodate a large fire truck. Mr. Tull clarified they would put the vaults in the public right-of-way. He anticipated the fire department might ask the applicant if the gravel driveway was sufficient to handle a fire truck. He related that the applicant had found the owner of the property the easement was over was not inclined to discuss allowing them to use the easement. The applicant thought the sprinklering option would work better for them.

38:00

Public Testimony

Proponents

Alice Richmond, 3939 Parker Rd., pointed out on the aerial photograph that there was currently no connectivity. This was the opportunity to create better connectivity. That would be better for fire access. She asked that her written testimony be what she had written on her testimony form where she indicated that the City needed to bring tax revenues into the City budget to make up for what it lost due to the L.O.T. project; and that this was also the right thing to do.

42:40

Rebuttal

Mr. Tull and Michael Robinson, 1120 NW Couch St., Tenth Floor, Portland, Oregon 97209-4128, came forward to answer any questions. Commissioner Martin asked if the applicant was concerned about proportionality or nexus regarding the trail. Mr. Robinson responded that they would have had more discussion with staff about it if they thought it was an exaction they could not afford or that did not make sense. They thought it was appropriate in the proposed location and it would serve the public and the neighborhood, so they were comfortable with it.

Commissioner Axelrod indicated he would not like to see a significant Douglas Fir tree on the front corner of the property on Bland removed to develop the half street on Sunbreak. He suggested not developing the half street and keeping it a pedestrian pathway; and not putting a

sidewalk on the Tract A side of Bland Circle as it would not connect to anything and there was an existing sidewalk on the other side of the street. The additional room that would create could be used to make the storm detention facility more attractive. He would prefer to see that area terraced rather than surrounded by a high wall if that was feasible.

Mr. Tull related the applicant had considered that and talked with staff about it as they were laying out the site. The factors were that Bland was a restricted access (every 300 feet) collector street; and the extension of Tannler into the site created a natural four-way intersection and was probably the best place to connect with Bland, but it directly aligned with that tree. Aligning the connection with Tannler was also the most logical and safe place for Tax Lot 500 to eventually take access when it developed. Mr. Sonnen and Mr. Robinson clarified that the tree did not have to be taken out now because of the road, because it was just a dedication. Mr. Robinson advised the tree had to be removed because of utilities. He advised the applicant was complying with the code. They understood they were required to do the frontage improvements on a collector street even if the sidewalk did not go anywhere. Their preference was to save significant trees. That was why they relocated the trail. The Douglas fir Commissioner Axelrod referred to was probably a tree whose days were numbered because of its location.

Mr. Robinson advised that he believed the Commission could approve all five variances if it wished to. The application the applicant had submitted requested five variances. They believed they had provided substantial evidence that satisfied the variance approval criteria. The hearing was noticed for five variances. If the Commission decided the tract solution was not something they wanted to approve they had the ability to approve the application as the applicant had originally submitted it. They had worked very hard with staff to come up with solutions they could support. That was how they had arrived at the two tract solution. However, they preferred their original proposal.

Vice Chair Steel noted the isolated location of Tract B sandwiched between two back yard fences and asked what it would look like. Mr. Robinson confirmed it could just be a grassy area maintained by the homeowners association, accessed via the trail easement. If the Commission approved the five variances that tract would be divided between the lots it abutted. He acknowledged the applicant just used it as a device to comply with the "2.5 times" requirement the City was thinking about taking out of its code. He asked the Commissioners to look at how the application addressed the variance criteria and find it was satisfied. He indicated it was not a normal situation and it was not a self-imposed hardship in that the street locations forced long lots. It was a condition the applicant found when they purchased it. It was the result of infill. He confirmed the trail alignment would remain the same. There would still be future connectivity if the Commission approved all five variances so the applicant did not need the two tracts. The lot lines would shift back to where they were originally proposed. The applicant would be happy to have the two tracts go away. The shape and length of the lots would then not be appreciably different than the code required. Vice Chair Steel clarified that the

Commission was considering changing the lot proportionality requirement but not for the R7 zone.

Vice Chair Steel indicated she preferred to avoid a situation like the one at Trillium School. Over time people had occupied land that was not actually theirs by deed. It had been difficult for them to find out something else was going to happen to that land.

Commissioner Axelrod asked the applicant if it could help the design of the stormwater retention area in Tract A if there was a condition of approval that removed the requirement for the sidewalk. Mr. Tull indicated that if they moved the sidewalk, curb and planter strip along the north/south extension all the way to the west they might be able to retain the tree. However, they would have to move them all back and put in the street when TL 500 developed. That would be extremely expensive. It was not something they would want to pay for twice. A possible way to handle this would be to require the applicant to install a temporary asphalt trail at that connection.

Mr. Le related they had discussed alignment of roadway many times. The only good alignment meant they had to remove the tree. They had talked to the arborist. They all agreed that they wanted connectivity and an alignment that provided safety for the future, so they agreed to remove the tree. As for the sidewalk, the master plan listed a sidewalk connection from the site all the way to Salamo Road. Mr. Le recommended keeping the sidewalk as shown on the plan. Mr. Tull added that they would mitigate removal of the large, 30-inch tree by planting 15 mitigation trees (a mixture of oaks and western red cedars).

Questions of Staff

Staff re-confirmed that the City planned to have sidewalks from the site to Salamo. Commissioner Axelrod questioned why they needed a sidewalk on both sides of the street. Chair Babbitt noted that was code. He recalled a past planning director had advised that connectivity could take many years to accomplish. Mr. Soppe clarified for Commissioner Axelrod that the boilerplate "Note to the Applicant" might ask for a geotechnical study but if there was already one in the packet staff was not asking for another one.

1:03

Deliberations

Chair Babbitt closed the public hearing. He recalled Vice Chair Steel had talked about accepting the original application for five variances and eliminating two tracts. Commissioner Miller asked why staff had reduced the number of variances. Mr. Sonnen related staff and the applicant had discussed options for dealing with the variance requests. One of them was to add tracts. Then staff had suggested the condition that would allow the tracts to be removed should the code no longer necessitate them. Mr. Sonnen and Mr. Soppe concurred that the hearing notice had in fact identified five variances and the original application had been submitted with five variances. Mr. Sonnen confirmed that the Commission had the prerogative to approval all five variances if they thought that was appropriate.

