

SUMMARY MINUTES

Regular Meeting
Eugene Planning Commission
Sloat Room–The Atrium Building–99 West 10th Avenue

July 18, 2005
11:30 a.m.

PRESENT: John Lawless, President; Mitzi Colbath, Vice President, Jon Belcher, Rick Duncan, Randy Hledik, Phillip Hudspeth, Anne Marie Levis, members; Neil Björklund, Gabriel Flock, Susan Muir, Steve Nystrom, Ann Siegenthaler, Kurt Yeiter, Planning and Development Department staff; Glen Klein, City Attorney; Janice Gotchall, Kevin Matthews, Charles Biggs, Bruce Wild, Francina Verrijt, Jim Spickerman, Terry Connolly, Diane Wiley, Phillip Carroll, Lauri Segel, guests.

ABSENT: Mike Sullivan, *ex officio* member.

PUBLIC COMMENT ON NON-AGENDA ITEMS

I. APPROVAL OF MINUTES – June 13, 2005

Ms. Colbath moved to approve the June 13, 2005 minutes as amended. The motion passed unanimously, 7:0. Mr. Duncan observed that the motion did not have a second. Mr. Duncan seconded the motion. Mr. Lawless noted consensus to accept Mr. Duncan's second, and to honor the vote.

II. PLANNING COMMISSION DELIBERATION/POSSIBLE ACTION: GOAL 5 NATURAL RESOURCES

Staff: Mr. Björklund, 682-5507

Ms. Levis, seconded by Ms. Colbath moved to recommend to the City Council approve the draft ordinance dated July 12, 2005, with the amendments addressed in the July 18, 2005 email from Mr. Lawless and the subsequent amendments and clarifications discussed at the July 18, 2005 Planning Commission meeting. The motion passed 7:0.

III. ITEMS FROM COMMISSION AND STAFF

- A. Other Items from Staff
- B. Other Items from Commission

MINUTES

Regular Meeting
Eugene Planning Commission
Sloat Room–The Atrium Building–99 West 10th Avenue

July 18, 2005
11:30 a.m.

PRESENT: John Lawless, President; Mitzi Colbath, Vice President, Jon Belcher, Rick Duncan, Randy Hledik, Phillip Hudspeth, Anne Marie Levis, members; Neil Björklund, Gabriel Flock, Susan Muir, Steve Nystrom, Ann Siegenthaler, Kurt Yeiter, Planning and Development Department staff; Glen Klein, City Attorney; Janice Gotchall, Kevin Matthews, Charles Biggs, Bruce Wild, Francina Verrijt, Jim Spickerman, Terry Connolly, Diane Wiley, Phillip Carroll, Lauri Segel, guests.

ABSENT: Mike Sullivan, *ex officio* member.

Mr. Belcher convened the meeting at 11:35 a.m.

PUBLIC COMMENT ON NON-AGENDA ITEMS

No one offered public comment.

I. APPROVAL OF MINUTES – June 13, 2005

Mr. Belcher corrected page 5, paragraph 7, the first sentence to read: “Mr. Belcher stated that the clause in Ballot Measure 37 said the requirement could be waived or compensation could be given according to Ballot Measure 37, but the proposed ordinance did not provide for compensation.”

Ms. Levis arrived at 11:37 a.m.

Ms. Colbath moved to approve the June 13, 2005 minutes as amended. The motion passed unanimously, 7:0. Mr. Duncan observed that the motion did not have a second. Mr. Duncan seconded the motion. Mr. Lawless noted consensus to accept Mr. Duncan’s second, and to honor the vote.

II. PLANNING COMMISSION DELIBERATION/POSSIBLE ACTION: GOAL 5 NATURAL RESOURCES

Mr. Björklund stated that the agenda packet included a revised ordinance in which staff had attempted to address all issues and revisions requested by the Planning Commission.

Mr. Björklund distributed a handout that was an email message dated July 18, 2005 to Susan Muir from

John Lawless, subject: Goal 5 Deliberation Notes. Mr. Björklund reviewed Mr. Lawless' email message and facilitated a discussion on Mr. Lawless' concerns and clarification of the proposed ordinance language.

