

MINUTES OF PLANNING COMMISSION MEETING – March 18, 2014

Call to Order at 7:00 p.m.

Roll Call: The following Planning Commission members answered the roll call: Chair Tamara Stempel, Kevin Johnson, Michele Kremers, Pat McMahon, Craig Seghers, Kim Sieckmann, and Kirk Stempel.

Absent: None.

Staff: Clay Glasgow, City Planner; David Doughman, City Attorney; Jolene Morishita, Assistant City Administrator; and Scott Tabor, Director of Public Works (left at 7:30).

Chair Tamara Stempel lead the flag salute.

Consent Agenda:

1. Minutes of February 18, 2014 Meeting

Commissioner Kim Sieckmann moved and Commissioner Kirk Stempel seconded a motion to approve the consent agenda consisting of the minutes of February 18, 2014 as presented.

Motion carried unanimously.

Regular Agenda:

2. Appoint a member of the Planning Commission to serve as a Planning Commission Representative on the Park and Recreation Board (Meets as needed on the fourth Monday of the month at 7:00 p.m.)

Questions from the Commissioners: Is there an expiration date on the term of the representative? Answer: Assistant City Administrator stated the meetings are held as needed on the fourth Monday of the month. Craig Seghers noted he would be interested.

Commissioner Pat McMahon moved and Commissioner Kim Sieckmann seconded a motion to appoint Craig Seghers to be the Commission representative on the Park and Recreation Board.

Motion carried unanimously.

3. Public Hearing – Z0017-14-CP/Z0018-14-Z, Comprehensive Plan Amendment from Single Family Residential to Open Space and Zone Change from Single Family Residential R-7.2, to Open Space, OS. The subject property is at 18711 SE Valley View Road, owned and operated by Oak Lodge Water District. Reason for request is for Future use of a portion of the property for an off-leash dog park. Chair Stempel opened the public hearing at 7:05 p.m. She explained the hearing format and asked if there were any ex-parte contacts, bias or conflicts of interest to declare.

Commissioners were asked if they visited the site; all of the commissioners have visited the site. All ex-parte contacts are still on record from the February 18th meeting.

Commissioner Craig Seghers stated he was absent at the last meeting and was asked to review the video which he did. He did have a conversation with Scott the other day.

Chair Tamara Stempel asked the audience if there were any objections to the Council's jurisdiction to consider this matter. There was no response. She asked if they wished to make a challenge of any council member's impartiality or ability to participate. There was no response.

Staff Report: City Planner Glasgow reported this is an open public hearing that has been continued from the February 18th meeting. At that hearing the staff report was presented and discussed, testimony was taken and there was a request to continue the hearing to allow for additional testimony to be submitted. The Commission decided to continue the public hearing until this evening.

The proposal is for a Comprehensive Plan Change from Residential to Open Space, and a corresponding zone change from R-7.2 to Open Space.

Questions from the Commissioners:

- The application still indicates that the site size being rezoned is 7.2 acres, it has a cell tower and the cell tower is located on the site. Have these numbers changed? Answer: City Planner Glasgow stated the property is approximately 7.2 acres in size. The Commission is looking at a portion. At the time the application was written there was no specific size for the open space. The size is not 7.2 acres; it is .59 acres the portion adjacent to the north of the Nick Shannon Memorial Park.

City Attorney David Doughman noted when you have a case where there is a plan amendment with something else; people wonder what happens to the 120-day clock. The answer is that it doesn't apply. In terms of the continuance, it is limited to the initial hearing. The Commission can be accommodating but it is usually done at the first hearing.

- Could the property be sold and built out as residential houses (three houses). Answer: Mr. Doughman stated theoretically if the water towers were not there the property could be subdivided into lots averaging 7,200 sqft. It would be up to the owner.
- Will there be a need for a partition for this half of the property. Answer: Mr. Doughman stated he understood it to be a lease.

Applicant Presentation: City Planner Glasgow stated he had no new information to introduce.

