

City of Oregon City
Planning Committee
Minutes
January 27, 2020, 7:00 p.m.
City Commission Chambers – City Hall

1. Call to Order

The Planning Commission meeting was called to order at 7:00 p.m. Commission Members in attendance were Vern Johnson, Tom Geil, Dirk Schlagenhauser, Gregory Stoll, Michael Mitchell, Patti Gage and new commissioner Christopher Staggs. Laura Terway, Community Development Director was present for the City as was Carrie Richter, Deputy City Attorney.

2. Election of Planning Commission Vice Chair and Chair

Dirk Schlagenhauser nominated Mike Mitchell for Chair. Patti Gage seconded the nomination.

Vote:

Tom Geil – aye

Dirk Schlagenhauser -aye

Patti Gage – aye

Gregory Stoll -aye

Vern Johnson -aye

Christopher Staggs -aye

Michael Mitchell -aye

Michael Mitchell was elected Chair of the Planning Commission.

Patti Gage nominated Dirk Schlagenhauser for Vice-Chair. Michael Mitchell seconded the motion.

Vote:

Christopher Staggs -aye

Vern Johnson -aye

Gregory Stoll -aye

Patti Gage -aye

Dirk Schlagenhauser -aye

Tom Geil -aye

Michael Mitchell -aye

Dirk Schlagenhauser was elected Vice-Chair of the Planning Commission.

3. Public Comments

No members of the public were present.

4. Discussion Item

4a. Legal Training presented by Deputy City Attorney Carrie Richter

Attachments: APA Oregon Planning Commissioner Handbook
Boards and Commissions Orientation Manual

Carrie provided legal training for the commission members. Their biggest task for 2020 will be adopting a new comprehensive plan. City's Comprehensive Plan is 15 years old (2004). The Plan is the Constitution that drives the City's planning program. In this meeting they will discuss components of the plan and how the plan fits into the larger planning scheme. They will also discuss ex parte contacts and conflicts of interest.

Federal, State and Regional Land Use Framework

Federal Requirements

The U.S. Constitution provides certain guarantees to real property owners – takings clause, due process, equal protection. Feds can't just take property. When people seek land use approval, they must be treated fairly and equally. The City operates under these parameters. The City also operates under Federal Laws such as the Clean Water Act & RLUIPA (Religious Land Use & Institutionalized Persons Act). Religious and incarcerated persons are protected from discrimination by local government, and prevents governments from seeking to curb religious activity, i.e. the City won't let a church remodel because of design overlay restrictions.

State of Oregon regulations – Statutes and 19 Statewide Planning Goals

Covers minimum procedures for notices and public hearings, for processing land use applications, gives clear and objective standards for housing applications vs discretionary standards. Regulations that govern annexation of land into the city, statutes explaining how public meetings are to be handled and how records are kept.

Discussion followed of the 19 statewide planning goals that are ambitious objectives to be achieved through land use regulation. These are broad and vague, i.e. "protect natural resources." The goal does not define the degree to which implementation is to be carried out. Some administrative rules that implement the goals give further direction, i.e. planning goal #3 provides for protection of farmland but it doesn't state how to go about doing that. The Department of Land Conservation and Development has adopted administrative rules that state how to protect those farmlands.

Carrie gave several examples of various State agency administrative rules that define how to implement goals for various natural resources and land use. Examples include transportation planning administration rules, forestation protection efforts, etc.

Regional Portland METRO – Location of Urban Growth Boundary (UGB)

METRO sets the location of the UGB for all surrounding areas in the METRO area partnership. OC is on the edge of the UGB so when the UGB is expanded it usually includes land within or adds land to OC, which can be viewed as an opportunity or a challenge. METRO decides what population growth will be and where the land allocation will be most appropriate. OC participates in the process but does not decide.

