

The Junction City Planning Commission met in regular session on Wednesday, September 21, 2022, at 6:30 p.m. in the Council Chambers at City Hall, 680 Greenwood Street, Junction City Oregon and remotely via internet and phone.

**Present were** Planning Commissioners, Jeff Haag (Chair), James Hukill (Vice-Chair), Doug Easterday, Chris Miles, and Jack Sumner; Commission Alternate, Jesse Newman; Contracted Planning Services, Gary Darnielle, Principal Attorney, Lane Council of Governments; City Attorney, Rebekah Dohrman; Public Works Director, Gary Kaping; and Planning Secretary/Technician, Tere Andrews.

**Absent:** Commissioners Jim Creech (excused), and Cindy Montgomery

### **1. OPEN MEETING**

Chair Haag opened the meeting at 6:30pm and led the Pledge of Allegiance.

### **2. CHANGES TO THE AGENDA**

Technician Andrews stated the preliminary subdivision application for Maple Springs, file SUB-22-04, would be reviewed at the October 19, 2022, Planning Commission meeting as additional information had been submitted and staff needed time to review.

### **3. PUBLIC COMMENT (FOR ITEMS NOT ALREADY ON THE AGENDA)**

None

### **4. PLANNING COMMISSION TRAINING**

City Attorney, Rebekah Dohrman presented a training which covered the following topics:

1. Public Hearing Procedures
2. Importance of Decisions Based on Findings
3. What are Sufficient Findings?

Attorney Dohrman explained there were four types of land use applications:

- Types I were non-discretionary decisions, examples were: lot line adjustments, and development permits without flood zones (staff decisions). Final subdivision and final partition plans were also Type I reviews however these came before the Planning Commission.
- Type II, Administrative actions which required some discretion. Examples included preliminary partition plans and expedited land divisions.
- Type III, Quasi-Judicial actions were discussed in more detail later.

- Type IV, Legislative decisions were decisions made by the City Council with recommendation by the Planning Commission. Examples of these included Comprehensive Plan Text Amendments, Zoning and Land Use Code Amendments, changes to the zoning map, and annexations.

Attorney Dohrman noted that as they moved from Type I to Type IV, and the more discretion built into a decision, the more process required to protect an individual's rights. Due process requirements amplified as the amount of discretion increased.

In 1973, the Oregon Supreme Court issued a decision in *Fasano v. Board of County Commissioners of Washington County*. The case caused that decisions by Planning Commissions were not always legislative decisions, that some involved individual's rights. Legislative decisions were broad policies that affected a large part of the city. Cities needed to adopt different procedure in cases which involved individual rights. That was the Type I, II and III procedures mentioned earlier in the training. In the *Fasano* case, the Oregon Supreme Court gave local governments guidelines for the kind of process needed in non-legislative decisions. These included:

- An Opportunity to be heard
- An Opportunity to Present Evidence
- Entitled to an Impartial Tribunal
- Entitled to a Record Made and Adequate Findings

These requirements were reflected in the City's Code (JCMC 17.150.070). A Type III application required a public hearing, that the decision-making body, the Planning Commission, be impartial, adopted criteria which was applied to a small number of properties or a single property, notice to the public was provided, and a written decision issued, based on Findings that addressed each of the applicable criteria. If an application could not be approved, or was denied, findings had to be made that supported the decision to deny the application. Notice of the decision needed to be given to the applicant, and anyone who participated in the public hearing. The Planning Commission decisions were appealable to the City Council. City Council appeals went to LUBA (Oregon Land Use Board of Appeals).

An applicant in a Type III land use application was entitled to an impartial decision-making body which meant:

- No Bias - Commissioner had not pre-judged the proposal and was capable of making a decision based on evidence and arguments presented at the hearing. If a Commissioner could not be fair and impartial, they should not participate in the hearing. If a Commission had some bias, they should consider whether they could be persuaded to change that bias. If that were true, the Commissioner would state on the record the bias and the ability to be open to changing their

mind. Such a statement should be sufficient to allow the Commissioner to participate in the hearing. If the Commissioner could not be persuaded, they should state that and step down from the dais, and not participate in the public hearing.

