

NEWBERG PLANNING COMMISSION MINUTES
January 12 2017, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Allyn Edwards called the meeting to order at 6:59 pm.

Affirmation and Oath of Office new members:

Mayor Bob Andrews administered the oath of office to Allyn Edwards, Ron Wolfe, and Miranda Piros.

ROLL CALL

Members Present: Allyn Edwards, Chair
 Cathy Stuhr
 Gary Bliss
 Ron Wolfe
 Jason Dale
 Philip Smith
 Miranda Piros, Student

Members Absent: Patricia Watson, excused

Staff Present: Doug Rux, Community Development Director
 Steve Olson, Senior Planner
 Brad Allen, Assistant Planner
 Bobbie Morgan, Office Assistant II

Also Present: Mayor Bob Andrews, Ex-officio
 Truman Stone, City Attorney

ELECTION OF CHAIR AND VICE CHAIR:

<p>MOTION: PC Bliss/PC Wolfe moved to appoint Jason Dale as Planning Commission Chair for 2017. The motion carried (6 Yes/ 0 No).</p>
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<p>MOTION: PC Stuhr/PC Bliss moved to appoint Philip Smith as Planning Commission Vice Chair for 2017. The motion carried (6 Yes/ 0 No).</p>

Chair Allyn Edwards turned the meeting over to PC Jason Dale. Chair Jason Dale continued the meeting.

PUBLIC COMMENTS: None.

CONSENT CALENDAR:

<p>MOTION: PC Stuhr/PC Edwards moved to approve the December 8, 2016, Planning Commission meeting minutes. The motion carried (6 Yes/ 0 No).</p>

WORK SESSION: Legislative and Quasi-Judicial Hearing Procedures

Community Development Director Doug Rux said this would be training on legislative and quasi-judicial hearing procedures.

City Attorney Truman Stone presented material on the hearing procedures. He explained the role of the Planning Commission when looking at applications. When they were acting in a legislative capacity, there was more flexibility to craft appropriate solutions, issues could be considered more broadly, past life experiences could be brought in, and common sense and neighbors' input could be used. When they were acting as a judge, they were limited. They had to take the preexisting law and apply it to the applications. Public testimony had to know what the rules were as well, and had to show how the proposal did or did not meet the criteria. The Planning Commission had to take what was presented and measure it against the criteria and make a decision.

PC Edwards asked about the Commission's potential liability for their decisions. CA Stone responded if they were acting within their role as a Commissioner, they were an agent of the government and were covered by the Oregon Tort Claims Act. As long as there was no personal motive and they were acting in good faith, there was no liability and if there was, the City would indemnify them.

CDD Rux said at the beginning of quasi-judicial hearings, the language was read for everyone to understand the process and to make sure all of the steps were taken. The staff report included findings that showed how the application did or did not meet the criteria and if there should be conditions.

PC Smith asked if it was possible that citizens could bring up other criteria that staff did not mention and that should be considered. CA Stone stated that was an unlikely scenario, but if it did happen, the hearing could be continued to add the new criteria and findings. There might be debate over which criteria applied and the Commission might need to make a judgment about the criteria.

PC Stuhr said it was important as a Planning Commission that they stick to questions related to the criteria and not hypotheticals about items not in the criteria.

CA Stone reminded the Commission the land use process was procedural. Due process of law was guaranteed under the Constitution, and there were two types, substantive due process and procedural due process. For the Commission, they were talking about procedural due process as it had to do with being entitled to a fair hearing. The decision could not be arbitrary or solely based on opinion. They could not add or subtract to criteria in the middle of a hearing. They could not change the law. If a Commissioner did not think they could be fair in their decision, they should excuse themselves from participating.

PC Stuhr clarified bias did not only include financial implications. She gave an example of a recent situation that could be bias.

There was discussion regarding potential and actual conflict of interest.

CDD Rux stated if someone challenged a Commissioner's ability to look at the decision fairly, the Commissioner would have to recuse himself or herself from the decision or if they did not recuse themselves, the decision could be challenged later and it could go to Council or LUBA.