Tom Geil questioned what the City has decided to do about considerations of annexation of certain lands; he had heard they were putting a hold on it. METRO determines urban growth but cities are allowed to decide about annexation on their own. Carrie said, yes, the City is analyzing this further but no annexation applications have been held up for now.

METRO Government has an Urban Growth Management Functional Plan, regulations that cities have to implement. Carrie gave the example of Goal #5 -protection of natural resources such as streams and riparian corridors - as how local governments have to protect these areas. As City Comprehensive Plan amendments arise the City has to implement any METRO regulations as part of its own planning program. There are also METRO requirements about urban planning, concept planning.

Carrie explained how when the UGB expands, the land in OC encompassed in the UGB change remains under Clackamas County jurisdiction and rural zoning regulations. UGB Management Functional Plan requires local governments to adopt a Concept Plan, a miniature Comprehensive Plan for that particular area; one example is the Beaver Creek Concept Plan. Makes it unnecessary to revise the entire Comprehensive Plan.

OC Regulatory System

City Charter – has provisions for structure and management of the City itself, operation of City Commission, City Manager position, and identifies determination of city boundaries and annexation to be determined by voters. Until recently with a change in the law, the City had voter-approved annexation in all circumstances. There is currently a challenge by the City of Corvallis arguing that Charter protection for voter-annexation should overrule the changes in law that allow State law to override voter-annexation; this case was argued in the State Court of Appeals in June 2019, with no ruling as of the date of this meeting. Members discussed process and timeline of court decisions.

City Comprehensive Plan – Local Implementation of Statewide Planning Goals

The City chooses areas to protect, development to support, policy guidelines to be followed. It is a long-term planning document for up to 20 years of future development. Includes City directives as well as private development regulations. More regulations are directed at what the City will do rather than at what private entities are expected to do. The City is obligated to ensure that development will be compatible with the city as a whole, with neighboring property owners, etc. Utility master plans- including storm water, transportation, sanitary sewer master plans- are attached to the Comprehensive Plan. Evaluates the condition of existing systems; while keeping in mind the population projections and job growth, the Plan identifies what/where additional infrastructure

investments will be necessary. Long-range plans will help aid in working with developers who propose projects, making sure they contribute to the overall development plan, keep within scope of planning.

OC Municipal Code and Zoning Map – Implements Comp Plan

The Municipal Code contains the day-to-day land use regulations the Planning Committee uses for reviewing development. It implements the City's Comprehensive Plan. The Municipal Code states details of what the Committee can and cannot do, what they are asked to interpret and against which they are to consider proposals. Includes zoning and overlay designations, land divisions and development standards, land use procedures.

Carrie showed the Commission members a comparison of a Comprehensive Plan versus the OC Municipal Code provisions. One example given was about affordable housing and allowing higher density building of corner duplexes in single-family residential areas and the circumstances and objectives of planning and development standards to go along with that. Comprehensive Plan policies are much more general. The Municipal Code gives the details and guidance to land-use applicants.

Other construction-related Regulations exist but they are not issues reviewed by the Planning Commission. Carrie discussed a few of these.

Recording final plat, reviewing land division - County Surveyor does this, followed by approval by Public Works and Planning Departments.

Building and construction codes, detailed standards – by City building official, not Planning Department.

Public Works infrastructure design standards, engineering design components/details, implemented by Public Works.

Process of Urbanizing Land

(1) METRO adds land to the UGB. City adopts a Concept Plan, local robust evaluation but not land division or zoning decisions, broader scale decision-making. Carrie gave Beavercreek example and industrial planning. Michael (Mike) Mitchell wanted to know if this plan drove certain recent Concept Plans. Laura explained a bit more about this project and how the UGB has changed frequently lately. Mike questioned if they needed to go back and create Concept Plans for areas currently between the city limits and the UGB; Laura and Carrie answered, "No." If METRO moves the UGB farther out, then a Concept Plan would be required. Laura gave an example of a school district requesting a UGB; if approved by METRO they would have to do a Concept Plan for their one small property. Carrie explained that if the UGB moves only "a sliver" the City could annex it and rezone and adopt the Comprehensive Plan designation for that piece of land.

