CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, May 10, 2011
6:30 PM

COMMISSIONERS PRESENT
Lisa Batey, Chair
Scott Churchill
Chris Wilson
Mark Gamba
Russ Stoll

STAFF PRESENT
Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Damien Hall, City Attorney

COMMISSIONERS ABSENT
Nick Harris

1.0 Call to Order – Procedural Matters
Chair Batey called the meeting to order at 6:35 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 February 8, 2011*continued from 4/26/11*

Commissioner Gamba moved to approve the February 8, 2011, Planning Commission meeting minutes as presented. **Commissioner Wilson** seconded the motion, which passed 3-0-1, with Commissioner Churchill abstaining.

Chair Batey requested that Page 8 of the February 8, 2011, minutes be shared with City Council.

2.2 February 22, 2011 *continued from 4/26/11*

Commissioner Wilson moved to approve the February 22, 2011, Planning Commission meeting minutes as presented. **Commissioner Gamba** seconded the motion, which passed 3-0-1, with Commissioner Churchill abstaining.

2.3 March 17, 2011

Commissioner Gamba moved to approve the March 17, 2011, minutes for the Design & Landmarks Committee and Planning Commission joint session as presented. **Commissioner Churchill** seconded the motion, which passed 3-0-1, with Commissioner Wilson abstaining.

3.0 Information Items
Katie Mangle, Planning Director, noted that since the meeting will be a brief worksession, the minutes will be simple.

Chair Batey noted the meeting items will be taken out of order so that Commissioners Stoll and Harris can participate in the worksession.

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

This item was taken out of order.

6.1 Summary: Royalton Place
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, explained the Royalton Place proposal to convert part of the building from independent living to assisted living and memory care. Ms. Shanks noted the timeliness of this proposal with regard to the Residential Development Standards project and how it is addressing the needs of Milwaukie's aging population.

Ms. Shanks outlined 2 questions that were in the staff report for the Commission to consider.

- Under the current code the facility is not recognized as a single use facility, therefore different codes apply to different parts of the building which staff felt would be problematic over time.
- The question to consider tonight was, rather than having a portion being subject to conditional use (CU) standards and a portion being subject to community service use standards (CSU), could the Commission determine the whole facility as a community service use.
    - She noted that within the code, the Commission can be deem the facility as a single facility and use, and specifically that the Commission can determine that if a proposed use is similar to other CSUs, it can be considered a type of CSU.
    - This determination by the Commission did not involve assessing the merits of the application, but rather how staff and the applicant should proceed with processing the application.
- She confirmed that there would be no significant exterior changes to the structure.

Commissioner Gamba agreed that the determination made sense, since the code is not keeping up and needs further refining.

Chair Batey noted the possibility of setting precedent. This facility is modest in size, but the code boundaries could be pushed in the future. She confirmed that both the CSU and conditional use codes give the Commission more discretion for setting conditions.

Commissioner Gamba asked about the difference between private and public institutions in the code, as the standards for nursing homes are different than those for private institutions, and what were those dividing lines.

- **Ms. Shanks** confirmed the CSU code has both private and public institutions, although the nursing and convalescent homes category doesn't distinguish between public or private. However, the difference between CSU and conditional use leads into the second question of which standards should be applied to this application.
- **The Commission** discussed the difference between CSU and conditional use standards. If the facility remained with the two different uses, should the solution be to require the facility to meet the higher CSU private institutions standards?
    - **Ms. Shanks** confirmed that the facility is currently a conditional use, but with the addition of the memory care and assisted living facility, the CSU has to be added to the conditional use.
    - **Ms. Mangle** reiterated that having the two different uses applied to different parts of the facility could make future modifications and such more difficult for everyone.
- **Commissioner Churchill** noted the concern about setting precedent to allow larger facilities in the future, but determining this case as a CSU seemed appropriate.

- **Ms. Shanks** confirmed that any of these types of facilities will still always need local review and approval regardless of State standards.
- **Damien Hall, City Attorney,** noted that setting precedent can be avoided by writing the findings to be very reliant on the facts of this scenario.
- **Ms. Shanks** reminded that since the facility would be 2/3 CSU and 1/3 CU, the CSU standards would be applied at the time of the hearing and so findings would be based on that.

Chair Batey confirmed that the Commission agreed on determining the whole facility as a CSU.

Ms. Shanks continued with the second question regarding how specific development standards will apply. The CSU code section has specific development standards for specific categories of uses, and very specific standards for nursing and convalescent homes, essentially having its own set of standards. She noted the comparison table in the staff report.

