



CITY OF LAKE OSWEGO
Planning Commission Minutes
November 14, 2016

1. CALL TO ORDER

Chair John LaMotte called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 380 A Avenue, Lake Oswego, Oregon.

2. ROLL CALL

Members present were Chair John LaMotte, Vice Chair Robert Heape, and Commissioners Randy Arthur, Ed Brockman, William Gaar, and Bill Ward. Commissioner Adrienne Brockman was excused.

Staff present were Scot Siegel, Planning and Building Services Director; Debra Andreades, Senior Planner; Leslie Hamilton, Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support.

Guests: Paul Suto, P.E., City of Portland Environmental Services, and Eric Eisemann, J.D., E² Land Use Planning Services, LLC.

3. COUNCIL UPDATE

None.

4. OTHER BUSINESS

4.1 Briefing on Community Development Code and Tryon Wastewater Treatment Plant

Mr. Siegel provided background on this project, noting this was just a briefing and that if there were direction to proceed with a planning effort, staff would return to the Commission with a public involvement plan. Ms. Andreades noted the Tryon Creek Wastewater Treatment Plant (TCWTP) was located in the Foothills District and a majority of the property was in the Public Functions (PF) zone where a major public facility required a Conditional Use Permit (CUP). She added that Portland updated the Plant's Facility Plan in 2014 and would need to come before the Development Review Commission for a CUP review to make necessary upgrades. She introduced Paul Suto (City of Portland) and Eric Eisemann (Planning Consultant).

Mr. Suto and Mr. Eisemann presented the following information and action items:

- Desire for Lake Oswego and Portland collaboration on a plan that ensured the TCWTP Facilities Plan was viable over the long-term.
 - Recognition of the importance of sanitary sewer service to both communities with measurable results
 - Define Standards and procedures for future improvements
 - Flexibility to deal with evolving technology and state and federal regulations
 - Shared Goal – Identify and resolve potential conflicts now to avoid uncertainties regarding future service.

6. COMMISSION FOR CITIZEN INVOLVEMENT

Chair LaMotte announced ongoing recruitments for City boards and commissions and an upcoming backyard habitat seminar on 11/19/16 at Tryon Creek State Park.

7. MINUTES

7.1 Commissioner Heape **moved** to approve the Minutes of September 26, 2016, as amended. Commissioner E. Brockman **seconded** the motion and it **passed 6:0.**

8. FINDINGS, CONCLUSIONS AND ORDER

8.1 **Evergreen R-7.5 Overlay Code Revisions (LU 16-0042)**

On October 10, 2016, the Planning Commission made a preliminary recommendation that the City Council approve the proposed amendments with changes as discussed during deliberations. Staff coordinator was Sarah Selden, Senior Planner.

Commissioner Arthur **moved** to approve the Findings, Conclusions and Order for LU 16-0042 as written. Vice Chair Heape **seconded** the motion and it **passed 6:0.**

8.2 **Food Cart Pods in Limited Industrial Park (IP) Area (LU 16-0027)**

On October 24, 2016, the Planning Commission made a preliminary recommendation that the City Council approve the proposed amendments with changes as discussed during deliberations. Staff coordinator was Sarah Selden, Senior Planner.

The adoption of findings was postponed until November 28, 2016.

9. PUBLIC HEARING

9.1 **Annual Community Development Code Amendments (LU 16-0030)**

A request from the City of Lake Oswego for text amendments to the Community Development Code for the purpose of clarifying and updating various provisions including pre-application conference exemptions, street front and side yard setback plane measuring points, courtyards in the Downtown Redevelopment Design District, and height of building definition. Staff coordinator was Leslie Hamilton, Senior Planner.

Chair LaMotte opened the hearing. Mr. Boone outlined the applicable criteria and procedures. At time of declarations no conflicts of interest were reported.

Staff Report

Ms. Hamilton provided a brief presentation which included the following information, with discussion or questions from the Commission noted, if any:

- Schedule Review
- Awnings in Downtown Redevelopment Design District (DRDD) and Lake Grove Village Center Overlay (LGVCO) – clarify where required:
 - Over windows and doors that face a public street (DRDD and LGVCO)
 - Over windows and doors that face a public plaza or walkway (LGVCO)
 - Not over residential windows
 - Not over landscaping

APPROVED: 01/23/2017

- DRDD/Courtyards – clarify where required:
 - Required on new commercial, multi-family and residential mixed-use development
 - Required on building walls more than 200 feet in length
 - Not required on townhouse development
- DRDD/Courtyards
 - Photos of examples

Staff clarified that there was a definition of courtyard, which Mr. Boone read aloud. Ms. Hamilton noted there were standards for materials but size was not specified; the Commission discussed, but did not provide direction to add a size requirement.

