
City of Sherwood, Oregon
Planning Commission
December 9, 2014

Planning Commission Members Present: **Staff Present:**

Chair Jean Simson

Commissioner John Clifford

Commissioner Russell Griffin

Commissioner Lisa Walker

Julia Hajduk, Community Development Director

Bob Galati, Civil Engineer

Brad Kilby, Planning Manager

Connie Randall, Associate Planner

Kirsten Allen, Planning Dept. Program Coordinator

Planning Commission Members Absent:

Vice Chair James Copfer

Commissioner Beth Cooke

Commissioner Sally Robinson

Council Members Present:

None

Legal Counsel:

Chris Crean

1. Call to Order/Roll Call

Chair Jean Simson called the meeting to order at 7:04 pm.

2. Consent Agenda

Commissioner Lisa Walker asked about approving the minutes for commission members that were not present. With four commission members present there would not be a quorum to approve the Consent Agenda if any members abstained from voting. The following motion was received.

Motion: From Commissioner Russell Griffin to hold the Consent Agenda to the next meeting, Seconded by Commissioner John Clifford. All present Planning Commissioners voted in favor (Vice Chair Copfer and Commissioners Cooke and Robinson were absent).

3. Council Liaison Announcements

There were none

4. Staff Announcements

Brad Kilby, Planning Manager, spoke of the Boards and Commissions dinner held the previous week. He said the City was accepting applications for a Planning Commission vacancy coming in January with a deadline of December 19, 2014. Resolutions for appointment would go to the City council at the first of the year. (Note: the deadline for Planning Commission applications was extended to December 31, 2014.)

Brad commented that a resolution to form the Community Advisory Committee and the Technical Advisory Committee for the Sherwood West project would go before council on December 16, 2014 and

said there was a call for people interested in being on the Community Advisory Committee. For public outreach a letter was sent to property owners in the Sherwood West area (available online) and an article was placed in the December Gazette.

For more information see the city website at www.sherwoodoregon.gov/sherwoodwest.

Brad informed the Planning Commission of upcoming public hearings in January 2015 and said there would be no Planning Commission meeting on December 23, 2014.

Chair Simson asked if there was an update for traffic calming on Lynnly Way and the process for citizens to address traffic issues within the city. Julia Hajduk, Community Development Director, replied that the city receives complaints through the Community Development Department and the Police Department. She said the result might be increased enforcement, and in the case of Lynnly Way additional stop signs were placed. Julia advised that there was no funding for neighborhood traffic calming and she was hoping funding for a program could be allocated in the next budget cycle. She thanked citizens who continued to come to Planning Commission and City Council meetings to keep the issue “on the radar” until a long term solution is in place. Discussion followed.

5. Community Comments

Eugene Stewart, Sherwood business owner, commented about the traffic going through Sherwood which he said neither the transportation system plans for the city, county nor the state addressed. He said he traveled 99W a lot and he felt that a bypass needed to be on the front burner for the city. Mr. Stewart commented on development and traffic that slowed down the commute. He said that Sherwood West would add to traffic and pointed out the changes in traffic control devices over the years. Mr. Stewart added that TriMet busses did not have adequate space to stop out of traffic and commented on mass transit. He suggested that traffic increases should be monitored on a regular basis and said part of the traffic issues stem from people working outside of Sherwood. Mr. Stewart asked why the city could not assist businesses in coming to the city and used Two Kilts Brewery as an example.

Robert James Claus, Sherwood resident, commented on the upcoming changes in the City Council. He said he talked to the Secretary of State’s office and commented on the removal from the city charter regarding the ability for Council members to talk to a staff instead of going through the city manager. Mr. Claus commented on undue influence and alluded to a pattern of such. He commented on prosecutorial discretion, saying it was a felony.

Mr. Claus stated case law of Amber Realty vs. Euclid, spoke of zoning and takings which led into comments about overreaching police powers and Ferguson, Missouri. He commented on free speech in Sherwood and said it has been systematically shut down. Mr. Claus asserted that if zoning was given in one instance it should be granted in another. He suggested the Planning Commission had violated the 14th amendment and had a chance straighten it out.

