

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 10, 2009
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman, Vice Chair
Lisa Batey
Scott Churchill
Chris Wilson

STAFF PRESENT

Katie Mangle, Planning Director
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Teresa Bresaw
Paulette Qutub

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:37 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 September 8, 2009

Commissioner Batey moved to approve the September 8, 2009, Planning Commission minutes as presented. Vice Chair Newman seconded the motion, which passed 4 to 0 to 1 with Commissioner Churchill abstaining.

2.2 September 22, 2009

Commissioner Churchill noted his comment on 2.2 Page 5 Line 157 and clarified that the designation of the orchard at Waldorf School as a Title 13 protected zone was a flawed premise because the orchard was a manmade planting 5 years earlier. If a homeowner planted a tree in their yard, it was unreasonable to automatically designate it a Title 13 protected zone. He corrected Line 157 to state, "**Commissioner Churchill** noted that the aerial survey mapping and canopy-related methodology *was flawed. An example of that* was how the orchard planting at the Waldorf School showed up as a protected zone *and yet it was planted only 5 years earlier.*"

Commissioner Batey moved to approve the September 22, 2009, Planning Commission minutes with the correction as noted. Commissioner Churchill seconded the motion, which passed 4 to 0 to 1 with Vice Chair Newman abstaining.

3.0 Information Items—None

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings—None

6.0 Worksession Items

- 6.1 Summary: Planning Commission Bylaws review
Staff Person: Katie Mangle

Katie Mangle, Planning Director, reminded that this was the Commission's second worksession to review the bylaws, which had not been updated since 1989.

Bill Monahan, City Attorney, reviewed the redline changes made to the Planning Commission Bylaws following recommendations made at the April 14, 2009, worksession that were presented in the meeting packet.

Key items of discussion were as follows:

- Attachment 1, 6.1A Page 7 Article V. A. Meetings.
 - As written, the bylaws allowed for one extension to 10:30 p.m. If the Commission was up against the 120-day land use clock and could not resolve an application by 10:30 p.m., there might be a problem with continuing another 2 weeks.
 - Only 2 extensions of a meeting should be allowed, so a majority vote could continue the meeting another 30 minutes to enable the Commission to close an issue if they were close to consensus. However, having more than 2 extensions was absurd, so the majority could then vote for a continuance.
 - Applicants should have the expectation that if the application was not completed by 10:30 p.m. they would need to agree to waive the 120-day clock to continue to another meeting.
 - Applicants did not have to agree to a continuance, in which case the Commission could be forced at 10:30 p.m. to deny an issue that they were within minutes of deciding.
 - The idea was to end meetings by 10:30 p.m. if possible, but it was not good to limit the Commission to just 1 extension. The Commission should have the tools to allow for a majority vote rather than no options. Staying late was not necessarily a problem.
 - Meetings could be extended by 30 minutes and then further extended in 15-minute intervals as necessary, but pressure should be on all meeting participants to finish by 10:00 p.m. whenever possible.
 - As long as a quorum was present, individual Commissioners could leave if necessary if meetings were extended. It was not healthy for meetings to extend beyond 10:00 p.m.
 - **Mr. Monahan** suggested changing the last sentence to read, "~~One~~ **An** extension to ~~no later than~~ 10:30 p.m. is allowed. If a meeting has not concluded at 10:30 p.m., the Commission shall **may** either vote on the Agenda item, **consider another extension not to exceed 30 additional minutes**, or vote to continue the item to the next available meeting."
 - The Commissioners agreed with the proposed language changes.
- Attachment 1, 6.1A Page 8 Article V. B. Quorum.
 - Current language in the bylaws left tie votes in limbo. The suggested language gave the Commission flexibility to not have a denial. Allowing for a new motion encouraged the Commission to consider what else might be done to make the application approvable. Ultimately, there must be a vote one way or another. The Commission could decide to continue in the case of a tie vote.
 - Some municipalities defaulted to denial in the case of a tie vote. Commissioners' absences due to personal circumstances could leave the applicant at a disadvantage.

