

## SUMMARY MINUTES

Regular Meeting  
Eugene Planning Commission  
Sloat Room—Atrium Building—99 West 10<sup>th</sup> Avenue

October 29, 2007  
11:30 a.m.

**PRESENT:** Randy Hledik, Vice President; Jon Belcher, Phillip Carroll, Ann Kneeland, John Lawless, members; Steve Nystrom, Kurt Yeiter, Planning and Development Department; Gary McNeel, Public Works Department; Emily Jerome, City Attorney; Jim Seaberry, Carleen Reilly, Lavin Segal, Rob Handy.

**ABSENT:** Rick Duncan, President; Anthony McCown, member; Mike Sullivan, *ex officio*.

### **PUBLIC COMMENT**

#### **I. APPROVAL OF MINUTES**

July 9, 12, 16, 23, and 24, 2007

Mr. Belcher, seconded by Mr. Lawless, moved that the July 9, 12, 16, 23 and 24, 2007 minutes be approved as submitted. The motion passed unanimously, 5:0.

#### **II. PLANNING COMMISSION DELIBERATION/ACTION: TRANSITION OF ANNEXATION PROCEDURES**

Staff: Steve Nystrom, 682-8385

Mr. Belcher, seconded by Mr. Lawless, moved to recommend to the City Council that the proposed ordinance be approved with modifications. The motion passed unanimously, 5:0.

#### **III. ITEMS FROM COMMISSION AND STAFF**

##### **A. Other Items from Staff**

##### **B. Other Items from Commission**

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PRESENT: Randy Hledik, Vice President; Jon Belcher, Phillip Carroll, Ann Kneeland, John Lawless, members; Steve Nystrom, Kurt Yeiter, Planning and Development Department; Gary McNeel, Public Works Department; Emily Jerome, City Attorney; Jim Seaberry, Carleen Reilly, Lavin Segal, Rob Handy.

ABSENT: Rick Duncan, President; Anthony McCown, member; Mike Sullivan, *ex officio*.

Mr. Hledik convened the meeting of the Eugene Planning Commission.

## PUBLIC COMMENT

**James Seaberry**, 1475 Green Acres Road #162, addressed issues concerning the Lane Rural Fire Rescue and the Santa Clara Fire District. He said Lane Rural Fire Rescue *Fire Med* income could be negatively impacted by some proposed annexations procedures for the area and opined Lane Rural Fire Rescue would “have a right to judicial process” if that occurred.

Mr. Hledik directed Commissioners attention to a letter from Peggy Keppler regarding access management in the agenda packet.

## I. APPROVAL OF MINUTES

July 9, 12, 16, 23, and 24, 2007

Mr. Belcher, seconded by Mr. Lawless, moved that the July 9, 12, 16, 23 and 24, 2007 minutes be approved as submitted. The motion passed unanimously, 5:0.

Mr. Lawless commented on the clarity of the minutes.

## II. PLANNING COMMISSION DELIBERATION/ACTION: TRANSITION OF ANNEXATION PROCEDURES

Staff: Steve Nystrom, 682-8385

Mr. Nystrom provided the staff report. The Planning Commission held a public hearing on October 16, 2007 to consider a proposed ordinance establishing procedures for processing annexation requests within Eugene’s Urban Growth Boundary (UGB). Following the close of the public hearing, the Planning Commission left the record open for one week, closing on October

23, 2007 at 5:00 p.m. The Planning Commission identified several questions or requests for further information from staff, responses to which were provided in the Agenda Item Summary (AIS).

Mr. Nystrom stressed the importance for the Commission to stay focused on the procedural purview of the ordinance. The ordinance was necessary under State law and necessary to have a foundation of procedures in place by January 1, 2008. Larger discussions around how the community should or should not annex, who should be in control, and how the annexations should occur were governed by the Eugene Springfield Metropolitan Area General Plan (Metro Plan) and specifically through resolutions adopted by the City Council. Following action by the Planning Commission, the ordinance would proceed to the City Council for a public hearing on November 19, 2007 and action by the Council on December 10, 2007.

Mr. Nystrom directed Commissioners to a Property Status Map and Eugene Zoning Map posted on the wall. Additionally, he circulated a map among Commissioners that identified 300 acres within the UGB removed from possible annexation after December 31, 2007.

Responding to a question from Mr. Belcher, Ms. Jerome explained current code provisions addressed annexation in terms of how the City would determine whether it should recommend approval or denial to the Lane County Boundary Commission, but did not contain enforcement provisions for any annexation application. There were jurisdictions that did not have local annexation provisions. When those jurisdictions received annexation applications, they went to the statutes while others have established their own way of processing those applications. This had not been a problem for those cities, the largest of which was Roseburg. However, Roseburg had a well established system and had not been challenged. The environment differed in Eugene, and she recommended that the City of Eugene have provisions. Absent those provisions, she would recommend that the Planning Commission do only what the statutes require. What this would mean was that applications submitted after January 1, 2008 would go directly to the City Council without notice or public hearing by the Planning Commission. She opined the Planning Commission was in “no-man’s land”, with case determinations occurring on a case-by-case basis.

