



486 Third Street - PO Box 55 - Lafayette, Oregon 97127-0055

LAFAYETTE PLANNING COMMISSION

NOTICE OF PUBLIC MEETING

THE PLANNING COMMISSION OF THE CITY OF LAFAYETTE WILL MEET IN REGULAR SESSION THURSDAY, JUNE 19, 2008 AT 7 PM IN THE CITY HALL MEETING ROOM AT 486 THIRD STREET (99W), LAFAYETTE, OREGON.

AGENDA IS AS FOLLOWS:

1. CALL MEETING TO ORDER
2. ROLL CALL
3. APPROVAL OF THE **May 15, 2008 minutes**
4. PUBLIC HEARINGS:

None Scheduled
5. DISCUSSION
 - **Ex-parte Contact**
 - **Housekeeping changes**
 - **Open Space/Recreation/Parks**
 - **PUD Regulations**

The location of this meeting is accessible to the disabled. If you will need any special accommodations to attend or participate in the meeting, please notify City Hall, at (503) 864-2451, at least 24 hours before the meeting.

CITY OF LAFAYETTE
PLANNING COMMISSION MEETING MINUTES FOR
May 15, 2008

Call to Order: Stan Hill called the meeting to order at 7:04 p.m.

Roll Call: Lori Labb called the roll.

Present: Chad Gooch, Todd Holt, Ronald Kerr, Chris Pagella, Stan Hill, Beth Cooke

Absent: None (1 vacancy)

Staff Present: Jim Jacks and Lori Labb

Others: Angela & Darrell Flood

Approval of Minutes:

Stan Hill made a motion to approve the April 17, 2008 meeting minutes. Ronald Kerr seconded the motion. Motion passed unanimously.

Discussion:

- Review of Conflict of Interest and Bias

Jim Jacks read over the bias and conflict of interest memos. He also gave the commissioners an additional packet regarding bias.

Chris Pagella questioned if the bias was determined by what someone says or how they address a specific situation. Jim noted that it can be from a person saying something that is not based on the facts.

Stan Hill questioned how to create the persona that you are not bias when everyone in the audience seems to think that water is the biggest issue with a new subdivision when that is an issue the planning commission cannot base their decision on. Jim Jacks noted that if a commissioner feels that the city does or does not have enough water, it would need to be backed up by factual information during the hearing.

Discussion ensued.

There was a discussion regarding Land Use application and LUBA time limits.

Chris Pagella questioned if he was a major property owner in Lafayette if he would have to declare bias or conflict of interest. Jim noted that you would not have to unless there is a there are things that have been said by the property owner and that said property owner is in decision making position or if a family member or yourself would be making money out of the decision then that would be a conflict. If it were to be a potential conflict, that person should state that conflict at the hearing.

Discussion ensued.

- Parks and Open Space Issues

Jim Jacks went over the staff report.

The Planning Commission discussed adding to the Code, the intent of a park.

There was a discussion on when the developers should be required to submit drainage/runoff and wildlife impact studies.

There was a discussion on the process on getting the verbiage changed in the Zoning and development ordinance.

Beth Cooke noted that as a reference, Hillsboro has one of the best developments codes and the contact person there is Bruce Bieri.

The Planning Commission requested a list of the ordinance issues that have been brought up in previous meetings to be brought to the next meeting.

Jim Jacks continued going over the staff report.

There was a discussion on requiring park land dedication from developers.

The Planning Commission discussed having a joint meeting with City Council after the Code changes are taken care of to discuss the ideals of parks.

Adjourn: Beth Cooke made a motion to adjourn. Stan Hill seconded the motion. Motion passed unanimously. 9:14 pm.

TO: LAFAYETTE PLANNING COMMISSION
FROM: JIM JACKS, CITY PLANNER
SUBJ: EX-PARTE CONTACT
DATE: JUNE 19, 2008

This Memo's purpose is to address "ex-parte" contact and make it clear that it comes into play with quasi-judicial processes, not legislative processes (legislative processes create laws, e.g., adopting a zoning requirement, and quasi-judicial processes apply the requirements to specific applications, e.g., a decision on a conditional use application).

Contact with City staff or the City's contract Engineer or Planner is not an ex-parte contact.

