



**City of Sherwood
PLANNING COMMISSION**

**Sherwood Police Facility
20495 SW Borchers Drive**

February 1, 2005

Regular Meeting - 7:00 PM

A G E N D A

1. **Call to Order/Roll Call**
2. **Consent Agenda- November 16, 2004 PC Minutes**
3. **Agenda Review**
4. **Brief Announcements**
5. **Community Comments** *are limited to items NOT on the printed Agenda.*
6. **Public Hearing**
 - A. **Sign Permit Appeals:** Three sign permits on separate tax lots have been appealed to the Planning Commission. Hearing has been tolled in succession from original date of September 23, 2004. *(Spencer Parsons, City Attorney's Office)*
 - B. **Sign Code Amendment:** PA 04-05 is a plan text amendment request from the City Council to amend the sign code (Section 5.701.05) to address amortization of non-conforming signs. This hearing was continued from January 4, 2005. *(Kevin A. Cronin, Planning Manager, Planning Department)*
7. **Comments from Commission**
8. **Next Meeting** *(February 15, 2005)*
NOTE: A hearing is scheduled for the TSP. The hearing was moved from March 15.
9. **Adjournment**

REMINDER: Open House @ Police Facility from 4-6
Open House @ YMCA on Monday, February 14 from 7-9 pm
TSP Work session – 6-7 pm

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
February 1, 2005

1. Call to Order/Roll Call

Vice Chair Patrick Allen called the Planning Commission hearing to order at 7:05 PM.

Commission Members present:

Patrick Allen
Dan Balza
Kevin Henry
Jean Lafayette

Staff:

Kevin Cronin, Senior Planner
Pam Beery, City Attorney
Heather Austin, Associate Planner

Commission Members absent:

Matt Nolan
Adrian Emery

2. Consent Agenda – November 16, 2004 minutes

Jean Lafayette asked for clarification on page 4 regarding the statement that Kevin Cronin made, "...the Planning Commission must make a policy decision". Vice Chair Allen clarified that the policy decision was regarding whether W. Villa St. is going to be a connection or not. Vice Chair Allen asked if there was a motion to adopt the Consent Agenda – Commissioner Henry moved, Jean Lafayette seconded. Minutes were approved.

Vote for Passage of Motion: 5-Yes, 0-No, 0-Abstain

3. Agenda Review – In addition to the regular materials on the agenda, the public hearing on the Sign Code Amendment will be this evening. Nothing else was added.

4. Brief Announcements – Kevin Cronin said that in the Feb. issue of the Gazette there was an ad for two vacancies on the Planning Commission, so hopefully some applications will come in and will start due process for that. Also, the deadline for the Gazette was before the change of the public hearing from March 15th to February 15th, so it's not stated correctly in the Gazette. It is February 15th, to be noted to the Planning Commission and anyone listening in the audience.

Kevin Cronin also stated that the meeting was also being taped tonight and that it would be a standard practice. The City Manager is making a decision on whether to continue taping the sessions or not.

5. Community Comments

Eugene Stewart, PO Box 534, Sherwood OR, 97140:

My question tonight is where do you go for guidance on how the City is complying about the citizen's involvement process...[inaudible]

Vice Chair Allen: I can answer that for myself, I would say that you go to the documents that we've already agreed with you are out of date and not terribly accurate, and we go to the implementing of resolutions and ordinances of the City's past. But, we've identified that as one of the top things that we need to work on as we begin to engage in the review of our core documents.

Eugene Stewart: Is that something, for no other reason – I mean as long it's in proportion is that something we need to be looking at to make sure we're following?

Vice Chair Allen: Kevin, do you want answer that?

Kevin Cronin: I think you've talked about it already – as part of our work program we have identified that we're going to be presenting this before the City Council on February 10th. We'd identified we need to update our comprehensive plan elements and one of those elements, which correct me if I'm wrong Commissioner Allen, is Goal 1 – public involvement. So we're going to be looking at how we need to change that and to increase public involvement. That's an identified goal or priority within the 2005 work program for the Planning Commission.

