

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, February 9, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman, Vice Chair
Lisa Batey
Nick Harris
Teresa Bresaw (arrived during 5.1)
Chris Wilson (arrived just prior to 6.0)

STAFF PRESENT

Katie Mangle, Planning Director
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes–None

3.0 Information Items–None

4.0 Audience Participation

The Commission and Ms. Mangle responded to questions from a student in the audience about the procedures for Municipal Code, zoning changes, and the Planning Commission's role in the planning process as follows:

- A lot of Code amendment work was being done in Milwaukie because the Code required some modernization. Five Code amendment projects were currently in process, which usually requires research to determine why the Code was written as it was, defining the problem to be solved, and providing a technical recommendation. Staff then conducts outreach to those who would be affected by any changes, and finally, presents a report and the recommended changes to the Commission.
 - From a big picture perspective, Code and zone changes are often made in reaction to a specific project that facilitates the need to make changes in order to prevent something similar from reoccurring.
 - Other changes affect smaller land parcels and involve a different process, such as when a landowner presents an application for a variance or rezoning.
- The Commission also addresses transportation planning and approved the Transportation System Plan (TSP) in 2007. The Planning Commission deals with long range planning, land use decisions, transportation planning, urban renewal issues, complaints, Code issues, bylaws, water quality resources, wetlands protection, and historic resources, etc.

5.0 Public Hearings

- 5.1 Summary: CSU major modification of NCSD administrative offices
Applicant/Owner: Garry Kryszak/North Clackamas School District
Address: 4444 SE Lake Rd.

File: CSU-09-11 *continued from 1/12/10*
Staff Person: Ryan Marquardt
Hearing will be continued to a date uncertain.

Chair Klein called the hearing to order at 6:34 p.m. and read the conduct of minor quasi-judicial hearing format into the record.

Commissioner Bresaw arrived at this time.

Katie Mangle, Planning Director, noted the criteria applicable to the application were cited at the first hearing. She explained the Applicant requested a continuance without a date certain because they were not sure how they would proceed with the project. The project was still an application, and staff would continue working with the Applicant. All the legal notifications would be redone once a date was set.

Vice Chair Newman moved to continue CSU-09-11 to a date uncertain. Commissioner Bresaw seconded the motion, which passed 5 to 0.

Commissioner Wilson arrived at this time.

6.0 Worksession Items

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

Ms. Mangle noted this was the third worksession held in the past year regarding the bylaws. She hoped to be able to forward the bylaws to Council for approval and reminded that as a living document, further adjustments could be revisited again in a year. Bill Monahan, City Attorney, had responded to comments made at the last meeting from the Commission.

The Commission discussed the bylaws with staff and made further changes as follows:

- Article II. D Open Meetings should read, "All meetings of the Commission are open to the public. The Commission has the authority to conduct an executive ~~sessions~~ **session** under ORS 192.660."
 - Staff had established a good set of formatting standards during the Code republishing process. Marcia Hamley would complete a final edit of formatting, grammar, and details before the bylaws went to City Council.
- During Executive Session, the Planning Commission would address lawsuit issues. For example, the City was threatened with a lawsuit during the time that City Council was considering the Sign Code changes. If the lawsuit had occurred when the Planning Commission was involved with the Sign Code changes, the Commission could have gone into Executive Session for updates about the lawsuit, because it was related to the decision.
 - **Bill Monahan, City Attorney**, added that an Executive Session could also be called if an application was near the end of the 120-day period and the Applicant required an immediate decision, refused to waive the 120-days, and threatened litigation.
- For clarification, Article III.B Term of Office should read, "Terms are for a period of four years. Commission members may serve no more than two consecutive full terms, unless there is an interval of at least one term prior to reappointment, ~~provided that the~~ **The** Council may waive this limitation if it is in the public interest to do so."
- **Ms. Mangle** clarified that both she and Administrative Specialist, Alicia Stoutenburg, who manages everything for the Commission, actually worked in the Community Development Department, so Article VII. B was technically correct.
- Article IV. Officers and Staffing should include "calendar" before the word "year" throughout

the section for clarification.