PC Smith suggested that after the Commission declared any conflicts of interest, ex parte contacts, or bias, the Chair should ask the audience if anyone objected. CDD Rux agreed that should be done. CA Stone said ex parte contact was different from bias and a fair hearing. Ex parte was not strictly prohibitive as long as it was disclosed and people were able to respond and put in contrary evidence.

PC Stuhr said a lot of times Commissioners drove by the site and she thought they should disclose what they observed. CDD Rux clarified conversations with staff were not considered ex parte contact.

CA Stone stated if someone did not get a fair hearing, they could appeal and the decision could be overturned. He reminded them they were volunteers and would not want to put themselves in the position of being accused of being unfair. He explained how meetings should be conducted. He then discussed the criteria and likened the

Planning Commission's role to the job of a jury. He passed out an example "RIOT" case and discussed how the jury would review the evidence against the criteria and come to a decision. The Planning Commission had more choice than a jury. They could say the application met the criteria, did not meet the criteria, or could create conditions for the application to meet the criteria.

PC Bliss gave the example of a recent application where some lots did not meet the criteria of gravity fed sewer, but offered another solution for the sewer on those lots. CA Stone said the Commission had to decide if the criteria were met. They were not the City's Building Official and Commission approval did not mean that the City would give them a building permit in the future.

CDD Rux said if the Commission imposed conditions on an application, and the applicant couldn't make the infrastructure work, the lot or subdivision would not be created because the final plat would not be approved. In Newberg there had been subdivisions that were approved, but had not been developed.

CA Stone said there would be times the Commission would be asked to interpret the criteria. One example was compatibility. He discussed the definitions of argument, evidence, and testimony. The evidence had to be relevant to the decision and had to address the criteria. Substantial evidence had to be used to make the decision. If there was conflicting evidence, the Commission would need to choose between them and explain why they chose one over the other.

PC Smith asked if the Commission did not think some public testimony was credible, how could they state that in the findings. CA Stone responded it would have to be fact specific. If that was all the evidence they had, it would be an uphill battle to justify that it was not credible. They were not bound to accept all evidence, but they had to identify why it was not believable.

PC Bliss asked about criteria that were relative, such as congestion. CA Stone said there were times when the Commission would have to interpret the criteria.

PC Stuhr commented that many times people said their kids played on the street as a reason not to approve an application. CA Stone replied the Commission had to look at the criteria to see if the testimony was dealing with the criteria.

CDD Rux commented on the transportation criteria used by the Planning Commission and agreed there were no criteria addressing streets as playgrounds. CA Stone explained citizens often had no idea how the Commission was constrained in these decisions. People had concerns that did not meet the criteria, and the Commission could agree those were valid concerns, but they had to follow the criteria in the decision. The criteria could be changed in the future, but it could not be done on the fly.

CA Stone then discussed opinion evidence. People could present their opinions and the Commission was not bound to accept the opinions. The Commission could ask for clarification or justification of the opinions and find out if there were facts that supported the opinions. He explained the findings for applications that showed evidence of how the criteria were met or how the criteria were not met.

PC Stuhr asked what happened when the findings said the criteria could be met, not that it already met the criteria. CA Stone responded the applicant had the burden to show the criteria were being met or could be met. If there was insufficient evidence, the application could be denied.

PC Bliss asked what to do in the situation where the Commission did not think the solution was viable or there was no way to ascertain the neighbors would not be affected. CA Stone stated if there was evidence that the criteria were met, the requirement was satisfied and they would have to approve it. If the Commission wanted to change the criteria to address a certain problem, it would have to be done in a different process.

CDD Rux reviewed some scenarios of applications and the process for making decisions based on the criteria.

CA Stone said if the Commission had any other questions, to contact him.

The Commission took a five minute break at 8:47 pm.

WORKSHOP: Potential Development Code amendments to Chapter 15.235 (Land Divisions)

CDD Doug Rux presented information on potential amendments to land division regulations. This section of Code was not well written and had not been updated to reflect State law changes. These changes would be brought back to the Commission in February for approval. He reviewed the purpose of the regulations, general requirements, and two-step process.

PC Bliss asked what overcrowding of land meant. CDD Rux explained it meant the parcels were too small and houses too close together to be desirable places to live. There was no defined threshold for overcrowding.