Public Testimony in Favor: Chair Tamara Stempel explained since this is a continuance; all of the testimony that was made at last month's meeting is still on record. This time is for new testimony.

Public Testimony in Opposition: Jeff Kleinman, 1207 SW Sixth Avenue, Portland 97204 stated he is an attorney representing Ken Yielding. He thanked the Commission for the continuance

he requested at the last meeting. They have had an opportunity to present a memorandum; he is here to summarize the key points.

There are several approval standards under the City Zone criteria and they don't think the City has met the burden as the applicant in this case of complying with any of them. There is no demonstration of the public need would be best carried out by granting this petition or the need is best served by granting the petition at this time. He just learned there is currently an off-leash dog area at Meldrum Bar Park which hasn't been discussed in front of the Commission.

The action is not consistent with any of the relevant components of the Comprehensive Plan, Metro's Functional Plan, and State-wide Planning Goals. There is no proof whatsoever of any change at all in the neighborhood or community that would justify the change. There is no evidence there was a mistake in the way the City originally zoned this property. There no evidence of adequacy of public services in terms of safe and healthful drainage of the subject property which is an enormous problem for his client when the property is wet and drainage of waste seeps into their back yard.

There is no evidence that the traffic needs are met. People are attracted to bring dogs from elsewhere to the dog park. The traffic needs and parking needs must be met. There needs to be justification open or a project like the dog park in open space. Compatibility with adjacent land uses is horrendously incompatible with adjacent residential uses. The access and parking facility is questionable.

Donna Todd, 16710 SE Valley View Road submitted information to the Council. She has lived at this residence for 21 years and the area has not changed enough to constitute a zone change from residential to open space. 36 feet from her front door is not enough space to rezone to open space. The street is not equipped to handle the traffic or the number of people the open space would bring.

Shirley Gardner, 6907 Oakridge Drive stated she has lived here for 36 years. Since the fence went up, the area is being utilized by people with dogs and kids to play. It used to be just an open area that the kids would play with balls and learn to play catch. Now only the dogs have that. They have seen a lot of untidiness there and grass isn't being kept. The area is filthy and someone has been going by and pulling out the green slats. The area has not been maintained and cleaned since the fence has gone up.

She talked to a lady that was walking her dog and she is looking for a place for her mother-in-law to live. She noted she would not want to live by a dog park. Many people have said they like the dog park and use it but they do not want to live next to a dog park. She will lose the value of her nice quiet neighborhood when these homes go up for sale and become rentals. The open space has been just for the neighborhood. Once it became noticed that it was an unleashed dog park, they have had a lot of traffic. A traffic study and a safety study would have been great to have done while the park was open.

Chair Tamara Stempel explained the Commission has certain criteria they have to consider for this open space. A lot of what is brought up is really not relevant to the criteria they have to consider. She asked if someone has new information that is relevant to the criteria please come up.

Applicant Rebuttal: City Attorney Doughman stated the issue is whether there is an off-lease area and is operating in Meldrum Bar Park. He is not aware of a dog park. He would like to clarify this officially. Scott Tabor, Public Works Supervisor reported to his knowledge there is no authorized off-leash dog park at Meldrum Bar Park.

City Attorney Doughman stated the best thing to do from here is to analyze where they are right now. He received Mr. Kleinman's memo yesterday and there are a number of arguments that he would like to review; particularly regarding the issue of the City's obligation with respect to housing and to meet a need. Every city in Oregon has to do this. There is history in Gladstone about residential properties being taken out of the R-72 land. The Comprehensive Plan expressed a need in 1978/1979 for a certain amount of R-72 land. This is critical even if the data is outdated to see if Gladstone meets that need.

City Attorney Doughman noted he needs to look at the Metro Code; he is not in a position now to advise the Council on whether this has happened or not because some of the facts are new. He did not realize some of the facts in terms of some changes that have historically happened. The City would be taking .08% of the residential stock. He recommends the Commission allow him additional time to review the new information and come back at the next meeting.