Mr. Carroll stated he had not attended the public hearing but had listened to a recording of the meeting. He opined that if a non-contiguous parcel were annexed under the proposed ordinance a newly contiguous parcel would be created thus becoming eligible for annexation. Mr. Nystrom concurred with Mr. Carroll.

Responding to a question from Mr. Hledik regarding street annexations, Ms. Jerome read from applicable sections of the code, noting the initial policy was adopted in 1993 as Resolution 4358, and modified in 2007. She said the City Council may want to import the proposed changes into the code in the form of an adopted ordinance.

Responding to questions from Mr. Lawless and Mr. Belcher regarding “cherry-stemming”, Ms. Jerome stated that the issue arose when a parcel considered for annexation would not be contiguous but for the road right of way (r-o-w) requested to be annexed with the parcel. The reasonableness standard applied to “cherry-stem” annexations, was directed to the question of whether or not it made sense to annex the subject property that was somewhat separated from the City proper. The criterion was not in the statutes but rather imposed by the courts.

Responding to a question from Mr. Hledik, Ms. Jerome explained the applicable City ordinance contained a provision that would allow the City Council to determine if it wanted a public hearing. The statutes did not require a notice, making it difficult for the Council to determine if a

public hearing was warranted. Thus, the staff recommendation was to include notice even if there was no public hearing to provide an opportunity for interested individuals to contact their Councilor regarding the importance of the issue. It was then a City Council decision as to whether or not a public hearing would be held on a particular proposal. An individual who had standing or was personally aggrieved could not force the issue on their own.

Responding to a question from Mr. Hledik, Ms. Jerome explained that the judges' written summary interpretation of the statutes stated the only involuntary annexations were island annexations. However, under the double majority criterion all owners and one-half of the renters needed to consent to involuntary annexations. Under triple majority, more than one-half of the owners of the land in the territory, who also owned more than one-half of the land in the contiguous territory and of real property, and a majority of the renters needed to consent to involuntary annexations. Additionally, annexation would occur in the event a health hazard existed, and could occur without owner consent.

Mr. Yeiter explained that some people opposed to annexations felt that the existing process in which new development triggered annexation was a forced or involuntary annexation.

Responding to a question from Ms. Kneeland, Mr. Nystrom said current code provisions that addressed triggers for annexation would apply, thus new dwellings would trigger annexations, while home improvements or room additions did not trigger annexation. Exceptions existed for farm dwellings and manufactured home hardships.

Responding to a question from Ms. Kneeland, Mr. Nystrom explained health hazards could be addressed under extraterritorial extensions.

In response to a question from Mr. Belcher, Mr. Yeiter said he turned away perhaps three requests for extraterritorial extensions a year, and did not recall more than a few being approved during the last eight or ten years.

Responding to a question from Mr. Carroll, Ms. Jerome said administrative guidelines adopted by the City Council regarding when streets should be added in an annexation process provided good direction for staff to know when the r-o-w should be included in annexation procedures.

In response to a question from Mr. Carroll, Mr. Nystrom said the Planning Commission could discuss implications related to revising notice requirements regarding the number of days or distance from the property edge. Mr. Nystrom encouraged Commissioners to make decisions based upon the individual applications, the applicable criteria and issues brought to the table for annexation requests.

Responding to a question from Ms. Kneeland, Ms. Jerome averred the Lane County Boundary Commission statutes addressed hazard abatement related to extraterritorial extensions and to some degree the Boundary Commission and was empowered to make decisions about them. The statute currently governing the extraterritorial extensions made no mention of hazard abatement. Thus, the proposed City Code language was derived from Council resolutions regarding extraterritorial extensions. Ms. Jerome added according to the Land Use Board of Appeals (LUBA), decisions whether or not to allow extraterritorial extensions were land use decisions and had to be made pursuant to land use laws, which was why the City choose a Type II process. She said extraterritorial extensions were rare, and only occurred when annexation was not possible.

In response to a question from Mr. Lawless regarding r-o-w annexation, Ms. Jerome said property

owners needed to make an annexation request, regardless of whether the r-o-w was privately or publicly owned.

Responding to Mr. Belcher, Mr. McNeel explained when the r-o-w in front of private property outside of the city limits was annexed, Lane County assessed improvements against the property, but the assessment was deferred until the property was annexed. In past practice, Lane County had paid the assessment for the property and collected a reimbursement after the fact.

Mr. Yeiter said Lane County street standards included streets that were as urban as those required by the City, and the County assessment policy was very similar if not identical to the City's policy.