Mr. Björklund distributed a handout consisting of a packet of illustrations of examples of five possible variations of setbacks related to lot dimensions, streams, and stream top of banks.

Mr. Björklund said he had followed up on Ms. Colbath's request for information on the City of Salem ordinance related to public park land. He said the City of Salem was not protecting any wetlands. The Salem City Council had adopted the local wetland inventory but had declined to adopt the Goal 5 inventory of wetlands. Additionally, the Salem City Council had declined to protect any of the wetlands.

Mr. Björklund offered a correction to a minor typographical error on one of the plant lists that covered the south hills area.

Mr. Björklund facilitated a discussion of the illustrations and how they related to the proposed ordinance, noting they were not intended to be an exhaustive list of examples. Minor typographical errors were corrected.

Mr. Björklund said that staff as well as Mr. Klein and Ms. Jerome from the City Attorney's Office would be reviewing the entire ordinance to ensure that it was consistently and correctly formatted.

Mr. Belcher commended staff for their work in mitigating to the greatest extent possible and reduce the potential for Ballot Measure 37 issues. He felt a motion passed unanimously by the City Council in October 2004, the council wanted to deal with each Ballot Measure 37 issue. It seemed to him there was a difference in philosophy between the ordinances passed by the council and the proposed ordinance before the Planning Commission. Mr. Belcher expressed concern that the commission was not following council direction.

Mr. Klein said Mr. Belcher was correct in his reading of the draft before the commission, as well as the City Council ordinance that said the City Council would be the entity that approved or denied a waiver. Mr. Klein had advised the council that under Ballot Measure 37, he did not believe there was any choice. Ballot Measure 37 said that in lieu of compensation, the governing body of the public entity that had enacted a regulation could waive the regulation. In his opinion, only the City Council had the power to waive a regulation if the authority to waive the regulation was Ballot Measure 37.

Mr. Klein said Ballot Measure 37 was a state statute. The state statute said if a jurisdiction wanted to waive a regulation in lieu of paying compensation, a governing body would have to do it. The statute did not address delegating that authority to another body.

Mr. Klein said Goal 5 was the first land use regulation going to the council after the passage of Ballot Measure 37 that had the real potential of creating a Ballot Measure 37 claim. In a sense, this ordinance was a test in that the City Council had not yet discussed how it wanted to deal with new land use regulations that created the potential for Ballot Measure 37 claims. Certainly one way to deal with that was to ignore Ballot Measure 37 as part of the new land use regulations. If a party wanted to file a Ballot Measure 37 claim, it would be filed under the city's ordinance.

Mr. Klein said another way to deal with the issue was to say there was no Ballot Measure 37 claim until the City of Eugene land use process had been exhausted. Assuming that the city wanted to put such a

process into the new land use regulation, it had the option of saying whether the decision would be made by the City Council, Planning Commission, Planning Director, or a Hearings Official, and that issue can be separated from do we want to put something in here at all or do we simply want to use the Ballot Measure 37 process that the City Council created.

Mr. Klein recommended that staff draft language be used for Goal 5 rather than the Ballot Measure 37 ordinance that council had adopted. Ballot Measure 37 was clear that a governmental entity could adopt a process and 180 days later, after the filing, the property owner had the right to go to court, affirm that regulation remained in effect, refuse to pay the application fee, refuse to submit an appraisal, and refuse to provide any of the requested information. But because the regulation had not been waived, a party could request a judge to award compensation.

Mr. Klein said in his view, short of some limited information a government could require as part of the Ballot Measure 37 claim, the government could not require property owners to actually go through the process that he just iterated. The court would likely decide that it was optional at the property owner's discretion.

If on the other hand, the Goal 5 ordinance could include language that a property owner did not have a Ballot Measure 37 claim unless they had gone through the city land use process, then, as part of the Goal 5 process, the local land use process would apply up to certain limits. The city would then have the authority to require property owners go through the local process, and pay the city's application fees and follow the other applicable requirements that dealt with the Chapter 9 process. The reason for including this language is that it provides maximum options and flexibility.