Commissioner Kim Sieckmann moved and Commissioner Craig Seghers seconded a motion to continue the hearing on file Z0017-14-CP/Z0018-14-Z until the April 15, 2014 Planning Commission meeting at 7:00 p.m.

Motion carried unanimously.

Commission discussion continued on Open Space. Chair Tamara Stempel asked for the history behind the dog park. City Planner Glasgow explained City Council allowed the dog park. Complaints started coming in. It occurred to the City that a plan and zone change was necessary. Assistant City Administrator Morishita stated the citizens wanted a dog park. There were a number of people over a period of time that came in and actually testified during the Council meetings requesting an off-leash dog park. The agreement that the City Council made to the public was they would move forward, make it an off-leash dog park and have it fenced. When it didn't happen rapidly and there were people asking why it was taking so long. There was a petition signed.

Commissioner Sieckmann asked if many people came in to ask for a zoning change. Answer: City Planner Glasgow stated the criteria for consideration of the plan/zone designation. Open space zoning allows more than a dog park. If it is changed to open space it allows any other use that is allowed within an open space. The Gold Wrench was rezoned from residential to commercial. The criteria were reviewed relative to all the potential uses. Someone can come

in and say I want to change that to commercial and they do not have to disclose why they want to change to commercial.

Chair Tamara Stempel noted dog parks are not in the code as allowed in open spaces; is that something that would have to be added? Answer: City Planner Glasgow noted it can be interpreted as a similar use to allow it. A conditional plan and zone change is possible where the plan and zone change is approved for a specific use.

Commissioner Sieckmann asked if this is passed can the dog park be opened without addressing the other possible uses. Answer: City Planner Glasgow stated it makes it easier if there is a specific use to go through the criteria. A vague plan change application makes it difficult to go through the criteria; it puts burden on the applicant as far as providing information.

Commissioner Sieckmann asked if he can suggest additional conditions next month. Answer: City Planner Glasgow stated that there is nothing in the code to prevent a zone change with a specific use. However the Council imposes conditions.

A member from the audience asked if open space is an overlay zone. Answer: City Planner Glasgow stated open space was an overlay but it is actually a zone, a different zone than R-7.2. This proposal is to take it out of residential zone and put it into open space zone. They are different. Gladstone uses its open space for schools, parks, etc. so often times there is open space scattered in residential areas. Nick Shannon is open space and the subject site is not.

4. Develop a Recommendation to City Council for Zoning Regulations of Medical Marijuana Dispensaries. Chair Tamara Stempel opened discussion on medical marijuana dispensaries. City Attorney Doughman reported there was a joint worksession with Council on this issue. Senate Bill 1531 made it through the House, Senate and Oregon Legislature. The final iteration gives cities and counties the ability to temporarily ban dispensaries within their jurisdiction until May 1, 2015. It has not yet been signed by the Governor. He has 30 days to do so and if he doesn't do so, or veto it becomes law. There has been a delay in signing the Bill.

It is his thought tonight that the Bill will become law. The City Attorney's office previously recommended there be a two-track approach. Have something that would prohibit them and based that prohibition on Federal law conflicts. Also have a parallel track that would essentially amend the City's development code to permit dispensaries in certain areas. The goal was to have something in place prior to March 1, when dispensaries could apply for a license. The idea was to have the prohibition in place and only if House Bill 1531 passed would the land use regulations be applicable.

There is still the Federal law issue to be litigated and there will be an answer at some point. There is likely to be more discussion on this issue during the 2015 Legislative Session. It is very likely that Oregonians will be voting in November 2014 on something having to do with adult recreational legalization. This dynamic has the ability to be included in the City's decision.