- Applications only go to City Council if appealed. It was best to resolve issues at the Planning Commission level, rather than forcing applications into appeals at the City Council level. The Code would need to be amended to have denied applications automatically go up to Council.
- Allowing a new motion encouraged the Commission to consider what else might be done to make the application approvable.
 - The land use statute allowed a commission to deny, approve, or approve with conditions. If the Commission believed an application could be approved with conditions, but the denial criteria were not met, the Commission was obligated to construct a condition(s) to make the application approvable. The provided language allowed the Commission time to do so.
 - The applicant could appeal the condition(s) if desired, but the Commission would at least be on record with a strong statement regarding what would make the application right for the community. If approved with conditions, the issue did not meet the denial criteria.
- The bylaws could require a specific percentage of the majority of members present in order to pass, causing an issue to default to a denial when a tie vote was reached.
 - A specific number of votes based on the number of Commissioners could be required, but this option could put the applicant at a disadvantage if too many Commissioners had to be absent from a vote.
 - A tie vote could automatically move an application to the City Council level.
- Stronger language seemed necessary to require the Commission to act in a certain manner after a tie vote, such as crafting additional conditions of approval, or swaying someone to vote for denial. The word "may" was not strong enough.
- Following discussion, the Commission changed the third sentence of Article V, B. Quorum, to read, "In the case of a tie vote, the matter is not complete. ~~A new motion may be made~~ **New motion(s) shall be made until the matter is resolved by a majority vote of those members present.**"
- The Commission changed the fifth sentence of Article V, B. Quorum, to read, "All items scheduled for the meeting shall be automatically continued to ~~the next regularly scheduled~~ **a regularly scheduled** meeting **unless the Director determines a special meeting is needed.**" This allowed for flexibility if a special meeting was required, to ensure a quorum was available, if issues were time sensitive, et cetera.
- One concern was that the language was subject to abuse by subsequent Planning Directors. Ms. Mangle clarified that the Commission ultimately determined the meeting schedule.
- The proposed language did not conflict with the remaining paragraph because continuances did not specifically regard public hearings; worksession items did not require a continuance. A special meeting could not be held the next week for a public item because no time would exist for proper public notification. A public hearing item could only be continued to the next regularly scheduled meeting.
- If no quorum was available for a meeting, the public hearing could be continued without re-noticing by having available Commissioners attend the meeting and additional Commissioners call in to participate merely to continue the meeting.
- Attachment 1, 6.1A Page 8. Article V. D. Voting.
 - When altering the order of the Commissioners for voting, it seemed easier to alternate one side of the room to the other instead of struggling to keep track of mixing up the order with every vote.

- Abstentions usually occurred early in the evening and the abstaining Commissioner sat in the audience, but not always. It was important for the abstaining Commissioner to explain for the record why they were abstaining because after deliberations, a Commissioner might realize he/she would not get a desired condition and choose to abstain at that point, possibly killing the quorum. At that point, the Chair should ask if more information could be obtained to help that Commissioner so they could vote.
- After discussion, the Commission changed the fourth sentence of Article V. D. to read, "The ~~meeting recorder~~ **staff** shall call the roll..."
- Attachment 1, 6.1A Page 8. Article V. E. Reconsideration of Actions Taken.
 - Reconsideration was meant to allow Commissioners to reconsider their vote to catch honest mistakes before the end of the same meeting. The bylaws did not currently address reconsideration. If the Commission did not want to allow for reconsideration, the bylaws needed to clarify that no such provision existed.
 - Whether a "yes" vote was intended to approve or deny an application was usually made clear during deliberation, but not always. The proposed provision would allow for discussion about why a Commissioner wanted reconsideration. Reconsideration would only be used if a Commissioner did not clearly understand the motion, and a second was required. The Commission could surmise from deliberations whether the person was confused and could decide as a group if reconsideration was desired. Reconsideration was allowed only by majority of the Commission.
 - Reconfirmation of the vote would allow for clarifying the intent of the motion and the vote, if necessary.
 - The Chair, not staff, should poll the Commissioners to learn how they might be leaning and whether they had any other questions. The Chair could also ask the motion maker to clarify exactly what a yes or no vote meant regarding the motion.
 - That poll would be taken after each Commissioner participated during the deliberations following the public hearing. If additional conditions were considered, the City Attorney could interrupt and allow the applicant to comment before the vote.
 - More open dialogue was preferred before Commissioners indicated whether they would vote yes or no. Much of the Commission's deliberation and discussion was done during the final round of staff questions, before official deliberation, when the Commission often contemplated potential conditions, et cetera.
 - According to *Robert's Rules of Order*, a call for a vote could be made, cutting off discussion and requiring a vote, if there was a motion and a second on the floor. Continued discussion resulted in delay.
 - The Commission agreed that references to *Robert's Rules of Order* should be removed to avoid confusion about the Commission's procedure for applicants or new Commissioners.
 - Though reconsideration could allow a mean-spirited person to stall or cause unnecessary delay, a majority was required for reconsideration to occur.
 - Following a brief discussion about whether, when, and how the Chair might clarify the motion and Commissioners' votes, **Ms. Mangle** noted the Commission could simply clarify motions as a best practice, since the Commission was not experiencing such problems.
 - A reconsideration provision was needed because Commissioners did not have standing to appeal a vote to the City Council if a mistake was made. Someone

else could appeal the vote by providing the City Council a copy of the decision, a list of who voted, and perhaps an affidavit from a Commissioner stating the motion was misunderstood.