- **Commissioner Gamba** asked the reason for the different standards and why nursing homes are CSUs. Does it benefit the City or the applicant to have a separate category for nursing homes?
  - Staff confirmed that nursing homes have more restrictive standards due to both safety considerations and traffic generation.
- Preferred the private institution standards because they are more restrictive in terms of the requirements around landscaping, etc., which would benefit both the residents and the neighbors.
- **Ms. Mangle** noted how this was a new experience for both the City and the Commission, and **Chair Batey** agreed that with the aging population, the City should expect more development of this kind and therefore the Code should address this issue better.
- **Commissioner Churchill** had concern in general about the potential for off-site hazards (e.g. someone could fall into a nearby creek), and so noted the need for the code specific to nursing homes. DHS regulation would not preclude safety hazards.
  - **Lee Winn, Winn Architecture,** noted that that would only be a risk if the facility was not DHS approved and licensed. The City required DHS certification, so the facility is required to meet DHS requirements.
    - Flexibility in the code would benefit the applicant if the CSU category would allow the facility to grow and adjust over time depending on the needs of the population. DHS certification is required by the CSU but is not required for other forms of housing, i.e. retirement communities.
  - **Commissioner Stoll** noted off-site hazards were a nonissue due to further state regulations and legal liability of the facilities if such incidents were to occur. The City doesn't need to over-regulate, and there are other factors to consider.
  - **Mr. Winn** noted that the nursing/convalescent portion of the code will need to change as many facilities are moving toward expanding services and continuing care. However, as long as it is nursing / convalescent, licensing is required, but is unclear about facilities under 15 units.
  - **Commissioner Churchill** noted Bill Reed's project in Gladstone where he worked around the requirements, created parcels, and developed a project that created a situation where there were wandering issues off-site. Although the applicant's facility has higher security standards for memory care, the City should consider allowable locations from a planning perspective.
  - **Ms. Shanks** summarized that institution standards will be applied at the time of the hearing.
- **Chair Batey** shared a story she heard recently about memory care and clever solutions to associated issues.

- **Mr. Winn** noted how rewarding this project has been for him and applauded the facility's company with regard to care of this population. He also stated that precedent should be considered as this population and the need for care facilities will continue to grow.

This item was taken out of order.

6.2 Training and team building
Staff: Katie Mangle.

Ms. Mangle reminded of the training last August about effectiveness of public hearings. Tonight's training would be more focused on the next level of training.

Mr. Hall reviewed the training materials, noting the specific topics that have been coming up recently and will be in the near future with some current legislative projects. The purpose is to ensure all interested parties have been considered and that the decision is defensible. He also noted some public meeting law has changed since August.

Mr. Hall explained that the difference between quasi-judicial and legislative is that for a quasi-judicial hearing, the Commission acts as an impartial judge, examining the legality and consistency with the code. In a legislative hearing, the Commission is like Congress, writing law, being lobbied, and allowed to have bias. He noted that where that line lies between legislative and major quasi-judicial can be borderline; there can be instances where actions that fall under the legislative criteria are actually quasi-judicial.

Commissioner Churchill clarified with Mr. Hall that under both legislative and quasi-judicial, actual or potential conflicts of interest must be declared at each and every meeting. Also, the statue regarding conflicts of interest has not changed in the past few years.

Mr. Hall and the **Commission** further discussed the specifics of ex parte contact, biases, and conflicts of interest.

- The State's Government Ethics Commission has changed to be more restrictive about potential conflicts of interest.
- Under legislative applications, ex parte contacts and biases are nonissues; however, there is a distinction between bias and conflict of interest, i.e. liking a proposal vs. a proposal being directly beneficial.
- How to balance bias in a legislative decision and ensuring that participants feel like the different issues were considered and weighed equally in the policy decision.
- If the proposed project is similarly situated, an exception to the conflict of interest applies in that if it affects everyone similarly, a Commissioner's participation is allowed even if a proposal affects a Commissioner's property, etc.
- Anything in the record can be used as evidence regarding how criteria are met or not met, including all written material and verbal comments made during the hearing.
- Contacts or conversations about potential applications should be avoided. If a contact is made, the information about the conversation should be described at the beginning of the hearing.
- Regarding upcoming light rail hearings as an example, public appearances are easily disclosed. Private conversations should be particularly avoided as procedural issues can be raised by the other person. Contacts should be limited to easily identifiable ones.
- Rule of necessity was noted; if a decision needs to be made by law, and all Commissioners were disqualified or abstained, all members would get reinstated and then the decision may be made.
- The bottom line is that the information used to make a decision needs to be in the record. Relevant conversations and off-line conversations between Commissioners should be disclosed. Making the disclosure is important in order to state that even with

the contact, an unbiased decision can be made, and to ensure sure all of the Commissioners and participants have the same facts.