- Article V.B Quorum had been discussed several times, but the language, "In the case of a tie vote, the matter is not complete. New motions shall be made." appeared vague. It did not specifically state that the vote could be left as a tie. Suggested additional language included: **"The issue shall be subject to new motions until a formulation obtains a majority vote,"** or "New motions shall be made **until a motion obtains a majority vote.**"
 - The wording regarding a tie vote was not exclusive to the Commission, but the language was ambiguous and might be considered a 'no' vote. Nothing in the bylaws currently stated how to handle a tie vote. It would be easier if a tie vote was a 'no' vote, rather than requiring new votes continually until a majority was reached. Although the Commission consisted of an odd number of members, a quorum was an even number or a Commissioner could abstain, causing a tie vote.
 - **Mr. Monahan** noted City Council had so few land use actions that he could not recall if a tie vote was a denial; however, it did prevent the application from moving forward. A provision could indicate that a tie vote was a 'no' vote, and then the applicant would have to follow the Code procedures to appeal or reapply.
 - If a tie vote was a 'no' vote, could someone move for reconsideration?
 - **Mr. Monahan** explained reconsiderations are usually moved by someone in the prevailing party and were limited to the majority because the minority could use it as a delaying tactic resulting in no decision being made. If the bylaws stated a tie or a majority vote could be reconsidered, then it might promote tie votes.
 - **Ms. Mangle** suggested stating that an additional motion could be made to seek a tie breaking vote and if not obtained, the 'no' vote would prevail. The language would prevent having an endless series of votes and gridlock.
 - **Mr. Monahan** clarified two options were available. One was to require new motions until the majority was met. The second option allowed one new motion to be made, and if a majority was not gained, the application failed.
 - Why should a tie vote mean a 'no' vote? It seemed preferable to allow motions and tie votes to continue until no one wanted to make another motion, at which point then the matter died.
 - A Commissioner could continue making motions all night, though no one believed motions would be made to thwart the process.
 - A motion could be made where the only subtlety was a change to the conditions of approval.
 - The Commission agreed to allow only one new motion after a tie vote.
 - Discussion prior to the motion should enable the Commission to determine whether the motion would actually work.
 - Changing the language from "shall" to "may" would allow a new motion to be made if desired, but accept the no vote if it was not worth the fight.
- The Commission consented to change the fourth sentence of Article V.B Quorum to state, **"~~New motions shall be made.~~ One new motion may be made. If a majority vote is not obtained on that motion, the agenda item fails."**
- Article V.D Voting could be challenged if the roll call vote was not taken in the correct order. The purpose of the article was to eliminate the appearance that the order of the roll call vote was controlled with a purpose.
 - For purposes of transparency, unless the order was incorrect on a regular basis, more benefit was to be gained by keeping the rule.
 - Any mixing of the roll call order would alter the order. The main change would be that that voting would appear more formal than it did now. Staff would use a cheat sheet to aid in keeping the roll call vote in the correct order.

- Article V.E. Reconsideration of Actions Taken was needed when a motion was not clearly understood.

Ms. Mangle said she planned to present the revised Planning Commission bylaws to City Council on Consent Agenda at the March 16 meeting, unless Commissioner Churchill wanted further discussion on the revisions. If Council wanted to pull the bylaws resolution for discussion, she would let the Commissioners know so someone could attend that Council hearing.

Commissioner Batey moved to approve the revised Planning Commission bylaws, forwarding them to City Council for adoption with the changes as discussed. Commissioner Wilson seconded the motion, which passed unanimously.

7.0 Planning Department Other Business/Updates

Commissioner Batey asked what happened when the Planning Commission Chair represented the Commission's decision at a City Council hearing, but was on the minority side of the decision.

- **Ms. Mangle** replied the practice was for a Commissioner to attend the Council meeting to answer questions or defend the decision when a Commission decision went before City Council. This was especially helpful when the Commission did not follow staff recommendations or was more passionate about the issue. Also, City Council comes into the recommendation cold while the Commission spends a lot of time discussing the issues and can answer questions.

Chair Klein stated he made a point to attend Council meetings when an issue related to the Planning Commission came before Council, such as an application being appealed, or someone being appointed to the Commission. If Council asked him questions, he represented the Commission's decision, even if he disagreed with the decision. He had only been asked a question once during the four Council meetings he had attended. If he felt strongly about an issue, he would turn in a yellow card to ensure he would be able to talk about it, but generally, he waited for Council to ask him questions.

- **Ms. Mangle** believed the Council was getting better about wanting to understand the history of an application or resolution. If a Commissioner was in the room, staff tried to alert the Council during their presentation so they knew someone was available to answer questions.