Vice Chair Allen: I think that by resolution in certain cases and at least by practice the Planning Commission has been identified as the Citizen's Advisory Committee, based in terms of what has been identified in the documents that you've talked about – like for purposes of the TSP and that kind of thing. I think it's top of the list in terms of issues to work on, and not just the issue of – should there be a separate advisory committee, but the whole issue of how do we better engage citizens in planning decisions.

Eugene Stewart: But I mean by regulation – they've adopted a specific way that the citizen's involvement program is supposed to run. If you don't follow that ...[inaudible].

Vice Chair Allen: I couldn't answer that – I think you could raise an objection to an action that we take and that objection on that basis, there is a process for considering that. I'd say we are aware of the issue and we're working on it..and certainly I think the workshop that we had tonight on the TSP for instance is a demonstration of good faith, that what we really want to do is get a lot of citizen engagement. And the top of our list is working on fixing the documents make reference to that.

Eugene Stewart: OK.

Vice Chair Allen: Anybody else have anything they want to comment on that is not on the agenda? If not, we'll move to a public hearing on Sign Code Amendment PA 04-05. I think is actually a re-opening of a continued public hearing which we previously held. I'll turn it over to staff for any kind of an update...first, we need the rules –

Kevin Henry: Read the Rules of Public Hearing Disclosure

Vice Chair Allen: Asked if there were any public bias or conflict of interest? None being stated opened the public hearing. We'll have 15 minutes for a staff report and then 5 minutes maximum per person for anyone wanting to provide testimony.

Kevin Cronin: I don't have an addendum staff report – we do have a memo from the City Attorney, from Spencer Parsons who is to my left. I'll give the rest of my time to Spencer.

Spencer Parsons: Good evening Commissioners, I'm Spencer Parsons from Beery, Elsner & Hammond, City Attorney's office. We were asked by Kevin to look at some questions that were brought up at the last hearing, in particular there were three issues about the proposed amendments to the Sign Code: 1) Whether there was an issue under the first amendment of the U.S. Constitution, Article 1, Section 18 of the State Constitution - a free speech question. 2) And the two more significant issues that were brought were whether the proposed changes constituted and unconstitutional taking, or would in certain circumstances, and 3) Whether Measure 37 was an issue. We looked not at the Measure 37 claim, but in the past we have looked at the other two questions on free speech claims and the takings claims. We examined the applicable case law, we looked at case law from different jurisdictions, and what we decided was that an amortization provision of 5 years or longer would be reasonable. As far as the speech issue was concerned, the provision isn't content based. It's not regulating speech per se, it's just regulating the signs regardless of what they say. Even in the event that if a court would decide - that the provision was drafted was very narrowly tailored, it's kind of a manner regulation and there are alternative channels available to people.

So provision doesn't bar signs it just spells out new standards about what kind of signs that would be acceptable in the City, and it provides for an amortization provision that says after 5 years signs need to be brought into compliance with those standards. After we did - now two analysis' of whether that would be legal we came to the same conclusion and the answer was yes. In the memo that I provided it largely talks about the case law that we relied on to come to those conclusions. The staff report which I read today, it discusses the specific criteria that you're considering – what kind of recommendations to pass on to Council. The staff provides more than adequate findings addressing those criteria. Other than that, unless you have specific questions for me I'll yield the floor.

Vice Chair Allen: Thank you. Any questions? There being none, are there any other staff comments?

Kevin Cronin: None at this time.

Vice Chair Allen: Is there anyone that wishes to testify on PA 04-05? Eugene, I think you are it, so why don't you get a blue card and come on up?

Eugene Stewart: Same thing I'm back at again I guess..is just to raise the issue is that I believe it's in your code that when you do an amendment you are supposed to get recommendations from the Sherwood Citizen's Advisory Committee – and I don't believe that's been included anywhere in this hearing. So there is a question or whether or not - not only I, but other people..if you don't do it the right are we going to backwards on this or what? That's the only think I have to say.

Vice Chair Allen: OK. Questions for Eugene? Staff did you have any issues...

Kevin Cronin: The same issue that was brought before us by the same person providing the testimony, was brought up at the TSP and the same comments still apply to this case. It's the same legal analysis that could be used for this particular issue.

Eugene Stewart: And what is that legal analysis?

Vice Chair Allen: That was that by resolution the Council had designated the Planning Commission as the Citizen's Advisory Committee.