If the concern here was not only with the Ballot Measure 37 claims, but also should the City Council have the ability to waive, that can be easily modified. Consideration would have to be given to how this would really play out if something that had been a quasi-judicial land use matter now that allows a property owner to jump up to the City Council, get a determination, and then come back down. We could propose to the council that they use the same processes they had already adopted for all other land use matters. That is, with very few exceptions, virtually no quasi-judicial land use matters go to the council. That was the approach proposed here, using the same process as we do with Type I, II, III issues.

In response to a question from Ms. Levis, Mr. Klein said legally there was no benefit to having these go to the City Council. This was strictly a policy question. Was it better for the elected officials make this determination, or was it better to have someone other than the elected officials make this determination? Mr. Klein believed it was better not to have the decision made by elected officials who were uncomfortable making quasi-judicial decisions.

Ms. Levis said in that other quasi-judicial decisions were handled in this manner, it made sense to do the same with the Ballot Measure 37 issues.

Ms. Colbath said if the ordinance gave the City Council authority over the waivers, that should be the policy.

Ms. Muir said that the council adopted the ordinance because it had no other option at the time available to them. Now they had the option. She cautioned the commission to carefully look to ensure that they made the right decision. The concern from staff for the practical application was that the clock was ticking on Ballot Measure 37 claims. The elected officials had a hard time meeting the clock. If there were a number of such claims in process, we could run into problems.

Ms. Colbath identified two issues. Ms. Colbath wanted to ensure that the council knew that they had the option versus saying this was what we absolutely believed ought to be done.

Mr. Klein said the only sense he got from the council was the recognition that the voters within Eugene did not approve Ballot Measure 37 and to the extent there were things that could be done not to grant greater rights than Ballot Measure 37 granted. He sensed that the council did not want to grant anymore than was necessary because it took away local power. To the extent possible this allows as much control as possible through a local process.

Mr. Belcher said he did not see in the proposed Goal 5 regulations where the City of Eugene had the ability to compensate. When this became a Type III quasi-judicial process, any decision ends here, and we do not have the ability to compensate. This appeared to take away the option to compensate. Where was the opportunity for the council to say no, this resource was too valuable, and we would rather buy the property than have a requirement reduced or eliminated.

Mr. Klein said at a minimum it raised the issue to the City Manager's level, and could include City Council consultation, consent calendar action, or a council decision.

Mr. Belcher had two concerns. One, the commission needed to let council know that the Planning Commission talked about this issue. The other one was the process that was proposed had the opportunity to for compensation. He did not want to propose something that would not allow the council to decide to compensate rather than waive.

Mr. Björklund said the agenda item summary could include descriptions of the Planning Commission discussions and its concerns surrounding this issue.

Ms. Muir said another option would be for the commission to write a letter for the agenda item summary.

Mr. Belcher suggested that commissioners could talk to their council buddies.

Mr. Klein said if the commission thought that the council ought to be consulted, a process could be desired to accommodate that. The 120 day limit approached rather quickly and he preferred to preserve as much of the 120 days as possible for staff to complete its work.

Mr. Klein said the way its was currently written the manager had the authority to make the determination. Once the manager agreed to compensate, that in essence would be a withdrawal of the request to waive the regulation. If the party refused to withdraw, the request would be denied based on compensation.

Ms. Levis did not share Mr. Belcher's perspective. She was more comfortable following the same process used in other quasi-judicial issues. She did not want to elevate this to be such a big issue. It was well written.

Mr. Klein said even if the Planning Commission did not want to raise this issue at all, he would still want to flag it for the council because this would be their first opportunity to talk about how they want to deal with Ballot Measure 37 and new land use regulations.

Mr. Duncan agreed with Ms. Levis. If something is a really sensitive resource issue, the City Council will hear about it regardless of what process the commission puts in place.

Mr. Lawless said it was sufficient as written. He did not want to get in the position of second guessing City Council or trying to putting words or strategies in their mind. He preferred the approach that had been taken here in terms of keeping it local and keeping it fairly simple.