Christopher Staggs confirmed with Carrie that if land is added to UGB but it is not part of the city, the City has to adopt a Concept Plan. Carrie stated that there is no regulatory impact until the land is annexed. It continues to be County jurisdiction until it is annexed to the city. The goal is to give everybody a heads up about long-term plans. County and City must work together on this.

Tom expressed his concern that METRO moves the UGB and the City is responsible for paying for the Concept Plan. Laura explained that the City has received funding for some Concept Plans.

(2) Annexation is considered - There is a land use review component with zoning and utility service decisions and also a political component in voter approval. The State statute amendment to eliminate voter approval only removed the political component, not the land use component. Annexation applications are reviewed by the City --City doesn't have to actually serve the land upon annexation (meaning provide infrastructure); the land is just brought into the boundary, the possibility of serving is present, a feasibility determination for service. Annexation isn't what allows development. Development is allowed by zoning it to urban densities; rezoning gets the development started. Some applicants don't want to rezone the land, just want to annex the land into the new boundary. There has been criticism of this process, with some applicants wanting the annexation process to be the "trigger point" of the determination of funding sources and allocation of costs. Voter approval provides a political backstop and there is much criticism about eliminating it. Carrie discussed voter approval statutes about how annexation can occur.

(3) Applying Urban Zoning Designation as identified by the Concept Plan. This is where development can occur at the zoned densities. These 1 - 4 steps in the urbanizing of land occur in various combinations with one another, according to what the land use applicant has requested.

(4) Development – Actual land use development is proposed, land division occurs, implementation of Master Plan or Planned Unit Development, which is for large-scale and usually phased development, smaller scale than Concept Plan but larger scale than single development, i.e. Clackamas Community College. Guarantees a single review of bigger scale development, guarantees review of subsequent development will happen pursuant to codes in place when the Master Plan occurred, not regulations in the future. Laura explained how developers can proceed in the future according to changes in the City Code even if their Master Plan doesn't include it.

Vern Johnson asked how long has Master Planning been around for residential areas; they've been in existence for County-scale plans but is it relatively new for residential districts? Laura stated there are no limitations on where Master Plans can occur. In 2004 the City got rid of Planned Unit Developments (PUDs) which were for residential planning. "Master Plan" and "PUD" are now interchangeable terms/concepts. Carrie made the distinction that Concept Plan is a METRO requirement that occurs much earlier and the Master Plan, applied for by the land owner, occurs closer to the time development will occur. Master Plans are sometimes used as interim steps for larger-scale development. Statewide planning goals and the METRO regulations are applicable to Concept Plans. Statewide planning goals would not be applicable to a Master Plan because the Master Plan is reviewed against Municipal Codes.

Land Use Review - regulations related to what the Planning Commission does.

Carrie described the different types of land use reviews.

Administrative decisions

Type I – No discretionary decision-making and no notice, hearing or appeal, all done by staff.

Quasi-judicial decisions

Planning Commission sits in the place of a judge, reviews to determine if a proposal satisfies the applicable criteria.

Type II – limited discretion in decision-making, works with neighbors and City Commission, Planning director.

Type III – come before the Planning Commission, discretionary review to determine if criteria are satisfied. This would encompass Master Plans.

Type IV – plan amendments, zoning map amendments, public hearings by Planning Commission. This would encompass Concept Plans.

Christopher asked how a city decides the best density for an area. Laura said through a bunch of public meetings to talk about it; she talked about the Beavercreek area, how the City could not designate all of the land as residential because some of it was brought in to serve a regional industrial shortfall.

