

**CITY OF MILWAUKIE
PLANNING COMMISSION and CITY COUNCIL JOINT SESSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 28, 2015
6:30 PM**

COMMISSIONERS PRESENT

Sine Bone, Chair
Shaun Lowcock, Vice Chair
Shane Abma
Shannah Anderson
Scott Barbur
Greg Hemer

STAFF PRESENT

Li Alligood, Senior Planner
Vera Koliass, Associate Planner

CITY COUNCILORS PRESENT

Mark Gamba, Mayor
Lisa Batey
Scott Churchill
Wilda Parks

1.0 Call to Order – Planning Commission and City Council

Mayor Gamba and Chair Bone called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

2.0 Introductions

3.0 Joint Session

- 3.1 Summary: Land Use Training
Staff: Tim Ramis, City Attorney

Tim Ramis, City Attorney, reviewed key legal points on land use and legislative cases for the Council and Commission:

- When the Council or Commission conducts a land use proceeding, they are presiding over a conflict resolution process.
- It is important to evaluate the type of role the members are playing for different types of applications: acting as a judge and applying law for quasi-judicial applications, or acting as a legislator and creating policy for legislative applications.
- When acting legislatively, ex parte or bias does not apply. However, neither is permissible when applying law based on criteria (quasi-judicial).
- **Mr. Ramis** described what constitutes ex parte contacts and potential or actual bias. If there are questions, members are encouraged to contact the City Attorney or the Oregon Government Ethics Commission. He went on to express the following points:
 - If a decision benefits a group of similarly-situated people to that of a Commission or Council member, it is important to take care in that decision because the outcome of the challenges to that type of argument have varied.
 - Declaration of potential ex parte contacts or conflicts need to be done at the beginning of each quasi-judicial hearing.
- In a quasi-judicial hearing, the criteria are the only basis for the decision regardless of

opinion. If the criteria are undesirable, members can propose to change the law at a later time.

- Findings are necessary to have the decision in writing and to allow for the process to be open and transparent for the record. Explanation of interpretation of the code is also necessary in the findings in order to potentially defend the decision in the case of ambiguous code language.
- Conditions need to be an extension of the criteria. Oftentimes it is discovered through the hearing process that additional conditions need to be drafted.
 - Conditions that involve dedication of land or extensive construction of infrastructure are treated differently, i.e. exactions. Local government is limited in the exactions that can be taken under the principle of rough proportionality, i.e. conditioned only to the extent that the condition is proportional to the impact of the project.
- It is important to keep the public hearing portion of the process separate from the deliberation portion.
- Quasi-judicial cases require a decision within 120 days ("the clock"), although it can be waived by the applicant. In order to allow for time for any additional information and subsequent responses, it is helpful to set up a schedule for such steps rather than continuing the hearing. If the applicant asks for more time, the clock can be suspended.
- Roles in the process:
 - The City Attorney's role is to advise on rules and answer questions about process but cannot advise on substantive or decision matters.
 - The role of staff is to guide the process and to give their best professional opinion, based on the facts as they know them at the time of the application, on the analysis of the proposal and what the outcome should be. Staff reports present staff's best analysis of the case and may not agree with the preferred approach of the Commission or Council members. However, the members will have more evidence based on the public hearings.
 - The applicant's role is to advocate for their project and provide the best evidence.
 - Opponents have the same obligation for evidence.
 - The Planning Commission handles the initial hearing, presentations, testimony, and decision.
 - The City Council is presented with a case that already has an established record, although new arguments can be raised, interpretations can be made, etc.

Mr. Ramis answered questions from the Council and Commission.

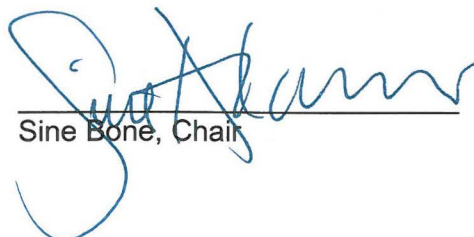
The Council and Commission discussed various topics.

4.0 Adjournment

Meeting adjourned at approximately 7:33 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II


Sine Bone, Chair