PLANNING COMMISSION MINUTES

February 7, 2001

CALL TO ORDER: Chairman Vlad Voytilla called the workshop to order at 6:40 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Chuck Heckman, Eric Johansen, Brian Lynott and Dan Maks and Alternate Planning Commissioner Russell Davis.

Community Development Director Joe Grillo, Development Services Manager Irish Bunnell, Planning Services Principal Planner Hal Bergsma, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

WORK SESSION:

I. Introductions:

At the request of Development Services Manager Irish Bunnell, everyone present introduced himself.

II. Procedure and Conduct Issues:

Assistant City Attorney Ted Naemura distributed an outline of the topics to be discussed regarding procedure and conduct issues, including applicable information. He discussed the following topics:

A. Distinctions between quasi-legislative and quasi-judicial hearings;
B. Requirements for an impartial hearing;
C. Personal liability issues;
D. Continuance issues for quasi-judicial hearings;
E. Substantial evidence -- some observations;
F. Admitting evidence and conducting hearing; and
G. New appellate decisions.

Commissioner Maks discussed past and present issues regarding quasi-legislative and quasi-judicial hearings and the 120-day rule.

Mr. Bunnell pointed out that the 120-day rule does not apply for a Comprehensive Plan Amendment.

Commissioner Maks observed that any application concerning an applicant that is not the City of Beaverton involves a quasi-judicial hearing.

Community Development Director Joe Grillo emphasized that a big factor involves an application that is site specific.

At the request of Chairman Voytilla, Mr. Naemura explained that the 120-day rule process involves permits and rezones, but not Comprehensive Plan Amendments (CPA). He emphasized that a rezone application submitted in conjunction with a CPA is also exempt from the 120-day rule. He explained that when the 120-day rule is applicable, an applicant's money has been invested and that time is money, adding that this State requirement motivates the City to make any final decision, including appeals, within 120 days. He further clarified that if this deadline is not met, the applicant can ask a circuit court judge to issue a *Writ of Mandamus*, requiring that the City approve the requested applications and issue permits. The burden is then on the City to explain why a *Writ of Mandamus* should not be issued.

Commissioner Maks emphasized that all appeals and all required notifications must be accomplished within this 120 days.

Mr. Bunnell pointed out that there could be a continuance at the request of the applicant.

Commissioner Maks mentioned that time restraints can create a lot of difficulty, adding that even one week could be critical.

Mr. Bunnell commented that the current appeal involving "The Hoop" has caused some concern with the 120-day deadline.

On question, Commissioner Maks advised Commissioner Lynott that the length of time for a continuance varies, depending upon the applicant.

Mr. Naemura discussed an issue involving the City of Sandy in which the City had been misled, preventing them from complying with the 120-day deadline. He pointed out that although the ruling had been in favor of the City, the applicant has filed an appeal on the decision.

Mr. Grillo commented that an exception to the 120-day rule involves a situation in which the total decision involved does not fall completely within one jurisdiction.

Mr. Naemura discussed what he referred to as a *Super Permit*, which he described as a single application and permit encompassing all permits and allowances necessary for a proposed project. Observing that the time constraint for such a permit is 240 days, rather than 120 days, he noted that this has not yet been done in the City of Beaverton.

Commissioner Bliss referred to a new business located on Tualatin Valley Highway in Aloha, observing that the applicant had originally indicated that this *Mr. Peeps* strip joint would be a furniture store.

Commissioner Maks pointed out that an allowed use must be approved.

Mr. Grillo observed that this involves an area in unincorporated Washington County.

Commissioner Bliss expressed his opinion that identifying the application as a furniture store originally had been misleading and subversive, noting that the applicant had realized that the neighbors would be unlikely to present any opposition to a furniture store.

Commissioner Maks agreed that this action had been sneaky.

Mr. Grillo pointed out that any decision must be based upon relevant criteria on what is a permitted use, adding that there may be building permit issues connected with occupation.

At the request of Commissioner Heckman, Mr. Naemura stated that a record could be held open for varying purposes.

Commissioner Heckman expressed concern with situations involving decisions while the record is still open.

Commissioner Maks mentioned that Henry Kane had taken the opportunity to hold the record open and then deluged the Commissioners with additional information.

Commissioner Heckman emphasized that a decision should not be made while the record is open.