Chair Babbitt noted removing the lot proportions requirement was on the legislative agenda and there was a condition of approval that if the code was changed the tracts were not needed. It seemed cleaner to take care of that now and not have the two tracts if the process had already met the legal requirements to enable the Commission to do that and it was the applicant's preferred method. He asked staff to recommend how to modify the related conditions of approval. Staff recommended as follows:

Conditions 2 and 4: Remove the references to Tract C.

Condition 12: Change this condition to: 'Tracts B and C shall be eliminated.'

Chair Babbitt reopened the public hearing and invited the applicant to comment on the proposed modifications of the conditions. Mr. Robinson indicated the applicant agreed with the changes the staff had recommended to Conditions 2, 4, and 12. He noted the opening statement under 'Recommendation' needed to be changed to: "Staff recommends approval of application SUB-13-02/VAR-13-05 through VAR-13-09." Mr. Soppe clarified that these changes would not change the trail easement width. It would still have to be 15 feet without Tract C.

Chair Babbitt recalled the October 2 Staff Memorandum made other three other changes to the conditions as follows:

Condition 4: Add 'Prior to occupancy.'

Condition 6: 'The applicant shall work with the City engineer to determine if a looped water line is possible and if so how the looped water lines shall be accomplished.'

Chair Babbitt closed the public hearing.

Commissioner Axelrod discussed Condition 10 requirements for the design of the Tract A retaining wall. They ought to require a stepped down design with native vegetation that integrated the structure into the landscaping and remove the 'either/or' language. He specified he did not want to see an arborvitae wall around the structure. He confirmed he would replace 'add trees of sufficient height to screen the wall' with 'add native vegetation of sufficient height to screen the wall.'

Chair Babbitt reopened the public hearing and asked the applicant to comment on the proposed change. Mr. Robinson indicated the applicant could not be sure that could be done until they had fully engineered it. If they found out they could not do a stepped-down design they wanted some other way to satisfy the condition. He asked the Commission to not change the condition and let the applicant work with the City Engineer to see what was possible. He added that they thought the suggestion about landscaping was a good one and they would be able to satisfy it. Commissioner Axelrod suggested the condition could just indicate that a stepped down design was preferred. Mr. Robinson indicated that was okay with the applicant.

Staff then displayed how they had modified Condition 10. The Commissioners clarified it should specify 'native' landscaping and 'native' vegetation.

Chair Babbitt closed the public hearing.

Commissioner Martin **moved** to approve SUB-13-02/VAR-13-05, -06, -07, -08, -09 subject to the conditions of approval as modified by the Commissioners during deliberations. Commissioner King **seconded** the motion and it **passed** 6:0. The Commission recessed for a few minutes before they reconvened for the next hearing.

1:21 to 1:32

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CDC-13-01, "Cut the red tape project." CDC and Comprehensive Plan amendments intended to eliminate ineffectual and inefficient regulations to encourage positive economic development. Continued from September 4, 2013 for Deliberations. See the October 2, 2013 hearing draft.

Chair Babbitt reconvened the hearing and asked for a staff summary.

Staff Summary

Mr. Kerr listed the sections that staff was proposing to defer in order to get additional vetting, analysis and public input:

- 99.038 Regarding neighborhood contact (Page 21)
- 99.060 Regarding approval authority (Page 23)
- 60.070 Approval standards for conditional uses (Page 27)
- 55.100(B) Regarding tree protection in subdivisions (Page 46)

Questions of Staff

Vice Chair Steel referred to 11.070. She noted that in this draft the proportionality of lot shape provision was not shown as deleted in R7 and R10 and some of the related diagrams were shown in place and some were shown as deleted. Mr. Sonnen recalled the Commissioners had discussed this in work session. The Planning Commission recommendation was to apply it to the larger lot districts and not to the higher density districts. Mr. Kerr clarified for Commissioner Axelrod that Public Works and Engineering standards addressed stormwater detention so staff did not want to duplicate them in the code. He clarified for Commissioner Martin which of the deferred sections he had listed were shown as current code language and which had changes. Commissioner Martin recalled the subdivision application the Commission had just decided. The applicant had found the code referred to 'Principal Street' but did not define it. Mr. Kerr planned to look into it. It might be a remnant of old code. Mr. Kerr agreed with Commissioner Axelrod that 75.050 Application provisions A. and C. should each refer to both 'variances and special waivers.'

Chair Babbitt then talked about the outreach. He first detailed each outreach action by date, method of communication, who it had been sent to, and what the message was. He noted the message was repeatedly and consistently that this was about eliminating unnecessary, inefficient, regulatory barriers associated with doing business in West Linn. There had been no actual code provided to refer to until an August 7 article in the West Linn Tidings, which advised the Cut the Red Tape Project focused on economic development and changes that were 'transparent, understandable and efficient.' Chair Babbitt commented that the proposed code did not seem to make the code 'transparent.' It was about changes that were not in the outreach messages such as changes to the City's land use appeal process; variance criteria and a new variance type; eliminating lot dimensional requirements; increasing building heights; removing Chapter 33; and revising conditional use standards. He noted the proposal called for exempting public projects that had been approved through a master planning process from having to go through the land use process. He advised those would not get the detailed level of review they would get at a Planning Commission hearing. He continued listing aspects of the proposal that were not in the outreach messages, including that it would allow on-street parking to count toward minimum parking requirements for new development; significantly reduce the landscaping requirement in general commercial; only require neighborhood association meetings for large scale projects; change tree protection; eliminate lot coverage requirements in commercial districts; expand the list of permitted uses in commercial zones; make staff responsible for setting agendas, not the commission and board chairs; modify sections of the Municipal Code, specifically regarding allowing poultry; and increase the fees for appealing land use decisions. He concluded that those things were proposed but had not been advertised. The outreach message was like a sales pitch.