Dirk Schlagenhauer asked if METRO said how much high-density land they wanted. Laura explained that there is a minimum urbanization level for residential areas. After meeting that criteria, then the City can decide where/how much density they want. Reference is made by Tom to large, sprawling areas in Redland that are still in the city limits; he asked if the 10-acre minimum rule was grandfathered in because those people were there when the rules went into place. Laura said those properties will be huge until they are urbanized. Members discussed the fact a resident can own those large properties without obligation to build anything. (Undetermined who was talking at this point.)

Legislative Decisions

Long-range policy-making decisions including amendments to plan and zoning code.

In some jurisdictions, such as Multnomah County, the Planning Commission deals only with Legislative Decisions. There are no rules in these kinds of decisions. City Commission reviews *de novo*, which means “like new.” They hear anything on Legislative Decisions. They take new evidence, consider testimony of others, as opposed to Type III decisions, in which applicants’ opportunity to submit new evidence is at the Planning Commission level. City Commission’s review is limited to the record prior to the Planning Commission’s review. Tom asked Laura about the Comprehensive Plan update this year and citizens meetings, asking if they are only looking at parts of the Comprehensive Plan that are within the Code and the Code can’t be changed. Laura said the Comprehensive Plan could have action items regarding updates to Code but it isn’t expected to change the Code. The Comprehensive Plan is written by the community, for the citizens; Laura said the City Commission wants to know what the citizens want for OC, what they value, and will figure out State law at some

other time. Carrie said the Municipal Code implements the Comprehensive Plan, which is not bound by what the Municipal Code says.

Quasi-Judicial Hearing Disclosures

At a Commission meeting, Michael (as Chairman) will read a script that is a public hearing announcement describing the rules of the hearings. Applicable criteria will be defined, a staff report is presented, testimony is heard regarding the approval criteria.

Vern said it's part of the Planning Commission's job and the staff's job to sort out the applicable criteria. Carrie agreed, saying it's also education for the applicant and the public about the specific applicable approval criteria to be evaluated by the Commission and not the "quality" or "character" of the applicant.

Carrie stated that the Planning Commission is the first hearing body so we want to encourage people to bring their issues in early, to maintain fairness for all applicants, property owners, the City, concerned citizens. An applicant must raise their issue before the local government before it can go any further, such as to the Land Use Board of Appeals. There is also an obligation to raise constitutional issues, or a "takings concern," early in the process so the City has a chance to respond.

The Planning Commission will not be biased or have a conflict of interest; there will be no judgment of an application in advance of the hearing. The applicant has a right to an Impartial Tribunal. This ensures due process to all participants to have a fair opportunity to get the approval they seek. Carrie explained the requirements of the Impartial Tribunal including disclosure of ex parte contacts between Planning Commission members and the public regarding applications before the Commission; contact is considered "ex parte" only if it occurs *after* an application has been filed. The public must be given opportunity to question the Commission member about those contacts. Christopher asked for an example; Tom gave some of his experiences. Commissioners will disclose any exposure to newspaper articles or other media about an application. Carrie gave examples of questions that might be asked of the Commissioners. Can a Commissioner give an objective evaluation without allowing prior exposure to the issue to impact his/her decision, set aside biases and preconceived ideas and thoughts in favor of the applicable approval criteria? Laura said they have to be sure that all Commissioners have the same information to make the decisions which is why no computers or cell phones are allowed in these hearings.

Vern suggested there can also be ex parte contacts in which Commissioners might initiate the conversation about an applicant without intending to do so. One must also be quick to stop conversation initiated by the other party. Carrie suggested it is a personal decision as to how a Commissioner will deal with those conversations but it's best to encourage the other person to come to the public hearing. Carrie described the difference between one's experience with a situation compared to an actual ex parte communication.

Carrie discussed that there are certain issues for which we are not able to set aside our own personal bias, depending on particular personal situations (examples given of natural gas and Walmart). Such "actual bias" will make it impossible for a Commissioner to give an unbiased decision.