With that background, City Attorney Doughman suggested the Commission begin thinking and operating under the assumption that at some point cities will be left with only the ability to regulate not prohibit. For what the Commission is being tasked to do, SB-1531 gives the temporary authority to ban, it also allows cities to impose reasonable regulations on dispensaries. State Law will grant a permit to an operation in cities in industrial, commercial and mixed-use zones. The city has the ability to limit that further. The State Law has a 1,000 foot buffer between K-12 schools (can be expanded to include preschools, daycare, etc.), parks, etc. Waiting for the bill to be signed gives the City time to see what other cities are doing and collect more information. Council has in place to prohibit to a date; however, if the law is passed, Council can change the date.

Questions from the Commissioners:

- Commissioner Sieckmann asked if a marijuana dispensary would stand as a title if the law passed for a medical dispensary. Answer: City Attorney Doughman stated that if this were to happen the City could change the definition. The recommendation to Council could be non-specific to medical marijuana dispensaries; it could be for any retail facility that may be dispensing marijuana. City Planner Glasgow stated to put retail in an industrial zone would be poor planning. You would be introducing retail commercial traffic into an industrial zone. The impacts would be wrong, it's not a good idea but it is provided for.

City Planner Glasgow noted he is on a group with the County that is reviewing the same issues. There are far too many variables to begin consideration of anything. No matter what you come up with tonight or next month will have to be changed. The voters will get at least two ballot measures to vote on this and Legislature is going to have a hay day with this issue. It will be different come next May. What the Governor is going to sign is a bill that says just say no until May 2015. He feels it is too soon to have this discussion.

It was suggested to wait until November after the vote to see what issues need to be addressed. It seems that Council is leaning towards placing dispensaries into light industrial areas and that area is mostly retail. Light industrial allows a host of commercial issues.

- Commissioner Sieckmann asked if there could be a square footage restriction on the facility. Answer: City Attorney Doughman stated at the end of the day a dispensary is a retail facility and restricting square footage is different than doing something like a pharmacy. There could be some reasonable square footage, safety and security regulations. If the state has not specifically prohibited a city from doing something, the City can regulate it. Even though there won't be changes until November there are still a lot of things that can be discussed. Colorado is state focused and he feels Federal is looking at them as a model more so than Washington.

Public Testimony: Shiloh Wilson, 825 E. Berkeley asked if it makes sense to wait until November. If you wait until November the Commission is in the same spot; no previous discussion and being faced with emergency decisions with Council again. The Mayor said they

are not trying to outright ban dispensaries, he said there is a process. That process involves the Commission. They asked the Commission to follow the process. It is important that the Commission do the job of looking at this issues and coming back with a recommendation.

Marijuana is people's medicine; for the patients he deals with daily it is there medicine. People have this view of the 60's of potheads, hippies, etc.; it is not who he sees. His patients are predominately over 40 and most over 50. They are dealing with chronic pain. It is not the young generation trying to get high that is going to medical marijuana dispensaries. He would like the Commission to have the conversations and come back with a recommendation.

Mr. Wilson submitted an article written by Dr. Sanjay Gupta, Medical Correspondent for CNN, who used to be completely against marijuana until he looked at the evidence. He doesn't hold the same view on recreational, whether it is legalized or not; however, the medical purpose behind these dispensaries is huge and the benefits are enormous. He asked if the City could do different regulations for medical versus recreational dispensaries. Answer: City Attorney Doughman stated no one has the authority now to say on recreational; however if recreational marijuana becomes legal there may be something that prohibits localities from doing anything or something in the middle because of the Federal background.

Chair Tamara Stempel stated when the time is right, there will be discussions and the issue will be thoroughly reviewed. There will be opportunities for public testimony. Until they find out what is coming up in November, she doesn't want to waste staff time, city attorney time, and anyone else's time until they have concrete information.