Tim Voorhies, Sherwood property and business owner of Steeltek, said he wanted a two way conversation with staff and the Commission. He said he saw a public notice at the US Post Office for code changes for Industrial properties. He asked how long staff had been working on the code changes. Chair Simson responded that there was a work session on September 9, 2014. Mr. Voorhies commented

that there were around one hundred industrial properties in the city, his research indicated that only one other industrial property was aware of the code change and that it was common courtesy to send a notice to each of those properties. He said it was wrong that there was no public notification to the people being affected. Mr. Voorhies suggested that the room would be packed by the other industrial property owners if they knew what was going on. Chair Simson said Mr. Voorhies' comments belong on another agenda item and asked him to make his comments after the staff report.

Mr. Voorhies said he was talking about public notices and property owners deserve the courtesy of a notice by letter, not by posting it in different locations. He suggested that the change in City Council members would bring honor back to the city. Chair Simson directed staff to address Mr. Voorhies' comments regarding public notice in the staff report.

With no other community comments, Chair Simson turned to new business.

7. New Business

a. Public Hearing – PA 14-02 Sherwood Zoning and Community Development Code Update

Chair Simson read the public hearing statement and reminded that the Planning Commission would be forwarding a recommendation to City Council which would give another opportunity to provide testimony. PA 14-02 was a City initiated legislative amendment.

Connie Randall, Associate Planner, gave a presentation (see record, Exhibit 1) and said the amendment to the Sherwood Zoning and Community Development Code seeks to correct errors, increase consistency between sections of the code, consolidate definitions, and clarify code language. She said there were two substantive changes to the code.

Connie reviewed that the first substantive change was to Chapter 16.31 which proposed to remove the requirement to obtain a Conditional Use Permit for incidental retail sales in the Light and General Industrial zones. The effect would be to treat Light Industrial (LI) and General Industrial (GI) zoned properties the same as properties zoned Employment Industrial.

Connie described the second substantive change as a change to Chapter 16.120 which proposed to increase the amount of monetary assurance of full and faithful performance, to those seeking to develop land, from 100% to 125% of the estimated cost of improvements.

Note: These items are described in more depth later in the staff report.

Connie reminded that the Planning Commission had held three work sessions regarding the code amendments:

- April 8, 2014 – Potential code amendments were part of a number of topics open for comment from the public.
- September 9, 2014 – Staff organized comments heard from the April 8th work session and comments gathered by staff from applicants, phone inquiries, and staff review.
- October 28, 2014 – Amendments were clarified and prioritized. Language was reviewed again and staff received direction from the Planning Commission and comments from the City Attorney.

Connie recounted that public notices were posted in five locations and online November 18, 2014, an article was placed in the November/December issue of the Sherwood Archer, and a public notice was published in The Times on November 27, 2014 and December 4, 2014 and in the December 2014 edition of the Sherwood Gazette. She said this was a Type V application and all noticing requirements were met. Connie informed the Commission that a notice to the Department of Land Conservation and Development (DLCD) was sent on November 4, 2014 and Agency Notice to surrounding and affected agencies was sent on November 17, 2014.

Connie reported that staff had received comments from Oregon Department of Transportation (ODOT) and the DLCD asking if the Transportation Planning Rule (TPR) consistency would be addressed. No public comments were received.

Connie explained that two findings were required for text amendments:

16.80.030.A – Text Amendment Review

An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

16.80.030.C – Transportation Planning Rule Consistency

1. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

Connie explained that the proposal sought to amend chapters of Volume 3 of the Zoning and Community Development Code of the Comprehensive Plan and did not include changes to the goals or policies. She said there were no additional standards other than ensuring that the language is consistent with the existing Comprehensive Plan and applicable rules.