- No Ex Parte Contacts – this was any verbal, written, or visual information (i.e., site visits) not in the record. This was to be avoided. If it happened, it should be disclosed at the public hearing, along with the context, the who, what and where of the ex parte contact. If a public hearing were continued, Commissioners would again want to disclose any ex parte contact because the decision-makers must be impartial. Ex parte contact should be avoided all the way through the public hearing process to the decision.

Commissioner Easterday asked, for clarification on site visits to a subject property involved in a public hearing.

Attorney Dohrman responded if a Commissioner went out of their way to drive past a subject site and seeing it somehow gave the Commissioner information that was not already known to the Commissioner from the application materials, or staff report. The Commissioner should state the site visit and new information. Ex parte information would happen if a decision were made with that new information if that new information were not before everyone. If the site were something that a Commissioner drove past every day in route to work or other daily activities, it would not be required to disclose the number of times the Commissioner drove past the site. If it resulted in new information. The information would need to be disclosed.

- No Conflicts of Interest – Two types of conflicts exist; actual, and potential.
  - Actual - were conflicts that will happen. If a decision made by a public official (Planning Commissioner) resulted in a financial benefit or detriment to the Commissioner or a relative, or a business the Commissioner or their relative was associated with, that would be an actual conflict of interest.
  - Potential - were conflicts that could happen. If a decision made by a public official (Planning Commissioner) could result in a financial benefit or detriment to the Commissioner or a relative, or a business the Commissioner or their relative was associated with, that would be a potential conflict of interest.
  - For either type of conflict, the general rule was “when in doubt, shout it out.”

- Potential Conflicts, the Commissioner would state the nature of the conflict, before voting, or discussing the matter, on the record, at each meeting where the topic would be discussed or voted upon.
- If the conflict was an actual conflict of interest, shout it out, then the Commissioner would mute themselves, no talking, or voting. The Commissioner could vote if the Commission could not act without that Commissioner's vote. Vote only, no talking.
- Exception – If the financial benefit or detriment would happen to a large group to which the Commissioner belonged, or was a non-profit, that would not be considered a conflict of interest.
- If a conflict were not disclosed, it would not invalidate a decision, however, the Commissioner could be personally liable up to \$1,000.00 per violation.

Commissioner Easterday asked, if it was a conflict of interest if the individual was a close acquaintance.

Attorney Dohrman responded the list of who was considered a relative did not include acquaintances, however, if in doubt, disclose it to protect yourself from that personal liability.

- Public Hearings
  - Staff report needs to be available to the public before the hearing.  
Included in the staff report:
    - applicable criteria stated
    - Information staff pulled from the staff report to show whether the criteria were met or could be met with a condition.
    - A proposed decision with findings and conditions

Commissioner Sumner asked, in a recent public hearing, the staff report showed the application met the criteria, there was no other answer than to approve. He asked why the application came to the Planning Commission if by statute and by rule, it would be approved.

Attorney Dohrman answered the application Commissioner Sumner referenced, was a Type III Land Use action. By city municipal code and by state law, even when there was not a lot decision-makers could do to condition or customize the decision or exercise discretion, the city and Commission still needed to follow the state procedural requirements. If that were to ever change, it might not require Planning Commission review. They were in an interesting space currently as some of the local discretion had been removed, however the procedures (city and state) required the application be processed with all the quasi-judicial proceedings which included public hearings.

The code could be amended to eliminate the option of additional density through a conditional use permit in an R2 zone. However, that was not something the Commission could do when an application was already before the Commission. An amendment to the text of the zoning code was a legislative process.

- Public Hearing Script
  - Set steps for hearing process
  - Incorporated all the required legal language
  - Prompts disclosures previously discussed
  - Appeal rights for the application
- Commission Options after the initial evidentiary hearing
  - Continue the public hearing to a specific date and time
  - Close the public hearing but leave the record open for written testimony
  - Close the public hearing and the record
  - Article VI, Section 5(k) of the Planning Commission By-law provided further guidance on when to continue a public hearing, *“Continuance of applications pursued with due course to a later date should be made when: 1. Further deliberation on the item may be necessary, including the request for new information by the commission, or 2. Newly submitted evidence dictates further technical review and analysis, or 3. Preliminary to commission action, staff preparation and review of findings and conditions are necessary.”*
- Deliberations
  - Ensure decision was based on approval criteria as identified by the City Planner.
  - Planning Commission may not consider factors outside of approval criteria.
  - Adopt findings that show how the approval criteria was met /was not met /could be met if conditions were imposed.
  - Each decision should include findings that support the decision.
  - Attempt to address every argument made by a participant.
  - Interpret any criteria that was not clear, if any.
  - Address conflicting evidence, if any. Determine which was more persuasive.
  - Decision must be based on substantial evidence in the record, and evidence that a reasonable decision-maker would rely upon.
- Components for a decision
  - Adequate findings
  - Relevant facts
  - Apply facts to criteria