Conflict of Interest primarily regarding a Pecuniary Benefit

Commissioners who benefit personally or whose family members might benefit from a proposal financially will have a conflict of interest and in most cases will have to step down.

General Rules surrounding public meetings and records requirements

Carrie stated that if a Commissioner responds to an email from someone like Laura and hits “reply all” it becomes a public meeting and minutes have to be taken. They should respond only directly to Laura. The same goes for telephone communications regarding City business and/or email threads in which information and discussion is forwarded down the line of Commissioners; it becomes public record. Carrie encouraged them to go straight to Laura about City business and not to one another. Vern asked which email accounts they should or should not use. Carrie explained the difference between public writings and public records. Any writing having to do with City business is a public record even if written on a private email account. She urged them all to use only their City email address for City business. The City can go through their private email in search of public records. They must also try to avoid using social media for discussing City business but if they do they must capture all of their writings so they can be entered into public record.

Public Hearing Procedures

Hearings are structured to be fair and give everyone opportunity to testify. The applicant bears burden of proof and presents their case first and last. Public record is closed after any rebuttal by applicant. Then the Planning Commission deliberates.

The Planning Commission’s job in these hearings is to determine if the applicable criteria are met. They must apply meaning to anything that is ambiguous. They must interpret any discretionary standards. Focus on the plain meanings of terms, while considering the context of the terminology.

A legally supportable decision by the Planning Commission must clearly and fully explain why the approval criteria are satisfied or not. These are written findings of the Commission. There must also be substantial evidence *in the record*, such that a reasonable person would make the same decision as did the Planning Commission. Laura asked about Commissioners reviewing technical reports. Carrie raised the question of how much Commissioners should rely on testimony of experts. She suggested they ask the experts to explain it so that they understand it. If you don’t agree with an expert or find them not credible you must explain why, explain your analysis. Carrie stated that she felt Planning Commissioners don’t question participants and applicants enough. The public hearing process gives the Commissioners the opportunity to ask enough to understand. Dirk talked about how difficult it can be to question experts. Carrie said the City has technical contract employees who provide their opinions to the Planning Commission so they have something to compare to the expert testimony given on behalf of the applicants. Tom talked about how citizens even have the same questions the Commissioners might have for the experts. Michael complimented Tom on how he often questions experts, “holding their feet to the fire.” Vern thinks it’s good for Commissioners to ask technical experts to bring their explanations down to public level. Laura cautioned about keeping questioning during hearings to the actual applicable criteria.

Michael asked if he knows prior to a meeting of something he wants to talk about, when should he bring it forward during the meeting. During the disclosures is the best time, Carrie replied. If you've had relevant experience that comes up during a hearing you need to tell about it at the time. If the record is closed and you think of something, reopen the public hearing and go back through the process. Carrie explained how Commissioners are allowed to enter evidence after the record is closed; it needs to be clear factual evidence to reopen the record and enter that evidence. Laura suggested using the applicant's rebuttal period to tell them of any doubts and ask for clarification. She said the earliest you raise your questions or concerns is the best and Carrie agreed, saying that gives the public more opportunity to comment.

Tom stated that there have been concerns in the past and some prior commissioners have quit because of the belief/concern that Staff only gives the Commissioners what they want to on behalf of the City. He and Laura had previously talked about this at length. Laura said she is not the decision maker, the Planning Commission is, and the Staff's job is to make recommendations, to write findings for them. The Planning Commission has an obligation to explain their concerns to Staff so they can write findings for those concerns. If they are looking for better/more evidence, they need to let Staff know so they can analyze things differently. The Staff's job is to provide the Planning Commission with information that allows them to make an informed decision that can hold up in court. The Planning Commission must state their concerns and questions so the public and applicants can respond. Tom stated that some people feel the Staff should just give findings and state a recommendation. Carrie said yes, that is one approach but her experience is that it isn't as efficient; she does understand the concern, however. Tom said that citizens don't always understand that this is just part of the process, that even though the Staff might make a recommendation it doesn't mean the Planning Commission will approve it. Laura said they can include some statements in their staff reports to explain this process a more in depth.