Connie summarized that there was a table in the packet containing the proposed text amendments, as Exhibit A, containing 52 items or changes. Each table item listed the item and an explanation of what had been proposed and why. She reiterated that there were two substantive changes with the remainder being administrative updates intended to correct scrivener's, formatting, and citation errors. Connie said the changes would consolidate definitions and provide clarity to the code. For example in a few instances the code refers to sections that do not exist or have been renumbered through previous amendments. Connie disclosed that in a prior edit the publisher inadvertently inserted section 16.90.30 between section 16.90.20.B and 16.90.20.C which had caused a lot of confusion.

Connie added that where possible the word "shall" was eliminated and code language was written in a more direct and active voice as suggested by the city attorney during the October 28, 2014 work session; an action supported by the Commission.

Connie said some changes had been made to the proposed amendments since the October 28, 2014 work session and referred to a memo provided to the Commission (see record, Exhibit 2). She discussed

the elimination of Item 3 from the proposed edits as it would put a duplicate definition for “Diameter at Breast Height” in the code and the consolidation of Items 33-34 and Items 39-41. Connie explained that the verbiage remained the same, but the modifications resulted in a change in the item numbers from previous work session packets.

Connie pointed to Item 37 on page 63 in the packet and said the verbiage should read “yes; 500-1000 square feet” in the row titled Open Space Provided for Public Use. She pointed to Item 39 on page 56, and said there should be a period on the end of footnote 3.

Connie moved to Item 10 on page 49 of the packet. She explained that this was Section 16.31.20 or the use table for industrial zones and said “that incidental sales or display showrooms associated with a permitted use and limited to a maximum of 10% of the total floor of the business” were a conditional use item in the Light Industrial and General Industrial zones. She indicated that the proposal was to change incidental sales to a permitted use and to eliminate the requirement for a Conditional Use Permit; treating the properties that are zoned Light Industrial and General Industrial the same as the Employment Industrial zoned properties. Connie said there was a footnote that limited the size to 5000 square feet in a single outlet and no more than 20,000 square feet in multiple outlets in the same development project. This is consistent with metro’s Urban Growth Management Functional Plan Section 3.07.430 which allows for incidental retail as long as it is restricted in the current manner.

Commissioner Griffin repeated the requirements for clarification and commented that the use would now be permitted outright for Light and General Industrial. Connie confirmed and clarified that the limit was 10% or 5000 square feet, whichever is less. Chair Simson added that the current chart used to be a narrative, and before it was changed to a chart the retail sales had been allowed. Connie confirmed that prior to 2012 incidental retail sales with limitations were allowed in the LI and GI zones and this amendment restored the property rights prior to 2012. Connie added that regarding the Transportation Planning Rule the Engineering Department reviewed and determined that there would not be an increase in the amount of incidental retail sales because it would be currently permitted through a conditional use permit and would not significantly impact transportation facilities (see Planning Commission Packet, Exhibit B).

Connie described the second substantial change as, Item 44, Section 16.134.010.A in the Subdivisions section, dealing with the performance security. She stated the amount that the city would recover from a performance bond would change from 100% to 125%. Connie reported that it was very rare that the City has to pull a performance bond, but in the instance that it must there were administrative costs that are not recovered; when a developer does not complete a project and the City has to complete a project there is an additional burden to the city and the taxpayers that is not recovered. She explained that a previous amendment changed section 16.108.020.D.2 (also dealing with performance bonds) to the 125% performance bond so the change was also cleaning up inconsistencies in the code.

Chris Crean, City Attorney added that if the project is a public improvement, the City has to pay prevailing wage and go through a public contracting process, and the cost to the city for the same improvement would be higher; another justification to go to 125%.

Connie concluded by stating that based on findings of fact in the staff report and presentation in the Public Hearing, and the conclusion of law based on the applicable criteria, staff recommended the Planning Commission forward a recommendation of approval of PA 14-02 to the City Council.

Chair Simson commented that in the open house work session held in April 2014, the code amendments were not as popular a topic as medical marijuana and Old Town standards. She said there were comments made about how the code needed improved and many of those where substantive changes where the public wanted the Planning Commission to change or improve a process.