Chair Babbitt indicated a lot of mistakes had been made during the process. The Economic Development Director was now suggesting removing several sections because they were controversial. Chair Babbitt explained they were controversial because the outreach had been very deceptive. People had not been made aware of them and there had been no code to refer to. Chair Babbitt noted that one of the reasons the original hearing had been continued was because it was noticed wrong. It had not listed some chapters proposed to be modified and it listed some chapters that were not proposed to be modified. The notice that had been sent to the DLCD only referenced changes to seven chapters, but the original hearing draft made changes to 29 chapters. He noted the Commission was being blamed for the process taking so long. They had only had the actual proposed code for a few months. He believed the first neighborhood association had seen it the night before the first hearing. He related that the Commissioners had repeatedly asked for the rationale and supporting information and related analyses during the process. They had asked questions including what the goals were. If a goal was to ease process for new development, where would that development happen and was there a related analysis showing it was needed there. If it was to improve efficiency in the process they wanted to know what the savings were in terms of hours and dollars. Improving citizen commitment and awareness was a big issue for people who testified. Where was the transparency? Brenda Perry had asked good questions about how much unoccupied retail space there was in the City; what specific business opportunities had been lost because of the

restrictions and regulatory requirements in the current process; what type of businesses or industries did they want to bring to West Linn; which areas in West Linn did they think would most benefit from the proposed changes; and what other areas besides the Arch Bridge area were targeted for significant development and required West Linn to make these huge policy decisions. Chair Babbitt related the only thing the Commissioners received in response to all of the questions they had asked was a copy of the West Linn Economic Development Committee's Economic Development Plan. He complimented the EDC for coming up with a list of great ideas. However, he was not sure how any of the proposed code changes related to them. He read aloud the list of topics in the Plan: Location of business and industry, including the vitality of the Willamette River industrial land; Retention and expansion of existing businesses; Types of new businesses needed; Access control on major roadways; Appearance of commercial /industrial development; and the City's role in economic development. Chair Babbitt observed that many of them focused on raising the profile of the business community in West Linn; retaining, strengthening and expanding the existing base; encouraging new businesses that enhanced the community and provided wanted and needed businesses services. He related that the Commissioners agreed with the action plan calling for the City to inventory the needs and assessments and to open channels to stakeholders. Many channels were apparently opened up to business license holders. He opined that if the message had been that the City was talking about making major policy changes to the land use processes more people would have been made aware and paid better attention. He did not see where the proposed code created the 'business ombudsman' the plan called for; or where it addressed 'toolkits for new businesses;' 'create a plan for priority sites;' 'focusing on outside grants;' 'audit all of our codes;' and 'rezoning,' 'permitting,' and 'SDC fees.'

Chair Babbitt explained he felt that the code that had been presented to the Planning Commission really missed the mark regarding what the Economic Development Committee said were important issues and the committee's specific recommendations. He noted that none of the things that the EDC recommended were about changing the City's land use policies. He felt the outreach did not accurately convey what was actually being presented. There were some good sections of proposed code. The Planning Commission had worked hard on a lot of it. For example, the change related to A-Frame signs was a positive thing. Even though he thought there were some good sections of code proposed, he could not support recommending this to the City Council. The process had been too flawed and plagued with problems. The Commission had consistently been sending that message from day one, yet nothing had changed.

Commissioner Martin commented that Chair Babbitt had said a lot that all of them were thinking. He appreciated Chair Babbitt's work to document things so well. It had been a very frustrating three months going through this process. Commissioner Martin explained there were no 'bad guys.' There were things that were not done that should have been done. Chair Babbitt had talked about those in terms of the outreach and focusing this on economic development and not allowing it to expand into other areas. The Commissioners had talked about those things throughout this process. Commissioner Martin agreed the process and the

output were flawed. He suggested one of the reasons for that was that it was rushed. There was a mandate to Mr. Kerr to do this quickly, in a time frame that Commissioner Martin did not think could ever work if they wanted to write code and involve the public the way they should. He complimented the Commissioners for their hard work in many meetings since July to salvage the proposed code. He indicated he thought to some degree what they had was workable going forward. He preferred to send what they had worked so hard on to the City Council in order to continue the dialogue and have the Council confront the same issues. He related that he understood Chair Babbitt's feelings and this was something for each Commissioner to decide on his/her own. He indicated the problem that led to this request for this code was a real one. This was a pivotal time because the land around the Mill was available. They did need a real economic plan. But the current effort was a failed effort. It needed to be done right. The public had been left out. If they were able to back up and start this effort over they desperately needed Mr. Kerr's very best effort and the best cooperation and positive ideas from neighborhood associations and the Planning Commission. They all had to solve the problem of how to do it right together. They could not just say 'no,' they had to move forward.

Chair Babbitt suggested a good place to start to create something meaningful that fit within the scope of what was advertised was to go through the West Linn Economic Development Committee's plan and create code, procedures and policies based on what was in it.

Vice Chair Steel related she felt as if this effort was more about marketing than communication. She recalled the code they first saw had a lot of things in it that troubled the Commissioners and the citizens because it seemed like the City was using this as an opportunity to get changes the City wanted. The Commissioners had repeatedly asked how things related to economic development. They had gotten a grid at the very end of the process that gave them a little of that. She related the Commissioners had worked very hard to pull the weeds out of the patch. One example was they had discussed not restricting an infill lot with the lot proportions provision. It was a change that would have made the code cleaner. It would have benefitted the subdivision application they had just heard that night. She indicated she agreed this had come about in a dismal way. The Planning Commission had been blamed for procedural errors they had nothing to do with. The delay had been because they had tried to salvage it when perhaps they should have decided early on not to support it. She explained she was inclined to recommend it to the City Council and let it move on from there because what they had at this point was worthwhile. She strongly encouraged staff to listen to the comments made and learn from them. Next time they should consider the communication aspects and ensure that everybody got the message and that it was a very accurate message regarding what was proposed.

Commissioner Miller described the Commissioners position as being between a rock and a hard place. She indicated she agreed with Chair Babbitt's and Commissioner Martin's comments. She related she was personally very disturbed that the Commission was being criticized as ineffectual and an embarrassment when they had persevered to work though this in numerous

meetings. She indicated she felt they were doing the job they had been charged with: To make sure that the public process was protected. She related that she felt that in some respects they needed to say 'no' because the outreach guidance they had spent considerable time crafting after the Master Trails Plan hearing had been ignored and because they had tried to do the work that other people should have done for them. On the other hand they had spent a lot of time vetting and working on this. At this point she did not feel great about 100% of it. However, they had tried. She related she did not know what to do. The issue had made the previous month of being a Planning Commissioner very frustrating and disappointing. She had great concern about what happened when it got to City Council. She would probably testify when it got there. She was at the point that she was not at all pleased with the way it came about, but she felt they had done their due diligence and it was time for this to move forward.