BACKGROUND

At the April 17, 2008 Planning Commission meeting the roles and responsibilities of the Planning Commission and of Planning Commissioners were discussed. On May 15 the Commission discussed bias and conflict of interest. Another term needing explanation is ex-parte contact.

Ex-parte contact occurs within the quasi-judicial process, but not within the legislative process. The legislative process is less restrictive because it involves the adoption of laws by the City Council. It is similar to the State Legislature where a State Senator or State Representative can obtain information from site visits, hearings, lobbyists, and any other source. The process of creating laws involves decisionmakers who do not sit as an impartial tribunal.

The quasi-judicial process is more restrictive because the decisionmakers sit as an impartial tribunal similar to a judge in the court system. Impartiality includes treating all the parties fairly, including allowing all the parties to know what information the Commissioners know. If a Commissioner receives information outside the public hearing, the parties don't know what the decisionmakers will base their decision on. An important element in information gathering is that it be factual. If the parties don't know what information the decisionmakers have available to them, the decisionmakers may make a decision based on erroneous information. Ex-parte contacts must be made public at the hearing so any nonfactual information can be corrected.

EX-PARTE CONTACT

For quasi-judicial processes (e.g., zone changes, subdivisions, planned unit developments, conditional uses, variances) a necessary step in the process is gathering facts. The facts are presented to the Planning Commission once the Chairperson has opened the public hearing. The facts are typically found in the application materials, staff report, other reports such as traffic and wetlands analyses, and in the written and oral testimony of people appearing at the public hearing. The information entered into the record of the hearing is factual, hopefully, but it is not uncommon for written and oral testimony to be entered that is opinion or statements the testifier believes are true, but are not true.

Another method for a Planning Commissioner to obtain information is when a Commissioner is contacted outside the public hearing, an ex-parte contact. For example, a person who is aware of an upcoming hearing on a development application sees a Commissioner at a store and starts talking about the proposed development. This is an ex-parte contact and the Commissioner should change the subject or discontinue the conversation. Once the Commissioner realizes the person is providing information, the Commissioner should tell the person the discussion is inappropriate because any information the Commissioner receives must be through the public hearing process to ensure fairness for all the parties.

The reason the impartial decisionmaker cannot listen to the comments is that they are not heard by all the other parties and, therefore, cannot be addressed by the other parties. In the public hearing all the parties hear the information and can testify that they agree with it and believe it is true or that they disagree with it and believe it is not true. If a Commissioner receives information outside the public hearing, it is in their mind during the hearing and is used as a basis for the Commissioner's vote. No other party to the hearing has had the opportunity to know what the Commissioner has in mind and to support or challenge that information.

If a Commissioner has an ex-parte contact via conversation, email, phone or other method of communication (including a site visit), at the public hearing, before the testimony starts, the Commissioner should say an ex-parte contact occurred and state what the information was. Such an announcement takes care of the ex-parte contact and all present are aware of it and can address it in their testimony.

Although it is not generally recommended, occasionally a Commissioner will stop at a site just to take a look. Such a visit is an ex-parte contact and at the hearing the Commissioner must indicate what information they learned so any of the parties can address it. A worst case scenario would be a Commissioner visiting the wrong site and having completely erroneous information in mind. In some cases a site is on a busy road and all the Commissioners go by it every day. In this case the Chair could make a statement for all the Commissioners saying something to the effect of, the site is on Highway 99W and we all go by it every day and have noticed the old building that is

Ex-parte Contact

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proposed to be demolished as part of the project. The Chair could then ask if any Commissioner has anything more that they want to add.

Overall, it is the responsibility of the applicant and others participating in the process to gather all the pertinent information and present it in the application materials or at the public hearing. When a Commissioner is involved in ex-parte contacts people on one side or the other can become concerned about the integrity of the process and of the Commissioner involved, whether the concern is warranted or not.

An ex-parte contact face to face or on the phone can be uncomfortable to deal with because the Commissioner must tell the person that he/she cannot listen to comments about the application. If the Commissioner first explains they have a responsibility to the public to be an objective decisionmaker and must base their decision on information presented at the public hearing to ensure the process is fair to all the parties, it can ameliorate any hard feelings.