Ms. Mangle provided the following updates and information:

- She invited the Commissioners to attend the second meeting of the advisory group for the Natural Resources Overlay project on February 17. The project regarded expanding the Water Quality Resources Map and Code to include habitat protections. The advisory group represented many interest groups and stakeholders included property owners and environmental activists and advocates. Staff hoped to solicit input from the advisory group, using their expertise regarding various preservation issues following staff's detailed presentation. Staff would brief the Commission regarding the project and ultimately present the ordinance for approval.
 - The draft Code would be available online for review. Commissioner Churchill planned to attend, and Ms. Mangle wanted to be sure at least one Commissioner was present. She would email the meeting details to the Commissioners.
- She distributed an information card about upcoming light rail open houses; no presentations would be given. Staff would be providing the Commission with more information at the March 9th meeting with the Design and Landmarks Committee (DLC).

- She clarified that the bridge across the Willamette River could not begin until the whole light rail project received federal approval, but construction could begin prior to local approvals were received. The Willamette Bridge would be well underway before local reviews began, such as for the Kellogg Bridge.
- She distributed a one-page summary regarding a draft program called Walk Safely Milwaukie that Community Development was proposing to City Council. The program was crafted in response to the TSP and neighborhood needs for traffic calming and pedestrian and bike safety projects.
 - Historically, the City did not have a funding source for such projects, although funds in lieu of construction money had been used recently. Two funding options were available: reduce the amount of the local gas tax going to the street maintenance program; or use part of the City's State gas tax to create a new program, similar to street maintenance that focuses on sidewalks and pedestrians. Over a 5 year period, approximately \$200,000 could be raised.
 - The Neighborhood District Associations (NDAs) would lead in defining the needs and projects. More detailed information was available online.

Chair Klein:

- Noted he had received an update about the program at his NDA meeting, and while he was supportive, the program needed to address big-ticket items. For example, the Springwater Corridor provided great biking access through the County and Metro areas, but it was difficult to access from within Milwaukie.
 - **Ms. Mangle** added that one eligible project was a local funding match on large projects, such as Logus Rd or the 42nd Ave sidewalk. Milwaukie was good at finding funding sources, but currently finding a local funding match was difficult, even if the State wanted to fund a project. Walk Safely Milwaukie could get Milwaukie one step closer to big projects if that was what the neighborhood wanted the City to pursue. The Lake Road Multimodal Project was big, but was funded by a federal appropriation earmark, which was extremely rare.
 - She believed the funding could be used for engineering to get a project shovel-ready, whether done in-house or by a hired consultant.
- Believed it would be nice to use the funding to get a project into the system and shovel-ready. A number of projects were desperately needed throughout the City that could have been done with stimulus money had the engineering and other preparation work been completed.

Commissioner Harris agreed having better access to the Springwater Corridor would be nice, which was something he often heard from others, especially at NDA meetings.

8.0 Planning Commission Discussion Items

Commissioner Bresaw asked if any improvement plans existed for Monroe St, which was a busy street that had no sidewalks.

- **Ms. Mangle** said Monroe St was on the street surface maintenance project list to rebuild the pavement. The TSP also included a project for a bike boulevard and sidewalk improvements; however, that funding was not yet available.

Chair Klein believed public will was needed to pursue improvements where Monroe St came to the north part of Hwy 224. He understood that many residents on Monroe St did not necessarily want improvements, even though the street was in horrible shape for pedestrians and cars.

Commissioner Batey added she has always been curious about how many people really did not want improvements on Monroe St.

9.0 Forecast for Future Meetings:

February 23, 2010 1. Public Hearing: VR-10-01 Harmony Rd Ministorage substantial construction Variance

March 9, 2010 1. Worksession: Joint Session with DLC—Light Rail briefing

Ms. Mangle reviewed the upcoming meetings with these added comments:

- In addition to the Variance, the Harmony Road Ministorage developer was also talking with Tom Larsen and had paid his building permit fees, so he was ready to go if approval was received from the Commission.
- Usually, extensions presented to the Commission regarded a final plat in a land division, but this variance was a real land use application with criteria and was more involved.
- On March 9th, TriMet staff would discuss light rail in more detail than at the last meeting. Copies of the Conceptual Design Report, describing what exactly the project is and is trying to accomplish, would be provided the Commission to facilitate questions.
- Beth would also brief both groups on the Sculpture Garden Project to be built in front of City Hall as part of the Jackson Street Improvement Project. The City received a \$25,000 State grant from the Tourism Board for the sculpture garden.

Meeting adjourned at 7:24 p.m.

Respectfully submitted,

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



Jeff Klein, Chair