Chair Simson indicated that staff recognized seventy nine code errors which were brought to the Planning Commission on September 9, 2014. She explained that the Commission decided that was too many changes for the citizens to look at so it was split into three chunks. The first chunk was to address scrivener's errors and inconsistencies within the code that were causing trouble with staff and the two substantive changes as discussed by staff. Chair Simson disclosed that there are more changes that will occur such as the process for a land use in Old Town so the right thing can be done more easily. She expressed an expectation that more people would attend the hearings for more substantive code changes and said Staff had gone above and beyond for noticing as the Planning Commission had asked staff to publicize the proposal as much as possible.

Brad commented on Mr. Voorhies' assertion that every industrial property should be sent a letter and declared that none of the uses allowed currently were changed or further restricted; in fact the restrictions were reduced. He said there was no requirement to provide a Ballot Measure 56 notice, which would have required a notice to each individual property owner, but because the changes were minor scrivener's errors and changes intended to make the code more consistent, they did not send letters to individual property owners. Brad informed that when we get into the next phase and there is more policy related content that affects property owner's ability to do things on their property, the City will be required to provide Ballot Measure 56 notice to individual property owners affected by the regulations. He reminded that it is a great cost to the City and the taxpayers, so when it is required, it will be done. Brad commented that notice was provided in accordance with state law and over above what is required by state law in Sherwood.

Chair Simson asked if there were additional questions on the process. None were received.

Chair Simson asked for questions from commission members.

Commissioner Griffin asked if the 125% bond insurance had been in place for a while, adding that 25% sounded expensive. Brad responded that it was common practice in other jurisdictions and was not specific to Sherwood. He reminded that a project may take place over a couple of years and the cost of materials, administration, and labor could go up and governments have to pay prevailing wages so the cost of the City doing development can be significantly more than a private developer and the 25% increase is intended to capture those additional costs.

Chris Crean added that it also matches Sherwood up with other jurisdictions across the metropolitan area so developers who build in multiple jurisdictions will face similar regulations in multiple places. To extend uniformity is a benefit as well.

Commissioner Griffin turned to page 47, 2b, Section 16.50.010.A. He asked what it meant to strike out the verbiage with red and replace it with “reserved”.

Connie responded that it was a place holder and there will not be a section 16.50.010.A; rather than renumbering all of the code, it holds the spot open.

Commissioner Griffin turned to page 51, 16g, Section 16.10.020, and read the definition “Hedges: a line of closely spaced vegetation specifically planted and trained ...” and asked if the word “trained” was correct. Commissioner Clifford (a landscape architect) responded that training was an acceptable definition. Connie pointed out that it was not new language being proposed, but the current language in Section 16.58.20.B and staff was consolidating the definition into the definition section.

Commissioner Griffin turned to page 61, the Design Review Matrix. Chair Simson pointed out that the chart was created from the existing language. Commissioner Griffin commented that it was much easier to understand and under the Building Design it listed 21 points possible with a minimum of 12 points required. He gave examples of reducing the glazing as part of the design and increasing in another area of the matrix or deciding not to screen the roof and asked if that was what the City wanted. Connie responded that the matrix did not change the current system and only changed from in-line text to the matrix format. Brad added that this came up in the Sherwood Industrial Park II hearings where the applicant was not meeting all the standards and said there was an option that if the applicant did not meet all the standards they could come before the Planning Commission for an architectural review. Brad said if they choose to go through the standard approval process they have to meet a certain number of points. Discussion followed. Connie reminded the Commission that now that the code language was easier to read and the implications more understandable the standards may need to be reviewed regarding the kind of development the citizens wanted and to propose changes. She stated that staff had not proposed any changes, but tried to make easier to understand what the code required.

Chair Simson turned to page 66, Section F, Time Limits and asked about the verbiage for site plan approvals between 2007 and 2009 that received an extension to December 31, 2013 and asked if it should be removed or remain. Connie replied that the code is written in the active voice and there could be a case to leave the historical reference in the code. She suggested that it could be changed from “are extended” to “were extended”, but if so it would be only time in code where past tense is used; staff’s intent was to keep the code and not make the change. Chris Crean suggested the verbiage be “A site plan approval granted on or after January 1, 2007 through December 31, 2009 is extended until December 31, 2013.” Discussion followed and the Planning Commission accepted the suggestion by Mr. Crean.