Commissioner Maks pointed out that an applicant is not required to inform the Commissioners of the content of further information they intend to provide.

Mr. Naemura commented that it is still possible to request this information.

Commissioner Maks emphasized that an applicant sometimes "shines on" the City and creates problems with the 120-day deadline, adding that they have been *seven dayed to death.*

Observing that there is a great deal of frustration with the system and different time frames, Mr. Grillo pointed out that only the state-mandated 120-day rule matters and that the City Council is generally very generous with their appeals.

Mr. Naemura pointed out that upon request, it is necessary to either grant a continuance or leave the record open.

Commissioner Maks observed that sometimes it is better to either approve or deny and allow the applicant to go through the appeal process.

Mr. Naemura mentioned that it is possible for an applicant to pad the record.

Commissioner Barnard discussed situations in which an applicant has schemed to keep the record open by providing phony opposition to make this request.

Mr. Grillo expressed his opinion that an applicant should provide some sort of sense of the situation, adding that it is necessary to probe the circumstances and that the applicant should be able to respond with credibility.

Commissioner Heckman mentioned a *de novo* hearing.

Commissioner Maks stated that the City Council does not take this action officially on the record ninety percent of the time.

Commissioner Heckman commented that the City Council indicates that they do.

Commissioner Maks stated that they say so but don't.

Mr. Naemura pointed out that when an applicant requests a continuance, it is necessary for them to waive the 120-day rule.

On question, Commissioner Maks advised Commissioner Lynott that law requires that a record be left open for a seven day minimum or that the Public Hearing be continued.

Commissioner Bliss observed that the 120-day rule begins from the time an application is deemed complete.

Mr. Naemura referred to page 11 of the packet that he had distributed, specifically E. Responsibilities of the planning commission as a body. Observing that this had originally been prepared by Adrianne Brockman of the City of Portland, he pointed out that he had made several additions to this information that sets fort the responsibilities for a hearing and a decision.

IV. Development Code Revision:

Mr. Bunnell discussed revisions to the Development Code involving Chapters 40 and 50, adding that he anticipates that there will be work sessions in April 2001, prior to a tentatively scheduled Public Hearing date of May 16, 2001.

Mr. Grillo pointed out that this involves policy choices, adding that it is necessary to allocate resources as effectively as possible. Pointing out that he expects very few easy projects in the future, he discussed what he referred to as warfare over remaining available land.

Mr. Naemura discussed the 120-day rule, expressing his opinion that it provides a strong pro-applicant rule. He mentioned that this rule makes it necessary for an applicant or an opponent to either raise it or waive it.

Mr. Grillo commented that any revisions to the Development Code need to be made in a clear and efficient manner.

Commissioner Barnard expressed his opinion that without the proper infrastructure, nearly all applications received for projects could be denied over transportation issues.

Mr. Grillo advised Commissioner Barnard that this is not true, noting that the Traffic Impact Fee provides that an application either provide adequate infrastructure or pay the applicable fee.

Commissioner Barnard referred to a recent subdivision application, noting that this area is developed to its maximum potential.

Commissioner Maks pointed out that this had involved an allowed use and that the subdivision application had only come before the Planning Commission because of the variances requested by the applicant.

Mr. Grillo explained that while not everyone is in agreement with the level of service, all roads have a level of service. He noted that off-site safety issues and what is in the code need to be considered.

Planning Services Principal Planner Hal Bergsma emphasized that an application could not be denied based upon traffic congestion.

Commissioner Maks mentioned that traffic issues are relevant on some applications but not all.

Mr. Grillo commented that it is necessary to rule on each individual case and trip generation.

Mr. Bunnell stated that the Traffic Impact Fee is assessed at the time of the Building Permit.

Commissioner Maks discussed concurrency issues, clarifying that necessary capital improvements should be in place at the time impact occurs.

III. Ballot Measure 7:

Mr. Naemura mentioned that the court hearing on the constitutionality of Ballot Measure 7 had been held on Tuesday, February 6, 2001, adding that although not everyone concerned had managed to be included in the lawsuit, there should be a letter providing a ruling in the near future.

Mr. Grillo explained that a process for responding to Ballot Measure 7 claims had been adopted locally by ordinance, adding that a judgement must be rendered within ninety days. He noted that because Community Development has been designated as the *Keeper of Measure 7*, there may be consequences for other customers and applications that do not involve Measure 7, which takes precedence over other matters.