A Commissioner asked Mr. Wilson what qualifications are needed to open a dispensary. Answer: Mr. Wilson stated he doesn't prescribe or have anything to do with that side of it; right now he cultivates marijuana (a grower) and patients come in to get the product. He is reimbursed for his expenses. He counsels folks on the general knowledge that he has as he knows certain types are better for different conditions. There is so much they don't know about cannabis; there are a bunch of cannabinoids involved but they don't know what most of them do. THC is the cycle-active one that people get high off of. It is looking more and more like that is actually a very small part of what the actual good stuff is. They found that from patients who take marinol THC because they can synthetically make that. However it does not do what the cannabis can do. The State regulations are coming in to help standardize dispensaries because there are so many different business models. A lot of State regulations cover common sense things like put the product in a big safe, when you leave at night don't useable product all over the place, security cameras, commercial locking doors, etc.

Chair Tamara Stempel asked Mr. Wilson for his contact information so they can call on him if the Commission needed his help in the future. Mr. Wilson wrote his information on the sign-in sheet.

Mr. Wilson was asked if recreational marijuana becomes legal, what he sees happening to the medical side. Mr. Wilson stated they would probably follow more of what the Colorado model is because in Washington they didn't safeguard their medical patients.

5. Work Session: Gladstone Code Review. Commissioner Sieckmann reported he attended the City Council meeting and there was discussion on Chapter 2.28.040, Vacancies and Removals and what constitutes an excused absence. Commissioner McMahon stated it was suggested that the Council Guide Book be reviewed to see what is excused for Council. Assistant Administrator Morishita explained that the Council was more concerned about prior notification than the excuse. The entirety of Section 13 was to go to the City Attorney's office to be put in motion for the changes that the Planning Commission recommended except for the changes to the attendance for the Planning Commission.

Assistant Administrator Morishita stated if the Commission wishes to have any changes made to the code insofar as the Planning Commission attendance, then it should be addressed. Council felt there was nothing to be changed; they like the wording the way it is. Chair Tamara Stempel repeated the text that the Planning Commission approved, "A member who is absent from two consecutive meetings without an excuse approved by the Planning Commission is rebuttably presumed to be in nonconformance of duties and the City Council should declare the position vacant unless extenuating circumstances are determined at the hearing."

Assistant City Administrator Morishita reported that Council felt an excused absence is essentially anytime any of the Commissioners call in or notify staff ahead of time of an absence, unless it is an absolute emergency. Commissioner Pat McMahon stated the big point was to make sure the Commissioner is calling in ahead of the meeting so that others are aware he would not be there and there will be a quorum.

City Attorney Doughman suggested a change in the wording, "A certain number of consecutive absences, whether excused or not, may be the basis for the Planning Commission to recommend removal." Since the Commission is not trying to say definitely if that happens you will be tossed, but if a pattern develops and someone isn't making it and can't then there can be a recommendation to remove.

It was the consensus of the Commission to change the language in Title 2, Administration and Personnel, Chapter 2.28, Planning Commission, 2.28-040 Vacancies and Removal, "If a member is absent from three consecutive meetings with or without an excuse notification approved by the Planning Commission is reputedly presumed to be in nonperformance of duty and the City Council shall declare the position vacant unless extenuating circumstances are determined at the hearing."

Commissioner Sieckmann asked if staff could develop a map from the Clear Vision Code showing what it means. City Planner Glasgow stated there could be figures and definitions showing what things mean.

It was the decision of the Commission to discuss Clear Vision issues at the next scheduled Planning Commission meeting.

Other Business: City Planner Glasgow reported that he had a copy of the inventory of historical resources in Gladstone. It was done by the County in 1984 and is still valid.

Upcoming Commission Considerations: None.

Business from the Commission: None.

Adjourn:

Commissioner Craig Seghers moved to adjourn the March 18, 2014 Planning Commission meeting. Commissioner Kim Sieckmann seconded the motion.

Motion carried unanimously.

Chair Tamara Stempel closed the Planning Commission meeting of March 18, 2014 at 9:00 p.m.

Minutes approved by the Planning Commission this 12th day of MAY, 2014.

 _____, Tamara Stempel, Chair