Chair Babbitt interpreted the City Manager's September 26 Memorandum as an acknowledgement that the process was flawed. It indicated he had several conversations with individual City Councilors and staff regarding how to divide the package into phases. Chair Babbitt read aloud from the Memorandum: 'Please note that as we proceed with a modified approach to the Cut the Red Tape Project we will continue to work toward the next phase of this project, which includes amending the mixed-use district regulations and creating a new civic institutional zoning district. Based on my discussions with Council and staff I have determined that the best way to move forward is to ask the Planning Commission to conclude its discussions on the first phase as of the October 2, 2013 meeting and to postpone making recommendations on certain proposals that staff will consider repackaging and deferring to a later date.'

Commissioner King offered her perspective that if they had demanded to know what the goal outcome was at the beginning of the process it would have been better. She felt the suggested neighborhood association changes were an entire, separate project, and not something to blend into an economic development proposal. In hindsight, there should have been a lot more analysis and a goal. Commissioner Axelrod said he appreciated each Commissioner's thoughts and dedication to the effort. He appreciated and agreed with Chair Babbitt's honest appraisal. He related that he had said from the beginning that he thought the whole process was misaligned and they were going about it backwards. They should first develop their vision and plans and then work on the code. They should not treat all their commercial areas the same as they were each unique. He related the Commissioners had tried their best to work with what they had been given. There were a few things in the proposal he thought should be incorporated into the code at some point. There were some things which could be made better if they were tweaked a little more. He said he wanted to send a message to the City Council and the rest of the City that the Planning Commission was not against the objectives of embracing economic development and balancing it with the needs and interests of West Linn growth. This was just the wrong approach. It had been misaligned from the beginning. He indicated the test was whether this proposal was really going to change anything about West Linn development. He thought the answer was 'no.' It did address some ineffectual aspects and some procedural elements that could streamline and help focus things. One example was

changing the number of copies required for certain things. He noted the Commission had just addressed dimensional lot requirements in the previous hearing by granting a variance and it went fine. So that change was not critical to move forward. He held that to forward a document that was not fully supported by the Planning Commission and not fully vetted was sending the wrong message.

Commissioner Axelrod did not see a need to mess with the tree code because it seemed like the tree code they had worked okay; years of work and a lot of information had gone into crafting the existing tree code; and if it needed to be changed there should be supporting analysis. He indicated the survey information underlying the proposal seemed weak and what he read indicated the current situation was fairly functional. He related that if he had to vote on this that night he could not approve it in its current form. He thought there were a lot of elements in the package that could be salvaged and worked on. They did not have to lose all the good work and insight that had gone into the package. He said he had been discouraged at the lack of engagement of the neighborhood associations. He was not sure how to get others in the City involved. They seemed to see a lot of the same players come and complain about changes. It would be nice to hear from more members of the community. He agreed with Commissioner Martin about trying to approach this from a positive perspective. He acknowledged he had the same feeling of frustration as Commissioner Miller when he heard the rumors about how dysfunctional the Planning Commission was when they had been working very hard to try to do the right thing. They were just not quite there yet. There was a lot to be gained from what they had done, but he did not think it was in a form he could support that night if they were going to vote on it.

Chair Babbitt thanked the Commissioners for their comments. He indicated he did not disagree with anything they said. He agreed that West Linn needed to have a vision and base its code on that vision. They did not have that now. He agreed if they made all of the proposed changes it would not really effect how West Linn would function.

Commissioner Martin indicated the proposal had previously been a very large step in the wrong direction but now it was a very small step in the right direction and worth taking. There was value in it. The change to a *de novo* appeal hearing of a planning director decision was worth doing. In many other areas the Commission had reaffirmed and strengthened the things that they felt were important that were sometimes the opposite of what was proposed.

Commissioner Martin **moved** to send CDC-13-01 to the City Council as the Commissioners had modified it and allow the Council to decide whether to go ahead with further revisions or not. Vice Chair Steel **seconded** the motion and discussion followed.

2:30

Commissioner King suggested the Commissioners ask for a joint session with the City Council to talk about it. She noted there was a communication link that needed to be strengthened. Chair Babbitt directed Mr. Sonnen to make that request. Commissioner Axelrod inquired if they had more time to work on the proposal. Mr. Sonnen advised the code allowed 60 days from the

date of the initial public hearing to make a recommendation to the City Council. At the end of the 60 day period the planning director was to notify the City Council of any failure to take action. Then the City Council could proceed as it wished.

Chair Babbitt commented that the outreach had never mentioned the significant proposed change to *de novo* appeal hearings. He suggested the City Council could get more people involved by actually advertising what the code was going to do and that it would change land use policies. Vice Chair Steel suggested the Commission could recommend that.

Commissioner Martin voiced his disappointment that the administrative procedures related to citizen involvement that the CCI had worked on, which were now city administrative procedures had been disregarded. That was the crux of the problem. All voices should have been represented at the beginning of the process. He hoped staff was listening to the message that they should do it the right way or they were going to do it over. The Planning Commission was not going to tolerate projects being brought forward that ignored the administrative procedures. Commissioner Martin suggested that each Commissioner write his/her own memorandum to the City Council.

Commissioner Miller indicated that while she very much wanted to move the document forward she was concerned that also sent the message that the city could disregard the Commissioners advice to reach out to stakeholders. The Commissioners had worked hard, vetted a lot of things, pulled out a lot of things. Yet she felt at a crossroads about it.

The vote was conducted and the motion failed 4:2. Commissioners King, Axelrod, Miller and Chair Babbitt voted no. Commissioner Martin and Vice Chair Steel voted yes. Commissioner Miller related she had voted 'no' with a very heavy heart. She wanted Mr. Kerr and the City Council to know she was sorry. But she felt that even as hard as they had worked to try to get it right it was just not there. Commissioner King saw this as an opportunity to get things right. She hoped there were ways for the Planning Commission to move the positive parts forward. She still felt they had made the right decision. Chair Babbitt observed the Commissioners had put a lot of work into it and there were some good ideas in it that could go forward, but he just could not recommend approval. Commissioner Axelrod agreed with Commissioner King's comments about connecting better with the City Council on the matter. There were some elements in the proposal that were good and should be advanced at some point even though they could not embrace the package as a whole. Vice Chair Steel noted the clock had run out for the Commission to continue to work on it and the result of the vote might mean that the draft would default back to the original draft with things in it the Commissioners found objectionable. The Commissioners inquired what version of the draft the City Council would get.