Mr. Naemura clarified that Measure 7 displaces the statewide planning goals with one policy, adding that monetary value must be maximized.

Mr. Grillo explained that the Planning Commission could not entertain issues regarding Measure 7, which is not relevant criteria for applications.

Commissioner Maks pointed out that based upon the Development Code, Measure 7 issues would go before the City Council.

Mr. Naemura mentioned that it is necessary to prove reduced property values to be compensated under Ballot Measure 7.

Commissioner Maks stated that development review criteria are not concerned with property values.

Mr. Naemura mentioned that he is open to any suggestions regarding the drafting of land use orders.

Observing that six separate Land Use Elements had been approved by the Planning Commission to be updated, Mr. Bergsma commented that these applications are now in the Consent Calendar process on the City Council level.

Mr. Naemura expressed concern with potential problems created if it is determined that Measure 7 is retroactive, and Mr. Grillo agreed with the potential exposure and risk to the City of Beaverton.

V. <u>Regional Planning Initiatives</u>:

Mr. Bergsma distributed information regarding a workshop entitled *Managing Growth: Where have we been? Where are we going?* scheduled by Metro on Wednesday, February 28, 2001, from 5:00 p.m. to 8:00 p.m. He discussed the recently adopted Housing Element, adding that there should be amendments responding to Metro's amendments. He discussed affordable housing and housing for the elderly and people with disabilities and referred to seven issues to be considered in the planning process.

Chairman Voytilla mentioned Metro's authority on affordable housing.

Mr. Bergsma pointed out that this has been a long process, emphasizing that it is necessary to provide housing that is affordable to the people with the lowest incomes. He suggested that this issue could initially be discussed in a work session.

Commissioner Maks discussed the population growth projections for the five, ten and twenty year horizon, as presented by Metro and Portland State University, expressing his opinion that some of those submitted by Metro had been ridiculous and presumptuous. He expressed concern with providing employment for future growth, traffic projections, economic development and facilities planning. On question, he advised Chairman Voytilla that the projected school population is generally within one percent.

Mr. Bergsma discussed Metro's Regional Goal 5 efforts, including concern with endangered species and water quality.

Mr. Grillo noted that Metro Growth Management Director Andy Cutugno and his staff should be credited for their efforts.

VI. Update UPAA with Washington County:

Mr. Grillo described a letter that had been signed by Mayor Drake concerning changes on the Urban Planning Area Agreement (UPAA).

Mr. Bergsma pointed out that the UPAA is thirteen years old.

Mr. Bliss discussed a conversation he had with Mr. Whitworth regarding annexation of county property that is not located near the current City of Beaverton boundary, questioning whether this "cherry stemming" is a common practice

Mr. Grillo commented that a property could be annexed into the City of Beaverton if the property owner is willing and if it is located within the Urban Service Boundary. On question, he advised Chairman Voytilla that he expects that this update would be completed during the latter part of the summer and that it should be voted on by the Board of Commissioners at the end of October, 2001.

VII. Finalize East Beaverton USA Agreement:

Mr. Grillo described the western boundary of the EBUSA as following 170th Avenue and 175th Avenues, through Bethany Boulevard. He added that the City's ultimate western urban services area boundary would not be determined until the Beaverton-Hillsboro Urban Services Agreement was finalized. With a new Mayor and some new Councilmembers in the City of Hillsboro, he is hopeful for fresh discussion of this issue.

Commissioner Bliss emphasized that he is concerned with problems associated with cherry stemming.

VIII. Urban Reserve Area 65 Annexation Agreement:

Mr. Grillo discussed this area which is located near the Portland Community College Rock Creek Campus, adding that there is an overall commitment involving bringing this area into the Urban Growth Boundary. He noted that the 109 acres is expected to provide 700 dwelling units. The City has agreed to enter into an agreement with the property owners to annex the area within the next ten years.

IX. The Round:

Mr. Grillo reported that the issue is rescheduled for trial before a federal judge on Friday, March 9, 2001, adding that at the time of the February hearing, the judge authorized that the current developer be given additional time for due diligence with a new developer. He mentioned that the developer needs to come up with $4.8 Million or the development would most likely be deeded to the City of Beaverton for $2.4 Million.

Commissioner Maks questioned whether the applications would require approval by the Planning Commission.