- Setback Planes – Point of Measurement
 - Photo of the “house in the hole” as an example
 - Profile view illustrations with points of measurement shown
- Fence/Wall Height
 - Zoning map with shading showing locations of lots setbacks/locations where standards would apply
 - Photos of examples 6- and 4-foot fences that were violations and conforming
- Fence/Wall Height – Option 1: Six feet in height allowed within 10 feet of public street with following criteria:
 - Bryant, Carman, Country Club, Lakeview, McVey, South Shore, Stafford, Westlake (arterials that carry a lot of traffic and generally were very wide)
 - Top one foot of fence at least 50% open
 - Bottom of fence screened by shrubs spaced no more than three feet apart to mitigate visual impact
 - Photo examples of combination fence/walls
- Fence/Wall Height – Option 2: Six feet in height allowed within 10 feet of public street with following criteria:
 - Bryant, Carman, Country Club, Lakeview, McVey, South Shore, Stafford, Westlake
 - Fence segments staggered by at least 32 inches for every length over 20 feet, or 16 inches per 10 feet
 - Bottom of fence screened by shrubs spaced no more than three feet apart

Staff clarified that as proposed the staggered fence had to be open, but the Commission could suggest changes. At a later date, Chair LaMotte indicated that he would like to address 6-foot fences that were allowed 10 feet back from the street in front yards to determine if there were standards that could reduce the “stockade” effect. Staff agreed to note this as a deferred issue to be addressed at a later time. In response to a suggestion to add language (*in italics*) to Exception 1 – “may be located within 10 feet of the property line *provided the fence is located on private property*”, staff clarified that fence placement on public property required an encroachment permit and the City could apply conditions.

- Pre-Application Conference Exemptions – Categorical Exemptions
 - Minor modification to approved development permit where there was no increase in intensity of use and no building permit required (e.g. a material change from something that had been approved)
 - City projects for non-habitable structures that do not abut residential property
 - Minor fence variances generated by code enforcement citations

Based on Commission feedback, staff narrowed the list down and created three categorical exemptions rather than waivers. Regarding the letter received from the chair of the Hallinan Heights Neighborhood Association expressing concerns about the waiver process, Commissioner Gaar opined he felt these exemptions were minor enough to exempt the pre-app conference. Ms. Hamilton added that neighborhood associations would still get public notice as required for Minor Development permits.

- Similar Use Analysis – Noticing
 - Minor Development
 - Quasi-judicial decision per ORS 227.160 and thus only binding on subject property
 - Amendments clarify noticing and appeal procedures because references and requirements were scattered in Code

Based on questions raised at the last meeting, staff clarified that Similar Use Analysis only applied to the property that requested it, not all properties of the same zone.

- Appeal Fee Waiver – Documentation for land use appeal fee was waived for neighborhood associations (NA)
 - Require documentation of vote
 - Per the bylaws of the neighborhood association
 - By conclusion of opposition testimony at a hearing (usually 34 days or longer)

Commissioner Ward stated he was uncomfortable with this proposal, as he had heard some push back from neighborhood associations regarding this requirement – they felt it was too onerous, such as having to convene a special meeting to document their appeal request. But he did not have a specific change in mind, rather he was reporting on feedback received from neighborhood association chairs at various meetings. Staff and the Commission discussed what was meant by “documentation of vote”. Mr. Boone reviewed the proposed timeline for submittal. Commissioner Gaar asserted that an appeal was a serious process and documentation should be required. Chair LaMotte suggested there be a middle ground that stated the documentation requirement, which could apply to neighborhood associations as well as homeowner associations. Commissioner Ward suggested that staff send a letter to chairs of neighborhood associations clarifying the documentation required. Mr. Siegel agreed and added that this amendment also provided additional clarity and certainty to the neighborhood associations. Regarding the timeline for submitting an appeal, Commissioner Gaar suggested requiring the submittal earlier.