- Determine whether the criteria were satisfied or could be with a condition(s).
- Importance of decisions based on findings
  - A decision made that was not based on findings would be subject to reversal or remand
  - To bring the staff report and findings into the decision required two motions.
    - Move to approve and adopt the staff report (include date of report and title or file number)
    - Move to approve (or deny with findings to support) the application based on the findings in the staff report and attached the staff report as exhibit A to the final order.

#### **5. PUBLIC: MAP AMENDMENTS TO PLAN DESIGNATION AND ZONING MAPS (FILE CPA-22-23/RZ-22-24)**

Chair Haag stated for the record, he was opening the continued public hearing for the map amendments to the Plan Designation and zoning maps, file # CPA-22-23/RZ-22-24, Maple Springs on September 21, 2022, at 7:17 p.m.

Commissioners participated in the public hearing only if they could do so without undue bias either for or against the application.

Chair Haag asked the Planning Commissioners if there were any disclosures of conflicts of interest, ex-parte contacts, or bias related to the proposal or applicant.

There were none.

Chair Haag asked if there were any challenges as to conflicts of interest, ex parte contacts, or bias related to any member of the Planning Commission.

There were none.

Chair Haag asked for the staff report.

Attorney Darnielle introduced the application, Plan amendment, and zone change, file numbers CPA-22-23, RZ-22-24. The applicant was Maple Springs, LLC. The plan amendment and zone change were necessitated by their subdivision application which could not be approved without the Plan amendment and zone change before the Planning Commission.

In 2020 there was a property line adjustment done by the applicant on the subject site which move about 35,800 square feet from tax lot 4300 to tax lot 5000. Tax lot 5000 was the site for which the subdivision was proposed. Tax lot 4300 was zoned and had a Plan designation of low density residential. Tax lot 5000 was high density residential on the Plan diagram and zoned R3, Multi-

family Residential, and it had to be that in order to legally support the duplexes which the applicant intended to construct on the future subdivision lots after the subdivision application was approved.

In order to have the entire property correctly zoned, and planned, the Plan amendment and zone change were required.

Neither the Junction City Comprehensive Plan nor the Municipal Code provided any approval standards for either the Plan amendment or zone change. State law said when a change such as those proposed were made, they had to be consistent with any applicable statutes, administrative rules, and the existing Comprehensive Plan. Those requirements included notification to the Oregon Department of Land Conservation and Development, and notices to property owners and residents within 300-feet of the subject site. These requirements were met. The proposal also needed to be in compliance with Oregon Statewide Planning Goals. The staff report reviewed the applicable statewide Planning Goals as they related to the proposal.

- Goal 2 required coordination with local agencies and interested parties.

Goal 2 was met through the referral agencies which may be impacted by the proposal. Comments received from those agencies were applicable to the subdivision application and would be discussed at the time the preliminary subdivision application was before the Planning Commission.

- Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

The subject property was not inventoried as being a scenic, historic, or open space resource. Nor did it contain any mapped wetlands. The property subject to the plan diagram and zone change was vacant property that was not encumbered by any known natural resource.

- Goal 7, Areas Subject to Natural Hazards

The subject property was not located within the 100-year flood hazard area and is flat. No known natural hazards were present. The proposal was consistent with Goal 7.

- Goal 10, Housing

The Comprehensive Plan (Table 16) estimated 1,590 new dwelling units needed for the period between 2011 and 2031. Twenty percent of those units (318) were to be high density residential. The proposed rezone provided property that would meet the minimum density for high density residential.

- Goal 11, Public Facilities & Services

Public facilities included water and sewer services, recreation facilities, and services provided by the local government. Water and sewer were available from Junction City Public Works Department.

- Goal 14, Urbanization

The subject property was within Junction City and did not represent an expansion of the Junction City Urban Growth Boundary or the corporate limits of the city. The proposed plan amendment and zone change were consistent with Goal 14.