Mr. Sonnen advised that the vote effectively was the Planning Commission recommendation of denial of the proposal. The City Council would have the record from the Planning Commission's part of the process. The Commission could also write a transmittal memorandum to the City

Council offering their perspective. However, the City Council could now go forward and take action any way they chose to that was within the scope of the notice.

Mr. Kerr advised that even though the Commission had recommended denial he was still going to tell the City Council what the Commission had worked on. Nothing would be left out. He would try to capture what he could in terms of the reasons for denial. If the Commissioners sent correspondence that explained the rational for what they did that would be very beneficial. Commissioner Martin indicated he would have preferred to send the document forward with more wind in its sails, just to keep the other proposal from gaining any traction. He said he thought a joint session was a wonderful idea. In the absence of a joint session, they could each talk directly to individual Councilors about it.

Chair Babbitt summarized the Planning Commission was going to ask for a joint work session with the City Council and it had been suggested that each Planning Commissioner write a memo or letter to the City Council for the record supporting what they liked or did not like about the process, the code. He then closed the hearing.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

None.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

None.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 10:00 p.m.

APPROVED:



Michael Babbitt, Chair

12-5-13

Date



CITY OF West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of October 30, 2013

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

Members absent: Lorie Griffith

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

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 6:18 p.m.

PUBLIC COMMENT

Alice Richmond, 3939 Parker Rd., thanked the Commissioners for being committed and conscientious.

Karie Oakes, 1125 Marylhurst Dr., asked the Commission to put an email from the Assistant City Attorney regarding proceeding with the "Cut the Red Tape" process in the record and on the website. She indicated she felt it was not proper process. Chair Babbitt agreed to put it in the public record and on the website. Ms. Oakes reported the *West Linn Update* was still conveying the same propaganda regarding the "Cut the Red Tape" project even though the Commission had made it clear it was not a good description of what they were doing. She indicated that raised the issue of whether it was really a transparent process.

Teri Cummings, 2190 Valley Ct., thanked the Commissioners for their time and diligence. She indicated that when a city attorney advised about the ["Cut the Red Tape"] process people should have the opportunity to speak to that. She questioned how and why the Commissioners had singled out some aspects of it and not other aspects if they were concerned that there had not been sufficient public outreach.

WORK SESSION

Discussion of "cut the red tape" amendments including proposed amendments to CDC chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 27, 28, 31, 32, 33, 46, 52, 55, 56, 60, 65, 75, 85, and 99, and the Comprehensive Plan, CDC-13-01

Chair Babbitt invited neighborhood association representative's to participate in the discussion. Those present were: Aaron Buffington, President, Robinwood Neighborhood Association; Brenda Perry and Ken Pryor, Savannah Oaks Neighborhood Association; Julia Simpson, Willamette Neighborhood Association; and Gail Holmes, Economic Development Committee. The discussion documents were: "Discussion Draft for October 16, 2013 meeting;" and "Cut the

Red Tape: Amendments for Consideration dated July 10" (with strike-outs dated October 15). The group discussed the following aspects.

Exclusion of City Council goals

Staff recommended removing the 2003 City Council Goals from the Comprehensive Plan. The Commission had modified them and renamed them "Citizen Vision Goals." At the end of this discussion Chair Babbitt observed the consensus was to keep the Citizen Vision Goals as drafted, except they would add back the 2003 City Council Goal that had been number 10.

During this discussion comments were related to the amount of vetting of the proposed Citizen Vision Goals; that annual City Council goals changed every year; that Council goals were more practical than visionary; that Council goals were not always added to the Comprehensive Plan; that the goals in the Comprehensive Plan had been around for ten years and the community relied on them; that the goals were loftier, aspirational goals which could be vetted through a public process; that the Council Goals were outdated and did not belong in the Comprehensive Plan; and that if the Commission recommended the Citizen Vision Goals and left them in the document they would be vetted by the community at the City Council hearing. The neighborhood association representatives offered comments which included that citizens had not been involved in creating the Citizen Vision Goals; that it was important for West Linn to have the guidance of a vision; that as things changed the goals should be updated; and that these were long range, aspirational, goals as contrasted with the City Council's annual, practical, goals.

Commissioner Axelrod was asked what process and background information he had used to craft the Citizen Vision Goals. He related he had started with the City Council goals, changed some wording, cleaned them up a bit, and made them more current, but he had not changed most of them. He related that he had looked at Mr. Kerr's proposal related to economic development and tried to integrate the interest in the current economic vision as well as the concept of looking to revitalize areas of mixed-uses. He had kept the big, aspirational, goals. He had used the information they had received in the packages they got from the staff. He related that after hearing testimony and thinking about it he would add back the goal that had previously been #10 which called for growth to pay 100% of its cost, and retain and renumber new goal #10 as #11. He noted the community could now voice their opinions on the Vision. He recalled the Commission had gotten very positive feedback from the citizens who had come to their meetings.

Mr. Kerr suggested if the Planning Commission thought there was a valid reason to make the change this might not be the right venue to do it in. It might mean a separate process and outreach. They could recommend that. Commissioner Axelrod suggested the Commission proceed with the proposed Citizen Vision Goals and let the citizens decide what they wanted to do.

Mr. Pryor was concerned the Vision could be interpreted as pursuing mixed-use regardless of the cost. He questioned whether all growth could pay for itself (#10) and noted the goal related to mixed-use did not talk about factors such as cost and traffic (#7). Chair Babbitt observed the Commission could recommend the vision as a starting point and then it would be up to the elected City Council to make policy decisions after the community spoke about it. Commissioner Martin supported keeping the Vision in the document because there needed to be a vision in it and because the drafted Vision had received a lot of attention in their work sessions and public hearings and the public would have another opportunity to speak about it at the upcoming hearing. Ms. Perry asked the Commission to make every effort to publicize it and involve as many people as possible.

Chair Babbitt related that he and Vice Chair Steel had discussed additional outreach with the City Manager and some Councilors. He had advised them the Commission was going to recommend additional outreach before the Council hearing as well as offer a recommendation related to the document. Mr. Buffington inquired how much time the neighborhood associations would have to discuss the materials. Chair Babbitt clarified they had until November 13 to submit written testimony for the November 20 hearing and they would be able to offer oral testimony at the hearing. He noted that if the Commission recommended the proposal to the City Council there would be additional opportunities for public testimony at the Council hearing. He then observed consensus to keep the Citizen Vision Goals as drafted, except they would add back #10 and renumber the new goal there as #11.