- Appeal Fee Waiver – Extension of waiver to additional organizations not pursued at this time
 - Feasibility
 - Quality Control
 - Undermine effectiveness and purpose of City’s neighborhood associations

Ms. Hamilton noted there were over 100 homeowner associations (HOAs) in the City with bylaws and structures and that staff had concerns about quality control in terms of extending the fee waiver as the City did not track HOAs or review their bylaws. She pointed out that currently there was a structure established with the recognized neighborhood associations. She indicated that the Commission could revisit this topic when there was more information about HOAs and that this did not take away anyone’s ability to file an appeal. Commissioner E. Brockman opined he was leaning towards extending the fee waiver to HOAs as there likely were not that many that would take the City up on it and it might provide some flexibility where a neighborhood association board might not want to take an appeal on. Commissioner Gaar echoed this sentiment. Commissioner Heape mentioned examples where the neighborhood association appeal process had failed, where the neighborhood association had become

dysfunctional and the HOAs were the only representation that could be pulled together. He added that when neighborhood associations were very large geographically, if an HOA was in a more isolated area, the neighborhood association may not be interested in taking up the appeal on their behalf, leaving the expense to be borne by the HOA. Additionally, the HOAs pay to provide and maintain open space which felt almost like double taxation. Commissioner Gaar agreed and added he did not know the answer to the feasibility and quality questions for HOAs and wondered if they could work towards one.

Chair LaMotte opined that if a procedural checklist was provided, an HOA could submit without the City having to do research into their governance. Mr. Siegel wondered if this Appeal Fee Waiver should then also be extended to other member organizations, such as a church. He added that this was just about the fee, which could be split among HOA members, and noted that another concern was that extending the waiver could undermine the City's approach to public involvement through the neighborhood associations. He agreed there were some neighborhood associations that were not functioning well, which was an indicator they needed to work to improve that system rather than further balkanize involvement. Commissioner Gaar agreed and noted that it was a question of where did it stop, but added that HOAs were concerned about land use where a church or scout group were not. He opined the waiver should be extended to HOAs with safeguards in place. Ms. Hamilton shared that staff was still gathering information about HOAs and a proposal to waive appeal fees for other bodies was not part of the current proposal. Chair LaMotte responded that a list of HOAs and a review of their bylaws would not be needed if there was a checklist to determine the HOAs validity. Commissioner E. Brockman reflected on the question – does extending to HOAs undermine the neighborhood association structure? Commissioner Heape responded to the comment from staff that the City had no oversight of the HOAs, which he felt was untrue; he referenced a HOA's covenants, conditions and restrictions (CC&Rs). Mr. Boone clarified that the imposition of conditions in the CC&Rs were applied to the developer usually as mitigation related to the subdivision development. He added that the City did not get involved in the management of an HOA. Chair LaMotte noted that some HOAs were not within a neighborhood association; he suggested the checklist could include an item related to contacting the neighborhood association. The Commission directed staff to further explore this approach.

- Height of Building Definition
 - On planned development (PD) subdivisions, height could be measured from altered (either raised or lowered) grade, as approved in subdivision review process
 - Apply same methodology to subdivisions that do not have PD overlay
 - All subdivisions reviewed by Development Review Commission
- Measure 56 Items – to be included in flag lot amendments
 - Accessory structure setback standardization
 - Applicability of Open Space Standard to serial partitions

Ms. Hamilton noted there would be a Council study session in December. She explained that the amendments needed to be noticed under Measure 56 and were combined with the flag lot amendments to save on costs, as notice must be mailed to every residence in the City.

Citizen Comment

None.

Chair LaMotte closed public testimony.

Deliberations

The Commission reviewed and discussed the proposal page by page. Regarding Courtyards, Commissioner Ward indicated that he would like to see a minimal size specified. Mr. Boone confirmed that the public notice provided did not include adding a size requirement, which would require M56 notice. The Commission agreed to defer this issue for further policy level discussion. Ms. Hamilton responded to questions regarding tree preservation requirements in the Lake Grove Village Center Overlay District. Commissioner Ward expressed concern over the requirement of inch-for-inch tree mitigation as being onerous for developers. Staff noted this was included by the LGVC Committee to encourage tree preservation. Commissioner Ward suggested finding a way not to use the term Net Developable Acre, which could be confusing. Ms. Hamilton clarified that the term was already defined and was used elsewhere in the Code. Mr. Siegel suggested putting this definition on the list for the next round of housekeeping updates. Staff and the Commission discussed the use and definition of "City Manager" as used in the Code.

Chair LaMotte **moved** to approve the Annual Community Development Code Amendments (LU 16-0030) with the revisions as discussed and to recommend adoption to the City Council. Commissioner Ward **seconded** the motion and it **passed 6:0**. The vote on the findings, conclusions and order was scheduled for November 28, 2016.

10. SCHEDULE REVIEW

The schedule was reviewed and the following action item was identified:

- Uplands Neighborhood Plan discussion may be rescheduled as they are still working on it.

11. ADJOURNMENT

~~There being no other business Chair LaMotte adjourned the meeting at 8:40 p.m.~~