Eugene Stewart: OK. But does resolution override an ordinance?

Spencer Parsons: A resolution doesn't override an ordinance, but in most cases what it provides for is a designation of a committee or any kind of a body like that – and in many jurisdictions the Planning Commission can act as that.

Eugene Stewart: Right. But, they have adopted by ordinance – which hasn't been repealed, how the Citizen's Advisory Committee is operated and they are not following it.

Spencer Parsons: Does that ordinance allow a designated Planning Commission advisory?

Eugene Stewart: No, no it doesn't.

Vice Chair Allen: Are you certain of that?

Eugene Stewart: It's in Part 1 of comprehensive plan. And also, if you look at the statutes and also the regulations on bullet one it says yes, "the Planning Commission can be appointed, but they need permission from the State". I don't believe that's been done.

Vice Chair Allen: OK, anything else Eugene?

Eugene Stewart: No, that's all. Thank you.

Vice Chair Allen: Thank you. Any other public testimony? In that case I will close the public hearing on PA 04-05 and move to questions of staff and discussions. So, I think we're back to the issue that given the nature of this issue, I am concerned. Have you actually read the ordinance...

Kevin Cronin: I'm not sure what he's referring to. I know specifically the part of the comprehensive plan, but as far as the specific language referred to I'm not familiar with that.

Vice Chair Allen: Are all of our ordinances codified? So we ought to be able find it?

Kevin Cronin: Codified in the sense that it was adopted by ordinance, yes.

Vice Chair Allen: Was it indexed into a City code? There are a lot of ordinances out there that just exist – a lot of jurisdictions ordinances are just a chronological list of ordinances.

Kevin Cronin: Sure. We'd certainly have that and certainly we have the Municipal Code, and part of the Municipal Code is the zoning code which includes the comp plan. I'm not sure if that answers your question.

Vice Chair Allen: I'm concerned that if the circumstances are that there is this ordinance that specifies how we are going to have a Citizen's Advisory Committee, and that ordinance has explicit language that either doesn't enable – or somehow sets up circumstances that the Council can't just by resolution designate an existing body that we could have a basis for appeal under Goal 1 to the actions – can any of you comment on that concern?

Kevin Cronin: There is very little case law on Goal 1, and this same issue was brought before us for the TSP. I, as staff acknowledge that we need to work on our Goal 1 as part of a larger effort to update our comprehensive plan. We know that. And we need to look at how we do public involvement. Do we keep the Advisory Committee, do we re-establish it, or do we trade some other advisory committee, or designate the Planning Commission as the citizen's involvement committee as required under Goal 1? Those are all questions that are fair game when we start that process.

Vice Chair Allen: Yes, but I think the inherent question now is, "what are the rules under which we are supposed to conduct ourselves for this action?" I'm just...an overabundance of caution not wanting to caught on an issue like this where we have a procedural clause that ends up....

Kevin Cronin: Sure.

Jean Lafayette: And I see a difference between the TSP and this, in that the TSP actually was a resolution directing us versus this which has by habit become a part of what we do.

Vice Chair Allen: [to Spencer Parsons] Do you want to comment?

Spencer Parsons: I don't know specifically what the language says that he is referring to. I do know as a general principle that the Council has the authority to designate a Planning Commission as the committee body. Furthermore, as far as...Goal One's main concern is with public participation and input and things like that. As far as the process is concerned that's what we're going through right now. We've gone through that. We've had input from the public, we've had input from staff, we are participating in Goal 1 as we speak.

Vice Chair Allen: Would your advice to us be that irrespective of whatever that ordinance says...if that ordinance says you'll have a Citizen's Advisory Committee which will make recommendations to the Planning Commission, that even if it says that we have complied with Goal 1.

Kevin Cronin: Let me answer that. At least in part. We have met our code as far as zoning code, and that's the codification that you were asking about earlier as far as plan text amendments – starts with the Planning Commission and then goes to City Council. We've met that. That's standard. As far as how it relates to the comprehensive plan in Goal 1, I think that's part of a larger discussion we need to have in this calendar year.