39:26

Conditional Use

Current Comprehensive Plan definition: A proposed use of land which may be allowed after the City Planning Commission has determined that the proposed use is appropriate for the site, compatible with surrounding uses, is supported by City public facilities, and is of overall benefit to the community and meets all other relevant criteria.

Staff recommended definition (same as definition in CDC and used by the state): A use which may be permitted by the approval authority following a public hearing upon findings by the approval authority that the approval criteria have been met or will be met upon satisfaction of conditions of approval.

The neighborhood representatives raised the following concerns: conditional use approval authority might be taken away from the Commission; and, the staff definition was very open-ended compared with the current definition, which specified criteria such as 'overall benefit to the community' which was very important. The Commissioners agreed the criteria were important. Chair Babbitt assured the neighborhood representatives that the Commission had addressed approval authority so there was no longer concern the Commission would lose CUP approval authority. Mr. Kerr advised that if the Commissioners wished to retain the criteria, it should not be in the definition, but in the criteria section. Chair Babbitt observed the

consensus was to agree to use the staff recommended definition of Conditional Use that was consistent with the one in the CDC and to put the criteria in the criteria section.

Approval Standards for Conditional Uses (see 60.070 on page 26)

Mr. Kerr related that staff no longer proposed to remove any criteria. They had agreed with the Commissioners to keep the existing criteria and add to it.

Commissioner Martin posed these questions: How legitimate is it for the City to demand a benefit in return for CUP? If a proposed conditional use does no harm does it have to offer some kind of extra value? Chair Babbitt indicated he did not consider having to have a benefit a 'taking.' Neighborhood association representatives suggested the idea was the citizens were getting something of value to the community out of it; and, the idea was to first, do no harm, but in the end benefit the community. One commented that if businesses did not want to do that they could locate their businesses someplace else.

Criterion A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

The group discussed Commissioner Martin's suggestion to incorporate language to the effect that it 'provides a benefit to the community' into the above criterion. At the end of the discussion Chair Babbitt observed the consensus was not to add the additional language. During the discussion Mr. Kerr clarified that a conditional use was not a variance. It was a use the City had already deemed appropriate, provided it got additional scrutiny to ensure it did not have adverse impacts on surroundings. He advised determining what the benefit was would be subjective and ambiguous. He suggested that if the Commissioners did not want to allow a use in a zoning district they should change the CDC so no one could even apply for it. Discussion comments included that 'benefit' was subjective and should not be added; that they did not need another subjective criterion because they had already agreed to the subjective criterion, 'consistent with the overall needs of the community'; and that there were a number of other criteria that had to be met that could prevent a use from happening in the wrong place. Chair Babbitt then observed the consensus was to not add the additional language.

1:00

Charge neighborhood associations an appeal fee

Mr. Kerr proposed to no longer allow neighborhood associations to appeal land use decisions for free. He reported the appeal fee was \$400. Chair Babbitt recalled that this change was supposed to limit the potential for frivolous appeals that cost the City money. He clarified the Commission did not support the staff recommendation. The neighborhood association representatives indicated they did not support it either. Their comments included that being able to appeal for free had not been abused; neighborhood association input during appeals had enhanced applications; an appeal was a lot of work for a neighborhood association; if a neighborhood association could not afford the fee then they could not pursue a legitimate appeal; the associations needed the stipend they got from the City to run their organizations; if

the number of association appeals was a problem the Commission could place a limit on how many free appeals a neighborhood association could make each year. Commissioner Martin offered to pay a neighborhood association's appeal fee if they had a legitimate appeal and were required to pay the fee but did not have the \$400.

1:06

Lot Dimensional Requirements

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.

The Commissioners had already agreed to strike this provision in zones with larger lot sizes because it made no difference there. Now they considered whether to strike it in R7 and R10 as well. Mr. Kerr explained it regulated the depth of the buildable area of a lot because it controlled the depth of the non-Type I and II area of a lot. He reported staff saw a lot of variance requests related to this provision. Infill sites tended to have more constrained land so it was hard to get the required shape of the buildable area to develop on. He advised it might be overly restrictive because there were other controls in place to avoid odd-shaped or overly-deep lots; and, it was not in a developer's financial interest to create a bizarre lot. He related that staff thought removing the provision from R7 and R10 would not do great harm to the community; however, they would not fall on their swords over it if striking it created too much concern.

The Commissioners recalled a recent R7 subdivision application they had heard. In order to meet this code provision the applicant had changed their original site plan by shortening five lots by a few feet and putting the excess footage in a couple of tiny tracts that served no purpose. At the hearing the Commissioners had observed that did not make sense, so they approved the five variances the applicant had originally applied for and allowed the longer lots. Chair Babbitt noted the Commission could not have done that if the applicant had originally submitted a plan with the lots and tracts that met the code and not asked for variances.

During the discussion comments included that in the absence of this provision there were other controls in place and to give flexibility on infill parcels that were constrained; that the variance process was available; that the variance process had worked well in the case the Commissioners had described; that the Commission had only been able to resolve that case that way because the applicant had originally applied for variances; that there could be abuse without this provision; that the variance process was uncertain and might require additional fees; and that staff could make applicants aware of the variance option at the preapplication conferences.

Commissioners Axelrod and Martin each indicated he was inclined not to strike the provision. Mr. Kerr was asked what else prevented odd-shaped lots. He advised that included minimum lot size; minimum lot width; minimum density requirements that capped lot size; and a subdivision requirement that did not allow creation of inefficient, bizarrely-shaped, lots. He

was not sure why this code had originally been adopted, but thought it had to do with having regularly shaped lots with a large buildable area. Ms. Perry inquired if striking this provision would mean there would be less wiggle room on small lots and if it would result in increased density. Vice Chair Steel noted the example of the recent case showed that striking the provision would actually give developers more wiggle room; and that density would not be increased because there was still a minimum lot width in each zone.

Commissioner Martin then proposed to retain the subject code provision and increase minimum lot width. For example, he would increase R7 minimum lot width from 50 ft. to 75 ft., which would increase the depth limit by 15 feet without dramatically changing anything. He would make minimum lot width 75 ft. in R10 as well. Mr. Kerr clarified provision 4 was not talking about the lot's width and depth, but about the depth and shape of the buildable area of the lot (outside of non-Type I or II lands) and required it to be less than two and one-half times that area's width. He indicated he did not think it was necessary to make minimum lot width wider. He related that applicants were dealing with the issue that infill lots were a little bit more difficult to design so more flexibility would help.