In response to Ms. Colbath's question regarding EC 9.4940, Mr. Björklund explained that the city can require an easement, but it did not say that you could build a 20 foot wide road. The section was only about granting easements not allowing uses. He said other parts of the draft code provisions contained standards for building roads.

Mr. Hledik asked how the new language in the applicability section on page 5 applied to the Riverfront Research Park Master Plan.

Mr. Nystrom said the City Attorney would review this language and clarify it if needed.

In response to Mr. Hledik's question about page 6, EC 9.4920(1)(a) and (b), Mr. Björklund said what had changed was that subsection (a) used to apply to both riparian and wildlife habitat sites, and now it only applied to riparian.

In response to Mr. Duncan's question regarding page 8, EC 9.4920(5), language added about "built on a concrete foundation", Mr. Björklund said the idea was that a temporary structure, such as a shed you can buy at a home improvement center in a kit, and put up in a couple of hours should not cause someone to get an exemption from the regulations. And yet, you could have a shed up to 199 square feet with a permanent concrete foundation and stick built just like a house but there was no building permit required for that. So the goal was to how do we make sure that what we are getting at are these permanent structures that are legal, so that was the attempt there, so that moveable temporary structures that do not require a permanent foundation would not cause someone to get an exemption.

Mr. Duncan said many manufactured homes, some of which exceed 2,000 square feet do not have permanent foundations but they sit on blocks. Mr. Björklund said he would rewrite the language to address that issue.

Referring to page 26, EC 9.8030(14), overlay zone, Mr. Hledik asked for clarification and how it would apply.

Mr. Nystrom said it was just like the adjustment review provisions, in other words, adjustments were allowed where the code had provided for that ability.

In response to Mr. Hledik, Mr. Björklund said EC 9.4930(3)(b), "sanitary and storm sewers" was deleted because those fit in the definition of public utilities.

Mr. Björklund said EC 9.4980(10)(m) applied only to Category E streams, which were the areas that had no setback. This was an outright use with no review.

Mr. Hledik asked if there was a process in place to address the Goal 5 issues that may be associated with the I-5 bridge over the Willamette River.

Mr. Björklund said yes, the use was constructed public improvements that included bridges. The applicable standards included the standard for stream crossings, so if that came through and was in our

jurisdiction, and was after these went into effect, they would have to go through a review at the local level. The use of constructing a bridge is allowed in the use section, so this was not restricting whether a bridge could be built, but rather what standards applied to the bridges you can build.

In response to a question from Mr. Duncan, Mr. Björklund explained the process of requiring an engineering report for emergency channel bank repair.

Mr. Belcher raised issues regarding protection of animals.

Mr. Björklund said conservation generally focused on habitat since most animals move. If the habitat was protected the animal would be protected. Many of the provisions were intended to protect habitat for many types of wildlife including birds, small mammals, and insects.

Based on the record before the Planning Commission, Ms. Levis, seconded by Ms. Colbath, moved to recommend to the City Council approve the draft ordinance dated July 12, 2005, with the amendments discussed by the Planning Commission from the July 18, 2005 email from Mr. Lawless and the subsequent amendments and clarifications discussed at the July 18, 2005 Planning Commission meeting. The motion passed 7:0.

Mr. Björklund thanked the Planning Commission for their hard work on the lengthy process.

III. ITEMS FROM COMMISSION AND STAFF

A. Other Items from Staff

Ms. Muir said the City Council discussion on the July 20, 2005 agenda would be a follow up to the mixed used tour. She encouraged commissioners to attend the meeting.

B. Other Items from Commission

Mr. Belcher said he and Mr. Duncan had drafted a potential letter for the commission to send to the City Council regarding the big issues such the urban growth boundary that would be distributed to commissioners via email, for consideration as part of the joint meeting with the City Council.

Mr. Hudspeth asked commissioners to send any suggestions for the joint meeting presentation to him or Mr. Hledik.

Mr. Nystrom said he would send a current schedule to commissioners.

Mr. Lawless adjourned the Planning Commission meeting at 1:31 p.m.

(Recorded by Linda Henry)

m:\2005\planning and development department\planning division\planning commission\pc050718.doc