CDD Rux said staff was working on parking requirements for residential as a separate process. Partitions and subdivisions were a Type 2 staff decision unless there was a stream corridor. The preliminary plat approval was good for two years and could be extended for five years from the original date. Another application would need to be submitted to make modifications to approved preliminary plats. There were criteria for a phased subdivision process and there were preliminary plat submission requirements.

PC Stuhr asked if the Code addressed the cumulative impact of development. CDD Rux indicated he could take a look at what other cities did. SP Olson added that the TSP looked at the buildout of the City in 20 years and assumed all these properties would be built out and looked at the cumulative impacts and made a list of the projects that would need to be done and the SDCs that would be used to do the projects. As developments went in, they might have to do improvements immediately adjacent to the property and they were also paying SDCs based on future anticipated projects.

PC Smith thought it would be helpful for the public to hear as part of the staff report how these applicants were paying SDCs for future improvements to address traffic needs.

CDD Rux discussed existing conditions, other information the Director deemed necessary, approval criteria, conditions of approval, variances, and final plat submission requirements.

PC Smith asked for clarification on validation of lands not lawfully established. CDD Rux said this was a situation when someone sold land and recorded a deed transfer of the property with the County without going through a land division process. In this case, the application would go to the Planning Commission to create a legal lot.

PC Bliss noted there was not a defined scale for the preliminary plat. CDD Rux made note to include it. PC Bliss thought contours should be limited to one foot and if there was 100 or more feet between contours, spot elevations at half contour should be provided and if it exceeded 15%, there should be a five foot contour. CDD Rux would make those changes.

PC Smith clarified PC Bliss wanted it changed from two foot vertical intervals to one foot vertical intervals for land that was basically flat and had less than 1% slope, two foot vertical intervals for land up to 5% slope, and five foot vertical intervals for steep land above 15%.

PC Bliss said the contours beyond the boundary of the subdivision had been dropped out and he thought the contours should be carried 50 to 100 feet beyond the boundary so they would know if a new development would match the existing grading. CDD Rux added the suggestion to his notes. PC Bliss did not think 15.235.050A and B should be eliminated as they dealt with scale. Section 235.060A3 did not seem to be covered in new Section 235.070. Regarding future street plans, they kept coming up with new subdivisions placed in the vicinity of

existing subdivisions and the streets did not align. In the past a future street plan was not prepared to show how the streets could be continued and it caused off-set intersections that could affect land divisions.

SP Olson discussed one criterion that had to do with improvements being completed prior to final plat or bonded. The City's preference was not to bond, but have the improvements built. The way it was worded sounded like either was acceptable. They needed to express their preference.

PC Bliss said regarding Section 235.060A2, it stated the land division application would comply with this Code including but not limited to MNC 15340.010, and he could not find that section of Code. SP Olson said the new language stated the application would comply with the requirements of this chapter.

PC Bliss said under requirements for the preliminary plat, there should be a picture of a typical cross section of the street for people to know what was required for street improvements.

ITEMS FROM STAFF:

Update on Council items: CDD Rux said the Council approved the Downtown Plan and the Transportation System Plan. Staff was working on the statement of work for the Riverfront Plan. The Newberg 2030 project Task 1 information had been submitted to DLCD. Staff was working on Task 2, which was the buildable lands inventory.

The next Planning Commission meeting was scheduled for February 9, 2017.

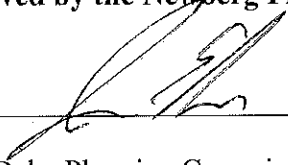
ITEMS FROM COMMISSIONERS:

PC Stuhr said she would absent at the next meeting. The Planning Commission area of the City's website needed to be updated.

PC Smith commented on the gate that blocked Evergreen Street from Deskin Commons and how for a recent application they were told they could not have a gate blocking a street. He would like to know the reasons it was allowed there but not in the area of the recent application.

Chair Jason Dale adjourned the meeting at 9:48 pm.

Approved by the Newberg Planning Commission this February 9, 2017.



Jason Dale, Planning Commission Chair



Bobbie Morgan, Office Assistant II