Commissioner Martin then suggested both striking provision #4 and increasing minimum lot width. Responses to that suggestion included concern about the effect on existing planned lots in the City; that some land owners who were counting on dividing their parcel into a certain number of lots for retirement investment would not be allowed to have that many; that some of the developers were their neighbors; that owners who had been counting on dividing their 100 ft. wide parcel into two 50 ft. wide lots would now have to try to create a flag lot; that it was not fair to change the minimum lot width because too much was already in place now; and that this could be handled through variances. Commissioner Axelrod noted he had asked for additional analysis of this. In the absence of additional analysis he would leave the provision in the zones. Chair Babbitt then observed that four Commissioners leaned towards striking the provision in the R7 and R10 zones. Mr. Kerr noted that the hearing draft would reflect that.

1:42

Commercial buffer (see pages 36 and 37)

Mr. Kerr pointed out the commercial zones specified the setbacks from residential zones and then the draft code continued by saying, '**In addition, in order to mitigate adverse impacts, a landscape buffer not to exceed 50 feet and which may include fencing or walls may be required.**' He noted the Commissioners had previously agreed to that language. He explained staff recommended deleting the 50 ft. buffer language because it did not make any sense to tell permitted uses their required setback was 20 ft. and then add language telling them a buffer of 50 ft. might be required with no explanation of what that meant. He related that staff did not think the buffer would be necessary most of the time; they did not think it added any value to commercial properties or encouraged the things the City was looking for. He noted the applicant would be spending a lot of money to come up with their proposal but the buffer was not a certainty. He suggested a different tactic could be to keep the 50 ft. buffer language but be specific about what its purpose was and what would occur in it. He advised that if a buffer

was necessary because of noise, light or other adverse impacts the code already had regulations that addressed those. Commissioner Martin noted keeping the drafted language would serve to warn applicants that they needed to look in the other sections because a buffer might be required. Chair Babbitt saw consensus to keep it.

Mr. Kerr confirmed that staff would correct some typos the Commissioners had found in the new draft. The Commission recessed for a few minutes and then reconvened the work session.
1:55

De Novo versus On-the-record Appeal Hearings

Mr. Kerr clarified for the neighborhood association representatives that all appeals were currently *de novo* hearings. He guessed there had been about a dozen land use appeals since he began working for the City. Chair Babbitt mentioned there seemed to be an increase in the number of appeals. He recalled the Commissioners had noted one advantage of on-the-record hearings was that the applicant would tend to present their best proposal to the Planning Commission instead of waiting to change it for the Council *de novo* hearing.

Ms. Thornton was asked to clarify how much of an application could be changed in a *de novo* appeal. She advised a project could be changed to the extent that it did not involve any new criteria (the Lake Oswego-Tigard water treatment plant application was an example of that). If the change made it subject to additional criteria the process had to start again at the beginning.

Neighborhood association representatives' comments included that although on-the-record hearings might encourage an applicant to put their best foot forward, laymen citizens needed enough time to understand the matter; the *de novo* process gave them more time to prepare and the ability to provide new evidence; to a certain extent an appeal was the price of doing business; and the bottom line was the change would take away the voice of the people. Commissioner Miller pointed out they still had the right to testify at Planning Commission and City Council hearings. Mr. Pryor cited the example that neighborhood comments had prevented a drive-through that was in the marketplace initial design. He indicated he thought if developers were much more proactive and forthright in presenting their plans to the neighborhood associations that might ameliorate some of the fears and doubts neighborhoods had.

Ms. Holmes said they were not ready to get rid of *de novo* for one reason, which was because communication with the City was not good enough; things happened that people had no idea were going on; and by the second (*de novo*) round they became aware of them. Commissioner Martin characterized that as using the Planning Commission as a trial run before people woke up and got involved at the Council level. He suggested the Commissioners consider ways to make people aware of applications and educating them about them. He indicated that until the City could do that he would not consider moving to on-the-record hearings. Chair Babbitt agreed the City could strive to do it better; however, he questioned that the end result would be better because the problem for years had been that there were some dedicated people who

stayed involved, but for the most part people were not interested in spending their time that way.

The Commissioners then discussed communication and timing. At the end of that discussion Chair Babbitt observed that the Commissioners wanted to keep on-the-record hearings in the draft for the time being, but before they made a formal recommendation they wanted to look at other options for improving the process and recommend those as well. The CCI could take it up at the same time. During the discussion the group considered a suggestion to put more information in the notice of land use application, including the applicant's findings. They asked Mr. Kerr to talk about the process. He related that notice that a land use application had been submitted was sent to the neighborhood association when it came in. They were invited to the preapplication conference. As soon as an application was deemed complete it was placed on the website. At that time the 120-day clock started. Staff was always looking for ways to get the information out even faster. The timeline they were using exceeded state standards. It took four to six weeks for staff to do their analysis and finalize the staff report, but the other materials were available for people to read during those weeks, including the complete application, which contained the applicant's findings of facts. He explained a problem with *de novo* hearings was that the City Council might be pressed for time to review an application and all of the materials in the record, but *de novo* allowed even more materials to come in. He indicated he believed an on-the-record appeal hearing would help and it would bring better applications. The Council could reopen the record if factual or procedural errors were discovered.

Commissioners' and neighborhood association representatives' responses included that if neighborhood associations had four to six weeks to consider it they should not wait until the last minute to look at it; four to six weeks gave them time for due diligence, but neighborhood association meetings were not all well attended and not all of them represented the views of their members; the Commission should ask them what they needed in terms of communication and education that could make on-the-record appeals work; one aspect of the communication problem was that not all citizens were aware they had a neighborhood association; the staff report was a critical piece of information for the neighborhood association; they should not go to on-the-record hearings until they could improve communication to the point it would work well; *de novo* was not used much by other jurisdictions, but it was overused in West Linn; watching a Planning Commission hearing was the ultimate education and prepared the citizens; they should think about limiting the number of free appeals a neighborhood association could ask for each year if they continued with *de novo* hearings to ensure the privilege was not overused, but if they decided to have on-the-record appeal hearings the associations should be allowed unlimited appeals; some neighborhoods were built out so a limit like that should be based on how much growth a neighborhood was going to experience; they needed the redundancy of *de novo* appeals until they were able to involve people earlier in the process and had made it possible for people who wanted to be informed to do their preparation; and the Commission needed to rebuild trust that had been lost recently.