Mr. Nystrom reminded Commissioners that street improvements were related to assessment rather than annexation policies, and although there was a connection between the two, street improvements were outside the scope of the current annexation procedures deliberation.

Mr. Carroll noted Mr. Handy's assertion that the ordinance needed to cite Oregon Revised Statutes (ORS) because Oregon Administrative Rules (OAR) did not hold accountable weight. Ms. Jerome stated the City of Eugene did not cite OAR and although it generally did not cite ORS, ORS had been cited in this case. The Oregon State Legislature regularly changed specific ORS provisions, and the City refrained from ORS unless unavoidable.

Responding to a question from Mr. Carroll, Ms. Jerome said although the inconsistency of the Metro Plan language regarding the Boundary Commission made it difficult to draft an ordinance, the real issue was that the Metro Plan was inconsistent with State law. The ordinance did not cite specific Metro Plan policies. Staff was in the process of contacting other local jurisdictions to ensure all of the new ordinances were consistent with each other.

Mr. Nystrom said the development of new ordinances was a clean up issue. Since State law trumped local laws procedurally and legally, it would be the guiding document in adopting the ordinance under consideration.

In response to Mr. Hledik, Mr. Nystrom said State law required the City Council to be the decision maker thus it made sense to have annexations go directly to the Council, rather than having a two step process involving the Planning Commission at the beginning of the process. He added the vast majority of annexations were non-eventful, small scale projects. Even those annexations that went to a hearing tended to be matter of fact. Street annexations were lightning rods, for which there was more direction from Council. A one stop approach with full discretion with the Council to determine if a hearing was warranted for more complex projects had been deemed to be the best approach from political, legal and administrative views.

Responding to a question from Ms. Kneeland regarding the statute of limitations related to previously executed annexation agreements, Ms. Jerome asserted there was a statute of limitations on how long an agreement was valid unless a separately signed agreement extended or waived the time limit. The City's practice was to always have both of those signed agreements, a ***Consent to Annex*** form and a ***Waiver of Time Limit*** form, submitted in tandem. If the agreements were not extended, they were only good for one year.

Referring to City Code Section 9.7835, Mr. Belcher stated it did not appear there was a requirement to inform districts of intent to withdraw. Ms. Jerome said the list and processes came directly from State statute. She concurred with Mr. Belcher that it would be appropriate to

include language to notify effected districts.

In response to Mr. Belcher, Ms. Jerome said the designation of taxing authority by jurisdictions related to annexed properties was governed explicitly by State statute and was not subject to change by the local jurisdictions.

Responding to a question from Mr. Hledik, Mr. Nystrom said the City Council would hold a work session on *Transition of Annexation Procedures* on October 31, 2007.

Mr. Belcher distributed a handout entitled, *Adopted Growth Management Policies, RESOLUTION NO. 4554, A RESOLUTION ADOPTING GROWTH MANAGEMENT POLICIES; AND REPEALING RESOLUTION NO. 3867.*

He read from **Section 2:** The policies adopted by Section 1 shall be used by the City to guide the work of the City Manager and staff in formulating for Council consideration proposed changes to the Eugene Code, 1971, including potential changes to Chapters 2 through 9. The policies adopted by Section 1 also shall be used by the City to guide other work programs, including such actions as preparation of the budget and revisions to the capital improvement program.

Mr. Belcher stated the proposed annexation procedures were directly related to Chapter 9, and he inquired why the Growth Management Policies (GMP) were not being taken into consideration.

Mr. Nystrom said, as previously discussed, the criteria under which the City was operating for a code amendment did not include a requirement for GMP consideration, although the Council could add that requirement in the future.

Following a discussion, there was consensus to require 30 days for both notification provisions for annexation processes. There was also consensus to require notification to properties within 500 feet.

Following a discussion regarding posting of notices for annexation public hearings, Mr. Nystrom said staff would take direction from the Planning Commission to ensure the notices were posted in the impacted neighborhoods.

Mr. Belcher, seconded by Mr. Lawless, moved to recommend to the City Council that the proposed ordinance be approved with modifications. The motion passed unanimously, 5:0.

Mr. Carroll left at 1:25 p.m.

### **III. ITEMS FROM COMMISSION AND STAFF**

#### **A. Other Items from Staff**

Ms. Gardner reviewed meeting schedules and agendas for upcoming Planning Commission meetings.

**B. Other Items from Commission**

Mr. Hledik stated this was the official last day of Commissioner Belcher's second term. He commended Mr. Belcher for eight years of terrific service and said he would be missed. Mr. Belcher said although his term was over, he had told the City Council that he was willing to serve wherever they felt his services would be most beneficial. He was confident the Planning Commission and excellent staff would continue to do a great job.

Mr. Hledik thanked Mr. Belcher for the guidance and mentorship he had provided other Commissioners.

Mr. Hledik adjourned the meeting at 1:28 p.m.

(Recorded by Linda Henry)

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