Gregory Stoll asked about questioning experts. If there is a conflict between experts, such as traffic engineers, then does the City's engineer come in to offer their point of view? Laura stated that then she would make a financial call as to whether or not it pays to bring in a City expert; it is risk analysis. If a commissioner has a concern when he/she reads any of the reports she would like them to let her know so she can determine if it's necessary to have the City expert come in for the hearing.

Conditions of Approval

Carrie stated that there are things that the applicant can do to ensure the applicable criteria will be met. These conditions have to relate directly to the impact of the development. There has to be a proportional relationship of the "ask" set forth in the condition and the "impact" created by the development proposal. For example: A single property owner who wants to add another house on one parcel of land cannot be asked to install a sewer pump station that serves hundreds of residential lots. A single property owner can only be asked to bear the cost proportional to his parcel. Constitutional limitations might arise on the City's ability to exact or condition a development.

Laura added a comment regarding records issues. If the Planning Commissioners take notes during hearings they will be collected and placed in the record. Tom asked how they are supposed to remember their notes for the next meetings. Laura will make sure they get copies. Tom was not

satisfied and asked what their personal notes during a meeting have to do with the public record. Michael stated that this is currently under dispute in West Linn. Are an individual commissioner's notes public record? Tom said they've been passing notes up and down the commission bench for six years. Laura instructed them that they cannot do that.

Carrie talked about the West Linn dispute, saying that a City Commissioner took a lot of notes and a citizen in law school asked for a copy of those notes as a public record. Carrie stated that "public record" is not the same as a record of a meeting about a land use case. Any writing that is related to city business is a public record. In the West Linn dispute, the City lost and had to turn over the notes. Laura said the OC City Commissioners all pass their notes/papers to the staff person at the end of their meetings. Vern asked if this applies to Legislative Decisions, as well. Carrie said, yes, if they are discussing public business. Laura didn't want to discourage the Commissioners from taking notes but said she wants them in the end.

4b. 2020 Agenda Items Not Related to Land Use Applications

Laura reiterated to the Commissioners that they will be working on the Comprehensive Plan update on which she will give more information as it progresses. They've awarded one grant and have tentatively awarded a second one.

Laura stated that at the City Commission update in December 2019, they listed work sessions that the Planning Commission wanted to have with them in 2020. These included work sessions with the Historic Review Board, the Transportation Advisory Committee, the Natural Resources Committee, and the Citizen Involvement Committee. Also, at the end of the year, they will pull together thoughts on what should be included in the City Commission goals for 2021-2023.

Tom brought up the Grande Ronde decision and asked if the Planning Commission is not yet involved. Laura said the City Commission is meeting with Tribal Council of the Confederated Tribes of the Grande Ronde Tribe as just a "meet and greet," open to the public. The Planning Commission will be reviewing Phase 1 of the Riverwalk when it's ready. Laura said they are working on an alternate approach to Phase 1.

Dirk stated on behalf of Michael that Michael had some questions for the TAC about "separated bike lanes." Laura said they did have some impact on that issue and she will tell them in the next meeting. Michael suggested that the Planning Commissioners review this list of work sessions and discuss in the next meeting or two. Laura suggested doing public educational work sessions as necessary.

5. Communications

Laura said the State is hosting community conversations on additional housing choices and housing supply. This is related to House Bills 2001 and 2003. She gave dates for upcoming public meetings.

Tom asked if OC is currently making rules as Salem has done about where they will allow camping. Laura said the City Commission is considering changes to camping ordinances. Laura discussed briefly some of the changes in laws, such as that a Court in Boise said that a City cannot make people move from public property if they have no place to which to move.

6. Adjournment

Meeting was adjourned at 9:19 p.m.