Commissioner Griffin pointed out formatting issues on page 66 for percentages in Section 16.90.030.A.1.a., staff was directed to use the format of *ten (10)*.

Commissioner Griffin turned to page 67 and asked if the equivalent acknowledgement of a Clean Water Services provider letter could be an email. Brad responded that it could be an email or an official letter on letterhead.

With no other questions for the Commission, Chair Simson asked for public testimony.

Eugene Stewart commented that the Planning Manger's explanation helped with the confusion about notices, but it was his understanding that with any changes made to the text of the code the affected property owners had to be notified. He said the notice said it affected the whole city. Mr. Stewart agreed that it would cost a lot of money to send notices out, but it seemed like there should have been a notice. He questioned how Goal 1 was met, said maybe he was reading it wrong, but it seemed like the Commission needed to sit down and have a session on this open to the public. Mr. Stewart said he and the Planning Manager disagree on Goal 1, but the Planning Commission was not doing what the Planning Manager points to for Goal 1. Mr. Stewart asked why the citizens' involvement plan was continually ignored, said it should be written down someplace, and we should see if it is being done.

Mr. Stewart commented that the Planning Commission did not understand why the public did not get involved and answered that it was because of the way it is done. He said a person is given four minutes to speak, but might have a twenty page outline to discuss and the Commission might glance at it and push it aside. Mr. Stewart suggested that the Planning Commission needed to take public opinions into the process before a formal hearing and receive comments from the general public during a work session. He expressed confusion that the decision was made during the work session, because he thought the Commission was not supposed to make a decision until the public hearing. Mr. Stewart commented that the Commission is not supposed to talk to people before the meeting, and asserted that it did not work to have the public talk to the Planning Commission for four minutes. He said the time needed to be expanded, especially when there are good thoughts to present and added that the public needed feedback from the Planning Commission on what their thoughts were. Mr. Stewart commented about having a hearing in one of the busiest seasons of the year and suggested avoiding December. Mr. Stewart commented that Goal 1 says there is supposed to be a committee for citizens involvement and he would like to see the minutes of those meetings that are supposed to be held once a year. He did not think there had been a meeting held which has been required by state law for 40 years. Mr. Stewart maintained that if the City looked at its citizen involvement, there would be more participation.

Tim Voorhies, Sherwood property and business owner of Steeltex Industries, said it was interesting that Connie said that two public agencies commented and no citizens. He said he took that as fact that there was no public notification on it, because the people that I talked to were very concerned about what was going on with it, but they said the city was going to do what the city was going to do and our voice does not matter. Mr. Voorhies remembered a conversation with one of the city's staff, under a previous mayor's regime, who said "Tim, you don't understand the public process, all the decisions are made prior to any public meeting. If you don't like it, move your shop out of town". Mr. Voorhies commented that the bare minimums for the public notifications was met and said they fought hard to get the 1000 foot radius for zoning changes and annexation notifications and that was why he fought against Brookman. Mr. Voorhies explained that he was not notified, but was within the 1000 feet, but staff said they followed state rules because the property was not within the city limits yet so they did not notify out to 1000 feet.

Mr. Voorhies communicated that he did not trust the city one bit. He added that he did not know if this was the proper place to mention it, but the City was going to have a devil of a time passing any more housing to be annexed into this city from what he has heard around town. We don't want to get bigger. Mr. Voorhies asked if Sherwood West was being annexed to keep work ahead of staff and to keep the cash flow coming in. He enquired about spending the money ahead of getting the area annexed in and suggested annexation prior to planning as to not waste the money planning for something that probably will never get voted in to the city.

Mr. Voorhies commented that it was no surprise that more people were not present, because it is like hitting your head against the wall. He gave an example of when the Planning Commission did a great job on the cannery site, because the Commission listened to the public, but City Council threw the Commission under the bus. He said it took him back to the comment that all decisions were made prior to any public meetings. Mr. Voorhies asked the Commission if staff was leading them down the path that they wanted to travel, that he did not know, but he did not trust them.