Spencer Parsons: And what I said before relates to what the Planning Commission here is doing is passing a recommendation onto the City Council that is going to make the City's final decision on this matter. In the meantime, if the Commission decides to make a recommendation one way or the other this evening or not, staff can go and look at the question that has been brought up and if there is an issue they can have the City Council send it back down.

Vice Chair Allen: Right. We've got to work...my assumption is that we've got to work under the assumption that the City Council has given us the authority to do this. We do it, it goes to City Council, and if Eugene or anyone wants to object at City Council and City Council says, "hey, you know what you're right", City Council then has the opportunity to send it back to us to get further input or send it back to another committee to get further input. So, I think we've been at least under the assumption that the City Council can invest that authority with us. I think we're okay to move forward on this and quit stalling and actually get something done in this community.

Jean Lafayette: I also.. I mean we're skirting around this nebulous...we're chasing a wild goose until we actually see what's in front of us on a Part 1 comprehensive plan. I don't think...a copy of that being provided and that specific site referenced being provided would also...

Vice Chair Allen: Just to be clear I'm not...I mean I understand the issue about Part 1 of the comprehensive plan, I'm concerned about a Council adopted ordinance that specifies how things are going to go. But I think that the idea that was laid out that we go ahead and make a recommendation based on the assumption that we have the ability to make that recommendation - I think chasing down and working with Eugene and getting the actual ordinance that is talked about and seeing what the language is, is something that Council ought to have benefit of before it acts. Again, on an issue as sensitive as this I would hate for some kind of procedural flaw like that to be a problem. I just don't think it's our area to decide that.

Jean Lafayette: I had one other comment about what is our area to decide or not. I don't believe that we have received Council direction on what they believe are our policy is regarding potential Measure 37 claims. As was written in the memo...no one has walked through this before. No one has said yes or no and the memo said something about.."presents another question, may require the City waive enforcement". And we're not a policy - we make recommendations and part of this process that I would hope gets taken up to the Council level, is that this is one of the first Measure 37 potential risks that we've been exposed to, and that before we push any further we should have a work session so that we know what the policy is going be on the City level.

Vice Chair Allen: I think it's fair issue, I guess I react to it a little differently presuming that until we are given a heads-up otherwise by the Council in terms of new requirements, that we'll continue to do business as we have. If the Council becomes uncomfortable with the requirements that they will let us know.

Jean Lafayette: But this is an easy one because they are going to see it after we are. But a regular Land Use Application that they wouldn't see we would be....

Vice Chair Allen: Well there wouldn't be any change in the comp plan or...

Jean Lafayette: But if we attempted to enforce a code afterward...now that we've made this decision and now once we go to enforce it, the next sign application that comes in that we try and enforce we have....this is outside of this area, I'm just saying that as part of our recommendation if we choose to take it up to the Council, we should state that a discussion regarding policy would be...so I think I have a concern that – I'm glad that they get to see it after we do, because they are making the final policy decision - but I think we should be more prepared for something that doesn't get passed on to Council.

Vice Chair Allen: Any other discussion on this? Is there a motion?

6. Public Hearing - Sign Code Amendment

Kevin Henry: I move we approve Sign Code Amendment PA 04-05 as requested, incorporating the testimony, findings and advice from counsel.

Vice Chair Allen: And I presume you are proposing that we recommend this to Council?

Kevin Henry: Yes.

Vice Chair Allen: Is there a second on the motion?

Dan Balza: I second.

Vice Chair Allen: Discussion?

Vote for Passage of Motion: **4-Yes, 1-No, 0-Abstain**

In Favor: Patrick Allen, Kevin Henry, Dan Balza / Opposed: Jean Lafayette

Vice Chair Allen: And we carry with a majority of those present, is that right?

Spencer Parsons: That's correct.

Vice Chair Allen: Motion carried...I'm curious Jean –

Jean Lafayette: I just think we didn't cover enough material, and going forward I think we need to have a clear sense of ...I just don't think that we covered it –

7. Comments from Commission

Vice Chair Allen: OK. Any comments from Commission?

Jean Lafayette: When we did our work session, our goals of planning one of our....we were going to add wireless communication towers and I think we should probably have – regarding the requirements and how to keep them from being ugly in the community. We never pursued it. Before we get the first one it would be nice to have something in place.