- Appeal fees were paid by the applicant, so it did not seem right for the applicant to pay for a misunderstanding by Commissioners.
- Perhaps wording could be added to clarify that only the vote would be reconsidered. The whole application would not be reopened for discussion.
- Further discussion regarded whether the Commissioner moving for reconsideration should have voted with the majority, and how that might affect an appeal.
- The language should qualify that any Commissioner who is confused about the motion may move for reconsideration, whether they voted with the majority or not. It was good to be on record accurately.
- **Mr. Monahan** clarified that the reason the member should be part of the majority was so that someone in the minority did not automatically cause a do-over.
- **Ms. Mangle** noted confusion could come from the majority or minority. The Favorite appeal was a classic case where the Commissioners questioned whether a vote in favor was approval of the application or of the appeal.
- A minority voter asking for reconsideration was not reopening the issue for deliberation. Reconsideration was just a confirmation of the vote, not tilting the vote one way or the other, unless someone was really on the fence.
- Reconfirmation of the vote would be done after a vote was taken, but before the Chair closed the hearing item. Any member could call for reconfirmation of the vote and staff would take a roll call vote for clarification.
 - The intent was to restate the issue one more time to clarify what a yes or no vote meant. It was simpler to request a reconfirmation than to admit that a Commissioner misunderstood the motion.
- Under current bylaws, once the vote was done and the gavel sounded, the decision was made.
- The proposed reconsideration language would accomplish the purpose of restating the motion and verifying that members voted on the motion as they wished before the end of the meeting. Staff could restate the motion and a Commissioner could move for a reconsideration if they had misunderstood. If the motion was seconded, the Commission would vote again. That was the only way a Commissioner could change their vote. Votes could not be changed during a reconfirmation of the votes.
- Adding reconsideration to the bylaws would allow the Commission a tool to address a misunderstanding of a motion, but was best used only in a worst-case scenario.
- The Commission consented to retain the language as presented in Attachment 1.
- Reconsideration provided the opportunity to address any confusion, and the Commission could address any concerns during Planning Commission Discussion Items, although that might be too late since the applicant would be gone.
- Attachment 1, 6.1A Page 9. Article V. H. Parliamentary Authority
 - Parliamentary Authority as a title could be changed to Rules of Operation or Conduct of Meeting to get away from *Robert's Rules of Order*.
- Attachment 1, 6.1A Page 11. Article VIII. A. Annual Goal Review
 - **Chair Klein** noted the Commission had never reviewed City Council's goals and objectives to establish Planning Commission goals. It seemed the Planning

Commission's goals became City Council goals because issues went through staff.

- **Ms. Mangle** explained that a work program essentially set the Planning Commission's goals.
- **Mr. Monahan** cited Milwaukie Municipal Code (MMC) 2.10.505(B) on 6.1A page 21, and agreed if City Council did not set new goals or generate that new vision, then the Planning Commission's obligation was relieved. However, Council's expectation was to disseminate their goals and visions to all boards and committees to know that they were understood and to establish conforming work plans. He saw Article VIII.A as a harmless sort of provision that indicated the Commission's bylaws acknowledged and reflected City Council's direction.
- **Mr. Monahan** stated that Chapter 2.10.040, the Removal provision shown at the bottom of 6.1A Page 20, was pretty open-ended. He hoped that if the Mayor or City Council recognized that an individual, or an entire board or commission, was not in harmony with the Council's goals, or taking the City's direction seriously, that the matter would be discussed with the entire group, either through the Chair or during a worksession.
 - In order to vote an individual off of a board or commission, City Council would have to take action at a public meeting, but a separate hearing was not necessary. The City Council could not make a final decision in an Executive Session. If notice was given regarding discussion of the performance of a public official, that person had the right to request the discussion be held in an open meeting.
- Attachment 1, 6.1A Page 7. Article III. E. Attendance
 - Simply talking to the individual if lack of attendance becomes an issue, generally resulted in that person stepping down.
 - A Commissioner needing to take a leave of absence due to extenuating circumstances did not necessarily mean that termination of the appointment would be required. However, it was the responsibility of the Commissioner to advise the Commission of a leave of absence.
 - The Commission should have the opportunity to determine if a change was needed if a Commissioner's leave of absence would harm the work of the Commission, such as being unable to have a quorum.
- Concern was expressed about some Commission decisions with regard to Chapter 2.16.010(4)d about solar radiation, shown on Attachment 5, 6.1A Page 22.
 - ****Ms. Mangle** responded that the solar access ordinance was adopted, but rarely used.
 - **Chair Klein** explained that incident solar radiation referred to retaining access to the sun by neighboring properties, which might prevent a large structure that would block the sun from being built.
 - The Commission could review Chapter 2.16 and provide recommendations to City Council for a Municipal Code rewrite. However, it was too late for the current republication project.