An ex-parte contact via email, letter, newspaper or radio/TV broadcast is easier to deal with because as soon as the Commissioner realizes it is an ex-parte contact, he/she can stop reading or stop listening.

End.

TO: LAFAYETTE PLANNING COMMISSION
FROM: JIM JACKS, CITY PLANNER
SUBJ: HOUSEKEEPING AMENDMENTS
DATE: JUNE 19, 2008

This short Memo's purpose is to advise the Planning Commission that City staff have prepared a list of Zone Code sections needing amendments and the City Planner has reviewed the list.

The list is divided into three categories; scrivener's errors, housekeeping changes and amendments that would involve policy questions.

The proposal is to initiate the amendment process to do the scrivener's errors and housekeeping changes, which should be straightforward and noncontroversial, at the same time the Commission is addressing the open space/PUD issues.

The timing has not been finalized, but the amendments could come to the Commission at their July meeting for an initial review with a public hearing at the August or September meeting.

The amendments involving policy issues would be on a later timeline.

End.

TO: LAFAYETTE PLANNING COMMISSION
FROM: JIM JACKS, CITY PLANNER
SUBJ: OPEN SPACE/RECREATION/PARKLAND II
DATE: JUNE 19, 2008

This Memo's purpose is to follow-up on the Planning Commission's discussion on May 15 regarding open space/recreation/parkland and to narrow the focus to the Planned Unit Development (PUD) regulations, especially the (1) required 20% open space, (2) what type of open space that should be and (3) the allowed small lots of 6,000 square feet compared to the normal minimum lot size of 7,500 square feet.

Given that the basic process used to create residential lots is the Subdivision process and that it is relatively inflexible, if the PUD process is to be used instead with its greater flexibility, the result should be better. The goal of amending the PUD regulations is to ensure the result is truly better.

BACKGROUND

At the May 15 Planning Commission meeting a memo, "Parks and Open Space/Outdoor Recreation Area" was in the Commission packet. The memo included the Comprehensive Plan's Recreation Goal on p. 27 which is "To provide the citizens of the community with adequate parklands and recreational opportunities." The memo also included the six policies related to the Goal.

As a follow-up to the May 15 discussion, included in the packet for the June 19 meeting is a sheet with a copy of the Comprehensive Plan's Open Space Goal (p. 13) which is "To conserve desired open space wherever possible." The sheet also includes the seven policies related to the Goal.

DISCUSSION

Using the Comprehensive Plan's Open Space and Recreation Goals and Policies as baseline information, the following two items from May 15 are restated so that the Commission can discuss the Zone Code's Planned Unit Development requirement that 20% of the site be open space or outdoor recreation area, and that lots in a PUD can be 6,000 square feet which is 1,500 square feet smaller than the minimum lot size of 7,500 square feet.

The May 15 memo's Item 3 stated:

3. An open space/outdoor recreation area issue is the Zoning Code's language for PUD's regarding the amount of open space that must be provided (2.302.05, D). It requires the amount of open space to be 20% of the gross area of the development and the required amount can be open space OR outdoor recreation area. The issue is whether the word "or" should be "and." These terms were the subject of different opinions in a recent PUD. The Zone Code (2.303.05, D) states:

Amount of Open Space: The required amount of open space or outdoor recreational area shall be at least twenty (20) percent of the gross area. Such open space should include school access routes, bicycle trails, natural or landscaped buffer areas, covered bus stops and the like, whenever practical or appropriate. (emphasis added)

The May 15 memo's Item 4 stated:

4. Another issue within the context of open space and PUD's is the allowed density in PUD's. The Zone Code (2.303.05, K) allows PUD's in the R-1 Zone to have a minimum lot size of 6,000 square feet rather than the usual 7,500 square feet. Generally, local governments have a subdivision process and the regulations for subdivisions have some flexibility, but not enough to deal with major issues related to developing around steep slopes, wetlands, rivers/streams, tree groves, etc. Many local governments also have a PUD process and the regulations provide for as much flexibility as the local government is comfortable with. The flexibility can be in the form of different lot areas, lot widths, lot lengths, setbacks, street widths, etc. The general benefit of a PUD is, if steep slopes, wetlands, rivers/streams, tree groves, etc., are to be dealt with to the satisfaction of the local government, then changes to the lots, streets, etc., could be appropriate. Also, because PUD regulations often call for open space of some sort to be protected, the tradeoff often is to allow the developed portion of the site to be denser (smaller lots) than in a regular subdivision with its fixed minimum lot size.