Mr. Grillo advised Commissioner Maks that some of the approvals have already been vested due to progress in the development, adding that some of the Board of Design Review approvals had actually lapsed.

Commissioner Heckman questioned how much of the money collected would be applied toward the liens on the development.

Mr. Grillo explained that part of the plan is very specific about who receives what money, right down to the last nickel, adding that the creditors have voted.

Mr. Bunnell questioned how much money is actually owed to creditors on the development.

Mr. Grillo clarified that this depends on who is asked, billing and substantiation, and referred to padding that can occur in bankruptcy deliberations.

Chairman Voytilla questioned the integrity of the buildings currently existing on the site.

Observing that the integrity of the buildings located on the site is still good, Mr. Grillo pointed out that these buildings have received the minimum heating necessary throughout the bankruptcy process.

X. <u>Open Discussion</u>:

Mr. Naemura referred to the proposal to discuss any potential revisions to the By-Laws, expressing his opinion that cell phones should not be permitted at Planning Commission Meetings.

Mr. Grillo advised the Planning Commissioners that a great deal of information regarding the City of Beaverton, planning and land use is located on the City's internet site.

Commissioner Maks referred to page 7 of the By-Laws, specifically an issue regarding voting, observing that a motion for reconsideration of Conditions of Approval is only permitted at the same meeting. He expressed concern with situations in which this had created problems, adding that the current By-Laws would not even permit a suspension of the rules so such an issue could be reconsidered at the next Planning Commission Meeting.

Commissioner Heckman stated that a motion could be amended at the next Public Hearing or Meeting.

Expressing his concern with potential problems and public embarrassment, Commissioner Maks requested that Mr. Naemura determine what would provide for legal action to modify Conditions of Approval.

Commissioner Bliss referred to Section 8 of page 7,.and discussed items that are continued to the next meeting due to time constraints. Observing that each week's Agenda only includes items that could reasonably be covered in one meeting, he expressed concern with adding items to an already full schedule.

Mr. Bunnell said that all items are put on the agenda in the order they become complete applications and advised Commissioner Bliss that an item is only continued if there is not sufficient time or at the applicant's request.

Mr. Grillo expressed his opinion that it would become necessary for the Planning Commission to become more efficient, adding that a consultant should be able to make an adequate presentation in 30 to 45 minutes.

Commissioner Bliss discussed his concerns with the credibility of individuals who refer to themselves as experts.

Chairman Voytilla advised Commissioner Bliss that the Commissioners have questioned the backgrounds of these individuals, adding that he is satisfied to see a favorable Staff Report and Conditions of Approval that he can live with.

Mr. Naemura mentioned that it is sometimes difficult to deal with both consistency and time management.

Chairman Voytilla commented that it is necessary to adhere to applicable criteria, emphasizing that this criterion is neither general nor broad-based.

Commissioner Maks mentioned problems encountered when an applicant fails to provide proper support, particularly Traffic Engineers.

Mr. Grillo advised the Commissioners that funding is available in the budget to allow them to attend applicable workshops.

Commissioner Barnard expressed his opinion that it is often difficult for a member of the public to provide adequate testimony in the three minutes they are allotted. He also felt that Public Hearing time could be reduced if Commissioners limited their questions to issues that were particularly relevant.

Commissioner Maks advised Commissioner Barnard that three minutes is often more than members of the public are allowed at other Public Hearings, adding that he is personally happy when he is even allowed to testify for three minutes.

Mr. Grillo pointed out that any individual providing expert testimony should be requested to submit written information and documentation.

Observing that sometimes everybody claims to be an arborist, Chairman Voytilla questioned whether a sign could be located by the testimony cards advising that documentation must be provided.

Mr. Grillo pointed out that expert information is often contradictory.

Commissioner Maks pointed out that expert testimony could not be substantiated without the proper evidence or documentation.

Mr. Grillo advised Commissioner Barnard that the Planning Commission could require anyone testifying to provide a "brief" summary of their written testimony, adding that once the offer has been made, it is their problem if they do not take advantage of the opportunity.

Commissioner Maks stated that he has concern with an individual appealing on the basis that the Planning Commission did not hear or consider testimony they provided.

Mr. Grillo pointed out that there should be a distinction between expert and non-expert testimony or opinion

MISCELLANEOUS BUSINESS:

The meeting adjourned at 9:45 p.m.