Robert James Claus, Sherwood resident, commented regarding Chair Simson's remark about the most exciting topic being marijuana and said the Planning Commission did not understand why the public was unresponsive. He spoke about the annexation and mayoral elections. Mr. Claus commented that the process stinks and said the Planning Commission did not know what the words procedural due process meant. He alluded to the city attorney's experience and commented about putting in a pipeline, annexing 1000 acres, and putting in a junk apartment behind the scenes. He commented on councilman stating that it was not Walmart and without a response from the Planning Commission.

Mr. Claus said he was the only person in the room that has had the US Supreme Court talk about a code he wrote and said he could not work with staff because of their arrogance. He said Mr. Crean declined to accept his help before billboards were placed in the city and that was how the city got billboards.

Mr. Claus commented that it did not make a difference what was said to the Planning Commission that follows a fee driven staff because there is not enough money to pay them. He said the Planning Commission would go with a City Council that thinks they can keep stealing from the landowners every time they turn around and pay for something that we don't want.

Mr. Claus spoke of the Langer Farms development, questioned design standards, and commented that there were not any design standards. He repeated that people were not in attendance and suggested that it was because it did not make a difference. He said he did not care about medical marijuana and the Planning Commission was wrecking the city step by step. Mr. Claus spoke of police powers and asked the Commission to continue for two weeks for the new City Council. He said the Cannery Apartments were embarrassing with three quarters of a parking space and fifty units to the acre because someone wanted to turn this into downtown Portland.

Chair Simson called for a recess at 8:22 pm and reconvened at 8:26 pm.

Chair Simson asked for comments from staff regarding issues raised by public testimony.

Brad Kilby, Planning Manager, responded that the application was a legislative process and not a quasi-judicial process and the Planning Commission was not obliged to leave the record open. He noted that the matter would go before the newly seated City Council for those who expressed concerns. Brad reminded that there were not any substantive changes that caused him concern and said he did not hear any testimony applicable to the proposed amendments that he could respond to. Julia Hajduk, Community Development Director, added that the code update would be heard at the January 20th meeting and the recommendation should be forwarded to that City Council meeting.

Chair Simson indicated that the only comment she heard addressing the code amendments before the Commission were concerned with notification requirements which both the person testifying and staff showed that the minimums were met; it was posted in all the regular locations and there have been many work sessions and opportunities for people to see and read about.

Chair Simson asked for the Commission's desire regarding PA 14-02. Commissioner Walker commented that the matter did not need to be left open, the commission has been working on it for a long time, and there was nothing substantial enough in this phase. Commissioner Clifford agreed, said he had attended most of the meetings, and that the Commission had gone through the amendment line by line to clarify all of the terminology.

Chair Simson closed the public hearing and the following motion was received.

Motion: From Commissioner Lisa Walker to forward a recommendation of approval to the City Council for PA 14-02, Sherwood Zoning and Community Development Code Update, based on the applicant's testimony, public testimony received and analysis, finding and conditions in the Staff Report with the proposed minor modifications discussed this evening. Seconded by Commissioner Russell Griffin. All present Planning Commissioners voted in favor (Vice Chair Copfer and Commissioners Cooke and Robinson were absent).

8. Planning Commissioner Announcements

Commissioner Walker asked about the Planning Commission position held by Sally Robinson. Brad Kilby replied that applications for Commissioner Robinson's position were being accepted and Commissioner Clifford's position would be open in March 2015. Brad indicated that staff may keep applications received for this recruitment and ask for Planning Commission applications for a shorter timeframe for the open seat in March. He encouraged anyone wanting to be part of the process to get involved and committed to contacting an applicant from the previous round of recruiting to see if he was still interested.

9. Adjourn

Chair Simson adjourned the meeting at 8:33 pm.

Submitted by:

Kirsten Allen

Kirsten Allen

Planning Department Program Coordinator

Approval Date: January 13, 2015