STAFF RECOMMENDATION

Due to the issues with a recent PUD, staff would suggest that one of the items deserving of more work is (1) the "or" versus "and" language, (2) the 20% figure and what the open space can be used for, and (3) the minimum lot size in the PUD section, so that when another PUD application is submitted, the City will be better positioned to achieve its goals.

ADDITIONAL INFORMATION

The following definitions from other cities are provided to show how other cities define selected terms. There is great diversity in what terms are defined and not defined.

Hillsboro:

Usable Open Space. Planned and improved open areas that provide opportunities for active recreation; passive relaxation; or community interaction. Such areas may include, but are not limited to: children's play areas; pocket parks; improved playing fields or courts; and paved or landscaped pedestrian spaces. Usable open space does not include: foundation landscaping; enlarged or enhanced parking strips or sidewalks; or unimproved or vacant areas. Usable open space may include Resource Level 1, 2, or 3 Significant Natural Resource areas, wetlands or buffers only if such areas are enhanced pursuant to the standards of this Ordinance. (Added by Ord. No. 5778/8-07)

Habitat Benefit Areas. In accordance with the Tualatin Basin Fish & Wildlife Habitat Program, areas shown on Metro's Regionally Significant Fish and Wildlife Habitat Inventory map as containing Classes I, II, and III riparian corridors/wildlife habitat and Class A Upland Wildlife Habitat. (Added by Ord. No. 5729/3-07)

Beaverton:

Active Space [ORD 4430; March 2007] Active space is an area which requires intensive development and often includes playgrounds and ball fields.

Natural areas. [ORD 4332; November 2004] Natural areas may include, but are not limited to, wetlands, riparian areas, Significant Natural Resource Areas, and significant groves of trees.

Open Space, Passive. [ORD 4332; November 2004] Open space where human activities are limited to defined walking and seating areas. Does not include environmentally sensitive areas such as a wetland.

Recreational Facilities. [ORD 4075; November 1999] Facilities that are intended to provide amusement to the user, with limited allowance made for up to 50 spectators. This use includes, but is not limited to: country clubs, golf courses, non-motorized bicycle tracks, skateboard paths, swimming clubs or pools, handball or racquet clubs, tennis or other racquet clubs, bowling alleys, dance halls and skating rinks, indoor soccer fields, or other similar uses.

Undevelopable area. An area that cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by

law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

McMinnville: Does not define Habitat, Natural, Open Space, Park, Recreation.

Newberg: Does not define Habitat, Natural, Open Space, Park, Recreation.

Corvallis:

Natural Hazards - Hazards regulated by Chapter 4.5 - Natural Hazard and Hillside Development Provisions.

Natural Resources - Resources regulated by Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland Provisions; as well as Significant Trees and Significant Shrubs, regulated by Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting .

Natural Swale - Naturally-occurring linear depression that carries surface water only after rainfall. It also transports sub-surface water either seasonally or throughout the year.

Net Aggregate Natural Features Area - As shown in Figure 1.6-23, the area containing protected Natural Hazards, plus the area containing protected Natural Resources, minus the overlap area containing both Natural Hazards and Natural Resources so that areas are not double-counted.

Open Space - Undeveloped or predominately undeveloped land, including waterways, in and around an urban area. Open Space lands are reserved for general community use, and include parks, preserves, general drainageway corridors, and other areas permanently precluded from development.

Outdoor Space, Common - Areas intended for common outdoor active or passive recreational use. Normally includes swimming pools, recreation courts, patios, open landscaped areas, preserved natural areas, and/or greenbelts with pedestrian, equestrian, and/or bicycle trails, etc. Does not include off-street parking, loading areas, or driveways. Can be privately owned and maintained, or dedicated to the City.

Outdoor Space, Private - Areas intended for private outdoor active or passive recreational use by residents of an individual dwelling unit. Normally includes patios and landscaped areas. Does not include off-street parking, loading areas, or driveways.

End.