

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, APRIL 11, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Shannah Anderson
John Burns
Sherry Grau
Scott Jones
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
Brett Kelter, Associate Planner
Tim Ramis, City Attorney

COMMISSIONERS ABSENT

Adam Argo

1.0 Call to Order – Procedural Matters*

Chair Hemer 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 Planning Commission Minutes

2.1 February 14, 2017

It was moved by Commissioner Burns and seconded by Commissioner Travis to approve the February 14, 2017 Planning Commission minutes as presented. The motion passed unanimously.

3.0 Information Items

Chair Hemer welcomed new Planning Commissioner to-be Scott Jones, who introduced himself, and noted his service on the Design and Landmarks Committee and his professional architectural background.

Denny Egner, Planning Director, noted Mr. Jones would be officially appointed at next Tuesday's City Council meeting. He reminded the Commissioners to complete their ethics filings paperwork

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 Work session Items

6.1 Summary: Land Use Approval Criteria
Staff: Denny Egner

Mr. Egner presented the staff report via PowerPoint, with additional comments from the city attorney. He reviewed the types of land use decisions, from Type I Administrative to Type V Legislative, as well as the related approval criteria for each type.

Mayor Mark Gamba, 1651 SE Lava Drive, noted the Commission's objective was to reflect and adjudicate the community's values and commitment to socially- and environmentally-responsible uses of its resources as reflected in the Comprehensive Plan, even if the Plan was 20 years out of date. He said:

- The City was reliant on the Commission to be aware of the direction the City was headed when considering land use decisions, partly because the Code and Comprehensive Plan were outdated. The Variance and Conditional Use criteria allowed for a project or development to proceed if it satisfied the community's interests and goals.
- The Commission had the prerogative and the power to deny an application for a variance if the Commissioners were not comfortable with the project.
- He encouraged the Commissioners to conduct site visits for quasi-judicial applications to see the context of the applicant's request and mitigation possibilities. Understanding the entirety of a project could enable the Commission to recommend solutions not presented by staff or the applicant.

Chair Hemer stated that the Council needed to proactively address enacting legislation desired by the community and not put the Planning Commission in the position of trying to make rules that did not exist, such as saving trees when there was no tree ordinance. As a judicial branch, the Commission needed guidance from Council about alternative choices when trying to apply conflicting community values.

Mayor Gamba agreed, and added that was why Council was pushing to do a new Comprehensive Plan and associated Municipal Code amendments. He described the difficulties of writing new code, such as the tree ordinance, and added that code amendment projects should be initiated as a result of community outreach. The Commission should keep in mind the long-term impacts of development approvals on the community.

Staff addressed several questions about sections of the Land Use Criteria. Discussion topics included amendments to the Comprehensive Plan and Municipal Code; the federal Religious Land Use and Institutionalized Persons Act (RLUIPA); Community Service and Conditional Uses; and Variances.

Key additional discussion items included:

- Staff would explore options regarding site visits for land use applications and how to coordinate with the applicant. Considerations included preventing a quorum to occur during a site visit as well as applicant liability concerns. Posting a public notice on the site did not constitute permission for the public to access the site.
- The Commission discussed the option of proposing conditions prior to the hearing which would give staff and the applicant time to consider other solutions, as opposed to negotiating during a hearing.
 - Staff reminded that the conditions generally had to be related to the recommended findings and the criteria. Proposing a solution in advance of the hearing could be considered pre-judgment.
 - Suggestions and questions should be sent only to staff and not to the entire Commission. During the hearing process, answers to Commissioner questions should

occur before the record was closed, so that all the evidence was in the record before deliberations began.

- Changes to an established Community Service Uses were considered modifications to an existing Community Service Use. The Commission could impose conditions on the operation or deny the application by making findings that the site was not appropriate for the new use. Each case was fact-specific to that case, including the specifics of how the use articulated its mission.
- Conditional Uses were not permitted outright because the City did not necessarily want or need particular uses throughout the community.
 - The Conditional Use review process allowed the City to limit uses, such as mini-storages, and to allow for public input.
 - No threshold existed in the criteria about limiting a Conditional Use, but the Commission could consider factors such as suitability and whether the community had a greater vision for the subject property.
 - Conditional Uses and their locations were designated years ago and should be revisited in the Code update.
 - Staff noted that some Comprehensive Plan policies were criteria and some were aspirational or explanatory statements. In a LUBA challenge, the City would have to show that the text of the standard applied to a Conditional Use application was written as if it were criteria. Staff could help in clearly identifying policies as criteria or aspirational statements.

Mayor Gamba noted:

- The King Road subdivision application was revised by Council which found a reasonable connection between the accessway variance and the issue of clear-cutting the trees, which led to a discretionary decision related to impacts to surrounding properties.
- As part of the Variance Request process, the variance alternatives analysis was required to have the applicant demonstrate that they had looked at the impacts and benefits.
- The Natural Resources Review criteria required applicants to also demonstrate that their alternative was the least damaging.
- It was suggested for staff to review the criteria applicable to a future application as part of training the new Commissioners. **Staff** replied the Natural Resources Review criteria would be reviewed in two weeks in anticipation of an upcoming hearing.
- The Willamette Greenway Overlay criteria requiring protection of views was unclear with respect to which views should be protected. The code needed to be clarified to update the language and specify that it protects public views from public properties.
 - Staff would verify if the Design and Landmarks had any jurisdiction regarding Willamette Greenway development per their bylaws.

7.0 Planning Department Other Business/Updates

7.1 Second Tuesday Planning Commission meeting start time.

Mr. Egner explained the second Tuesday Planning Commission meeting start-time overlapped with the City Council Tuesday study session, which meant the Commission meeting could not be televised until 7 pm.

Chair Hemer supported a 6:30 pm Commission meeting start time when the Planning Commission had public hearings.

8.0 Planning Commission Committee Updates and Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

Commissioner Anderson announced the next Vision Advisory Committee meeting would be May 5th at 6:30 pm at City Hall.

Mr. Egner said he would add the Natural Resources Review criteria to the April 25th agenda.

Chair Hemer stated he would recuse himself from the third public hearing on May 9th due to a conflict of interest and he intended to testify at the hearing. He announced the details regarding the Arbor Day Celebration on April 22nd and noted the plant sales being held by the Friends of the Library, Annie Ross House, and Milwaukie Garden Club on May 13th.

9.0 Forecast for Future Meetings:

April 25, 2017

1. Worksession: NMIA Review of Framework Plan and Implementation and Strategy

May 09, 2017

1. Public Hearing: CSU-2017-002 Harrison St Dance Studio
2. Public Hearing: WG-2017-001 Riverway Ln Addition
3. Public Hearing: HR-2017-001 Railroad Ave Demolition

Meeting adjourned at approximately 8:36 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Greg Hemer, Chair