Ms. Mangle concluded that staff would prepare a final draft for the Commission's vote of acceptance. The bylaws would then be sent to City Council for adoption.

7.0 Other Business/Updates from Staff

Ms. Mangle announced the second of 2 site tours of properties affected by the Natural

Resources Overlay Project was scheduled for Saturday, November 14. Brett Kelter, Associate Planner, would provide details. It was important for the 25 advisory group volunteers to consider how all the different sites would be affected for the upcoming Code and mapping reviews.

Commissioner Batey added that last Sunday's site tour was interesting because it involved a variety of residential, business, and industrial projects and highlighted the different issues that come up under Title 13.

Ms. Mangle reported that last night the Design and Landmarks Committee (DLC) forwarded a recommendation to the Planning Commission to approve the Design Review application for Riverfront Park. No changes were made, but findings were added for designers to consider as they developed the project.

8.0 Planning Commission Discussion Items

Commissioner Batey noted that the newspaper reported that 2 of the 3 permits were issued for the Kellogg Creek Wastewater Treatment Plant and asked what was happening with the third permit.

- **Ms. Mangle** replied the third permit was the request to replace the blowers. She sent several letters asking for more information about that specific project, but had received no responses. The City was basically waiting for more information about potential impacts. She guessed the request would require more than a building permit, but would trigger some type of land use review. The other 2 permits were issued after she was convinced that they were just electrical or replacement building permits, although she never received a response to inquiries about those either.
- **Mr. Monahan** understood that the permits for the compactor were picked up on October 12 and that the other permit was not needed because it was for replacing some pipes.

Chair Klein announced that Commissioner Wilson's daughter, Phoebe, was the October Student of the Month at Milwaukie High School. She also plays tennis and was Homecoming Queen, yearbook editor, and vice chair of the National Honor Society.

9.0 Forecast for Future Meetings:

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|-------------------|--|
| November 24, 2009 | 1. Public Hearing: CSU-09-11 4444 SE Lake Rd NCSD |
| | 2. Public Hearing: ZC-09-01 Bowman St & Brae St |
| December 8, 2009 | 1. Public Hearing: MLP-09-08-02 et al Howe St partition |
| | 2. Public Hearing: DR-09-01 et al Riverfront Park <i>tentative</i> |

Ms. Mangle noted the November 24th meeting agenda included a proposal from the North Clackamas School District for 1 modular buildings and an expanded parking lot on the Lake Rd administrative facility site. The school board meeting room would be moved into one of the modular buildings, and more offices would be created in the main building.

- She was unsure about the plans the school district had for selling the administrative building. Public opposition halted the project that the school district planned on Fuller Rd, so other small projects were being done to make do.
- The second item on the November 24th agenda was for a zone change from R-10 to R-7, both low-density zones. The change would allow the creation of one additional lot through a subdivision.

Vice Chair Newman:

- Asked about his potential conflict of interest since he lived at the bottom of a flag lot adjacent to the applicant requesting the zone change. He also lived near the North Clackamas School District building.
 - **Mr. Monahan** replied that he could have an actual or potential conflict of interest because the zone change could affect his property values. There could also be the perception that it would affect his property values. Commissioners had to decide whether they believed the conflict was actual or potential.
- Said he had no idea whether his property values would be affected, but it seemed that a no vote would cause the appearance of a conflict of interest.
 - **Mr. Monahan** clarified that the actual and potential conflict of interest had to be considered, along with concern about the appearance of the decision made by the Commission. The conservative route was to take a position and not participate, but that was Vice Chair Newman's decision.

Chair Klein noted everyone in that neighborhood could have the same implication, including Commissioner Bresaw.


- **Ms. Mangle** suggested that it would be helpful to have a conversation about conflict of interest after the Commission had seen the proposal. The zone change did not allow for development that was much different from the existing zoning and so may not actually impact the neighborhood.
- **Mr. Monahan** clarified that proximity was a consideration because if a Commissioner lived close enough to a property that changed to R-10, it could open up development opportunities that were not available under the present zoning. It depended upon each Commissioner's own specific circumstances.

Ms. Mangle concluded that only one meeting was scheduled for December. She was not certain that there would be time for both public hearings. The Minor Land Partition was a 2008 application that triggered the old transportation Code and involved street improvements and variances to street standards. The Riverfront Park application involved Design Review, Water Quality Resources review, Willamette Greenway review, and Transportation Facilities Review. The first phase of work was currently underway at Riverfront Park.

Meeting adjourned at 8:16 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc for
Alicia Stoutenburg, Administrative Specialist II


Jeff Klein, Chair