Regarding findings, Mr. Hall discussed the process of creating findings which were the mechanics of the decision made, based on facts and whether or not the application met the criteria, and noted the findings are the subject of any appeal, not anything else. When a decision results in denial, the criteria and rationale for that denial need to be clearly identified. He noted that if a tie vote results, the matter is not complete.

With regard to public meetings law, Mr. Hall introduced a case from Lane County regarding requirements for public meetings, and what triggers those requirements. The Lane County case determined that although the public officials did not have quorum as a body in any one 'place,' they were deliberating an issue through linked meetings and emails in a way that crossed the line on public meeting law. Although the decision was not necessarily a precedent-setting decision, it was something to be cognizant of and careful about. Communications and questions should be directed to and through staff.

7.0 Planning Department Other Business and Updates

7.1 Residential Development Standards project update
Staff: Katie Mangle

Ms. Mangle presented the update via PowerPoint, stating the reason, background, and outreach for the project. The public outreach included: a survey, noting general trends; personal interviews; open houses; focus groups; and Neighborhood District Association (NDA) meetings. She noted the successful turnout and constructive feedback. She reminded that is had been decided that the project would be guided by a steering committee rather than the Planning Commission, although the steering committee included one Commissioner. She would like to make sure that the communication bridge between the steering committee and the Commission continues to be clear.

Ms. Mangle hopes to have another workshop in late summer regarding the tougher design issues, as well as a few more steering committee meetings. Although there is a lot of work left to do, the plan was to wrap up the project by the end of the year. She reminded some prompts for this project were the house on Vernie Ave and Lake Rd, and the Columbia Care Services Balfour House, which she displayed the original proposal of to the group. She noted that there has not been a wholesale review of the housing development code since the 1960s or 1970s, which has left it with gaps.

She reviewed questions being addressed by staff and the steering committee in terms of what the focus of the code should be for both single and multifamily development. Currently there was a lack of compatibility between new and existing development. However, although many neighborhood communities have more consistent housing types, i.e. average ridge height, etc., the results of the survey showed that Milwaukie residents value to eclectic nature of Milwaukie neighborhoods. The group was trying to find the balance between compatibility and eclecticism. Ms. Mangle reminded the group of the project and steering committee webpages which had a lot of valuable materials available. She also noted that the visual aspect of this project was important and staff had been working closely with the consultant Marcy McInelly of Urbsworks, Inc.

Commissioner Stoll expressed interested in attending, but not participating, in one of the steering committee meetings.

This item was taken out of order.

7.2 Electronic Signs progress update

Staff: Katie Mangle

Chair Batey stated that she had done a public records request to ODOT regarding citations for the large electronic sign along McLoughlin Blvd just north of Hwy 224. She noted she finally got a response that ODOT had written 2 citations to 2 different companies. Apparently both companies claimed to not own the sign. However, there is not a way to enforce the citations.

Ms. Mangle reminded of the purpose of the electronic code changes was to address downtown signage and electronic billboard signs. The draft code should come to the Commission in June for a worksession. She noted that Commissioners Churchill and Gamba had met with the Historic Milwaukie Neighborhood District Association (NDA) to explain the downtown reader boards aspect of the project. She explained some research and resources with regard to other cities' regulations on LED billboards, and also a couple of reports by the Environmental Protection Agency (EPA) and AASHTO on sign regulation and outdoor advertising which focus on safety issues.

Ms. Mangle acknowledged that this project is to satisfy the need for this current issue, but that the entire sign code will need to be updated.

7.3 Natural Resource Table *(not on agenda)*

Ms. Mangle noted the Commission's direction on the Natural Resource Regulation amendments project, and handed out the draft table created at the April 26, 2011 meeting.

8.0 Planning Commission Discussion Items – None

9.0 Forecast for Future Meetings

May 24, 2011	1.	Public Hearing: Wastewater Master Plan
	2.	Worksession: Residential Development Standards project: Baseline (policy-neutral) code draft
June 1, 2011	1.	Joint Session with Design and Landmarks Committee: Kellogg Lake Light Rail Bridge
June 14, 2011	1.	Public Hearing: ZA-11-01/CPA-11-01 Natural Resource Regulations Amendments *continued from 4/26/11*

Meeting adjourned at 9:20 p.m.

Respectfully submitted,

Alicia Stoutenburg, Administrative Specialist II

Lisa M. Batey

Lisa Batey, Chair