Kevin Cronin: Sure. There are two things at play here. We have only 4 commissioners here so I would like to have a full commission available to discuss that; two – Adrian and I are

presenting our goals which we have already developed to City Council on Feb. 10th if I have my dates correct. Each Chair of a board or commission will be presenting their goals to the City Council at that meeting. I've developed a memo for Adrian to present that lists all our accomplishments for 2004, as well as the work program and any special requests we have for funding. So, that's in motion. What I would like to propose is to get feedback from Council first from their goal setting, and then make sure it is consistent with Council goals, then subtract or delete things such as wireless communications..

Vice Chair Allen: What is our degree of confidence that Adrian will be able to make the meeting on the 10th? Should we be keeping that date just in case?

Kevin Cronin: I emailed him although I've not heard back from him. I know he couldn't make it tonight because he had a work emergency. So I have not been in contact with Chair Emery.

Vice Chair Allen: OK, I'll keep it on my calendar just for back up.

Kevin Cronin: I'd appreciate that.

Vice Chair Allen: Any other comments?

Jean Lafayette: The handouts from training – the Council had a really great training session on the land use law. I was there and the two things that I thought were interesting, was at the first hearing if someone requested an additional amount of time you must grant it. And the 2nd one was that even if they request it you can't go past 245 days.

Kevin Cronin: Yes, Heather has copies. I wanted to follow up on some of the discussion on Measure 37. I think part of my job is to start to have a specific area within my staff report that talks about Measure 37, just like I do with other criteria. I will take to the City Attorney about whether that is prudent or not to do that. I think it personally is from my professional planning experience to have that in there as a discussion, one – because it is part of the public process, but two it produces exposure. It is something that is being talked about at least internally right now.

Vice Chair Allen: Any other comments?

Dan Balza: I know we are having another open house on the 14th with TSP, and on the 15th we are reopening the hearing. I guess what I am looking for is closure.

Kevin Cronin: I would love closure on the TSP.

Dan Balza: Any idea what will happen beyond the meeting on the 15th?

Kevin Cronin: You'll have an opportunity to recommend TSP to the City Council for a public hearing at that time. My job is to get all the comments that we receive tonight and try to summarize those in a memo or some email communication. Tonight was easy, there were two issues - Villa Rd. and Pine St. There were maybe one or two others in there, but we'll take a look at that tomorrow. On the 14th, my turnaround time is a little quick so I am going to try and crank something out and get it to you on yellow paper before the meeting on the 15th.

Vice Chair Allen: Say again what you said the error in the paper was about the public hearing.

Kevin Cronin: Sure. When I submitted the notice to the Gazette or the Archer, we had the original continuance date of March 15th, that's what you had continued to from our meeting on January 4th. That meeting was re-noticed for February 15th.

Vice Chair Allen: Am I the only concerned that people will read that paper and think that the hearing is on the 15th of March.

Jean Lafayette: I think there are a lot of people who came to the last meeting that knew the 15th, that we are going to surprise when they come on the 15th and we tell them we did that a month ago.

Kevin Cronin: What staff is going to do is send emails to all the people we have email for, we are going to do a newspaper notice, and we are going to send either email or mail notice to all those folks who submitted public testimony – blue cards.

Vice Chair Allen: We are worried about the ones that think they have until the 15th of March to work on it. I guess we can deal with that on the 15th of February. Anything else?

Kevin Cronin: Do I have a couple of volunteers for the 14th?

Jean Lafayette: I already put it on my calendar.

Kevin Cronin: Thank you Commissioner Lafayette.

Vice Chair Allen: I'm willing to volunteer, but my schedule is highly dependent on what is going on with the legislature – so I shouldn't be the counted on second person.

Kevin Cronin: I know that Matt is not going to be able to make it.

Dan Balza: I wonder who could do it? If Patrick can't do it, I'll do it.

Kevin Cronin: Thank you Commissioner Balza. People are generally happy that we did it, lots of good comments and feedback.

Vice Chair Allen: Anything else? Is there a motion to adjourn?

Kevin Henry: I so move.

Vice Chair Allen: The move has been seconded to adjourn.

Vote for Passage of Motion: 4-Yes, 0-No

9. Adjournment – Vice Chair Allen adjourned the meeting at 7:35 PM

End of Minutes