Vice Chair Steel recalled the neighborhood associations' concern about uncovering facts. She also recalled that Ms. Thornton had advised that the record could be re-opened in an on-the-record hearing if a factual or procedural error was discovered. She asked if there could be a third reason for reopening it if significant facts came to light after the initial hearing. Commissioner Martin related a former mayor had explained to him that the City went to *de novo* hearings because they spent a lot of time in hearings arguing about whether something was new information or not.

Chair Babbitt observed that four Commissioners were leaning toward on-the-record if the other issues could be solved, and two had indicated they wanted to maintain *de novo* hearings for the time being. He summarized that on-the-record would be kept in the draft for the time being, but before they made a formal recommendation they wanted to consider ways to improve the process. The CCI could take it up at the same time. He noted some suggestions had been made that night. He asked the neighborhood associations to ask their members what would work for them and provide recommendations. Mr. Kerr offered to provide a report outlining the current process.

Planning Commission review of Planning Director decisions

99.160 DECISION BY DIRECTOR

C. A decision made by the Director shall be final as provided by CDC 99.230 unless:
2. ~~Not less than two~~ A majority of the members of the Commission or two members of the Council order a review within 14 days of the final decision pursuant to CDC 99.240.

Mr. Pryor and Ms. Perry each indicated they did not support the proposed change because they believed if at least two Commissioners were concerned about a Planning Director's decision it should be reviewed by the Commission. Ms. Thornton advised the charter required a majority of the City Council. Commissioner Martin recalled the Commissioners had talked about going from two to three Commissioners. He anticipated it would be difficult to learn about it and somehow get four Commissioners to agree within the two weeks after the planning director's decision. Vice Chair Steel agreed those were practical reasons for calling for less than a quorum. Commissioner Martin indicated he would change this provision back to two Commissioners and also change the related Council requirement (in 99.170) to two Councilors instead of a majority. Ms. Thornton confirmed they could not engage in deliberations towards a decision outside of a quorum. She suggested they work through the planning department to schedule a special meeting to decide whether to review the director's decision. Chair Babbitt noted changing the Council requirement would not be consistent with the City charter. He observed the consensus was to change 99.160 to two Commissioners.

Chair Babbitt thanked the neighborhood association representatives for participating in the work session. He told them the Commissioners were thinking about opening the public record that evening and leaving it open for written comments until November 13; and scheduling the public hearing on November 20, when they would invite more testimony.

3:02

CONTINUED PUBLIC HEARING - DELIBERATION

CDC 13-01 Proposed "Cut the Red Tape" amendments to CDC chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 27, 28, 31, 32, 33, 46, 52, 55, 56, 60, 65, 75, 85, and 99.

Chair Babbitt opened the hearing and announced the Commission was not going to take formal action or make a recommendation on the project that night, but they were going to discuss it and re-open the public record.

Commissioner Martin **moved** to continue CDC 13-01 to November 20, 2013; leave the written record open until November 13, 2013 at 5:00 p.m.; and allow oral testimony at the November 20 hearing. Chair Babbitt **seconded** the motion and it **passed** 6:0. The Commissioners then considered the following aspects of the draft code.

Citizen Vision Goals

Commissioner Axelrod suggested making the following revisions to Goals 12 and 13.

Drafted Goal 12: ~~Explore the possibility of creating~~ **Create** a special mixed use zone **and framework plan** for the **industrial Arch Bridge** area overlooking the Willamette Falls.

Revised Goal 12: Create master plan for Arch Bridge area and prepare a planning framework and propose CDC revisions, as necessary, to implement the plan.

Drafted Goal 13: **Explore opportunities for creating specific district plans and regulations for each of the City's commercial areas.**

Revised Goal 13: Explore opportunities and create specific district plans and regulations, as necessary, for each of the City's commercial areas.

Mr. Kerr indicated he could agree to the revised wording because it added clarity and was action-oriented. No one objected to these changes.

GREATER FLEXIBILITY

Proposed GC zone permitted uses

27. Lodge, fraternal, community center, and civic assembly within the commercial districts along Highway 43 and Salamo Road.

[alternative: all Lodge, fraternal, community center, and civic assembly permitted as conditional uses.]

28. Religious Institutions within the commercial districts along Highway 43 and Salamo Road.

[alternative: all Religions institutions permitted as conditional uses – if this alternative is selected, lodges, fraternal, community center, and civic assembly (No. 27 above) must also be permitted as a conditional use. The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) mandates equal treatment among these types of assembly uses]

Commissioner Axelrod inquired about the addition of the above permitted uses. Ms. Thornton recalled that she had advised and the Commissioners had agreed to treat religious institutions and fraternal organizations the same. Mr. Kerr pointed out the language only permitted them in specific areas of commercial that were '**within the commercial districts along Highway 43 and Salamo Road**'; and that the Conditional Uses made them conditional uses in other areas.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Miller related that a *West Linn Tidings* article quoted a citizen who said they did not understand how the Planning Commission would approve any trails plan that would jeopardize the safety and well-being of West Linn citizens, but the article did not report that the Commission had done a substantial amount of work to address citizens' concerns and mitigate potential hazards before it approved the master trails plan. She reported that she had contacted the reporter to explain that and she believed he had printed a retraction.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Chair Babbitt asked staff to schedule a CCI meeting on December 4. Mr. Kerr related the City Council had indicated they wanted to meet with the Planning Commission in January to discuss a variety of issues. Chair Babbitt anticipated they could talk about the CCI and the Cut the Red Tape process as well. He reported the City Manager had told him they would delay the City Council hearing until they could do some additional outreach. Commissioner Miller asked that the City Manager put it in writing because no one had contacted her. Commissioner Martin expressed his opinion that so much had been removed from the proposed amendments package and so little was left they should just start over again, using a better citizen involvement process. Chair Babbitt anticipated the other items would be addressed in separate, smaller, groups of projects. Mr. Kerr offered to outline the things they had agreed on in preparation for the hearing. The Commissioners talked about issues related to their electronic drop box.

ITEMS OF INTEREST FROM STAFF

Mr. Kerr confirmed that he was serving as the interim planning director.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 10:08 p.m.

APPROVED:

for Christine M Steel, vice chair
Michael Babbitt, Chair

1-21-2014
Date



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