The options for the Planning Commission, as always, were to approve the proposal with the findings proposed by staff or other findings the Commission wished to add. The proposal could be modified, although that usually happened with an application such as a Condition Use, or the Commission could deny with findings supporting the denial. Staff recommended approval.

Commissioner Sumner asked if the site was in the Oaklea area.

Director Kaping replied the site was behind the new apartments between W 10<sup>th</sup> and W 11<sup>th</sup> Avenues (west of Oaklea Drive).

Commissioner Miles recapped, the request was to move the zoning and Plan lines in order to building duplexes.

Attorney Darnielle concurred.

There were no additional questions for Attorney Darnielle.

### ***Applicant and Others in Favor May Speak***

Chair Haag asked if anyone wished to speak in favor of the proposal.

Brandt Melick, Metro Planning, 846 A Street, Springfield OR 97477, explained the sliver of low density residential was insufficient to build on, the proposal would make it usable.

Jed Truett, Metro Planning, 846 A Street, Springfield OR 97477 added as the subject proper was currently zoned, the uses permitted in R1 were not permitted in R3 and vice versa.

There was no other testimony in favor of the application.

### ***Neutral Testimony***

Chair Haag asked if there was anyone who wished to offer neutral comments.

There were no comments.

### ***Those Opposed May Speak***



Chair Haag asked if there was anyone who would like to speak against the proposal.

There were no comments.

***City Staff Summary/Response to Public Testimony***

Chair Haag asked if there was any additional testimony from staff.

There was no additional information or comment from staff.

***Applicant Rebuttal***

Chair Haag asked if the applicant or their representative, had any rebuttal to the testimony.

There was none.

As there were no requests to keep the record or the public hearing open, Chair Haag closed the record and public hearing at 7:32p.m.

***Deliberations***

**Motion:** Commissioner Hukill made a motion to recommend approval of amendments to the Comprehensive Plan Designation map, and zoning map to redesignate and rezone the western 64-feet of tax lot 5000, Assessor's map 15-04-31-23 from Low Density Residential (L)/Single Family Residential (R1) to High Density Residential (H)/Multi-family Residential (R3), with findings supporting the decision as stated in the amended Final Order (CPA-22-23/RZ-22-24).

Commissioner Sumner seconded the motion.

**Vote:** Passed by a vote of 6:0:0. Chair Haag, Commissioners, Hukill, Newman, Miles, Sumner, and Easterday voted in favor.

Chair Haag continued the hearing for the Maple Springs preliminary subdivision (SUB-22-04) to the October 19, 2022, Planning Commission meeting.

**CONSENSUS:** By a consensus of the Planning Commissioner, the hearing for the Maple Springs preliminary subdivision (SUB-22-04) was continued to the October 19, 2022, Planning Commission meeting at 6:30 pm.

Attorney Darnielle offered additional response to Commissioner Easterday's question about conflicts of interest as they relate to close acquaintances. The statute did not cover close acquaintances, but there could be an issue with bias if that acquaintance were to sway the opinion of a Commissioner.

**6. EXTENSION REQUEST: DEVELOPMENT REVIEW, 287 W 5<sup>TH</sup> AVE (FILE# DEV-21-08)**

On October 8, 2021, Junction City Planning staff approved a Development Permit

for 287 West 5<sup>th</sup> Avenue to convert an existing single-family home to a tri-plex in the Central Commercial (C2) zone.

The applicant was working with their design professionals to address the Conditions of Approval listed in the staff report. The major item was incorporation of the stairwell to the upstairs unit, into the building. As proposed, it was on the outside of the building, municipal code required it be incorporated inside the building. The building permits were now ready to issue. The Development permit was valid for one year. The staff report was issued on October 8, 2021. The applicant requested a one-year extension for their Development Permit.

If the one-year extension should be approved, the new expiration date would be October 8, 2023. Under Junction City Municipal Code 17.150.140 the Planning Commission may grant a one-year extension upon determination that the applicant was pursuing the completion of the project and that no material changes of surrounding land uses or designations had occurred.

The surrounding land uses had not changed in the past year.

**MOTION:** Commission Hukill make a motion to approval the Development Permit extension request for File, DEV-21-08 with a new expiration date of October 8, 2023. Commissioner Miles seconded the motion.

**Vote:** Passed by a vote of 6:0:0. Chair Haag, Commissioners, Hukill, Newman, Miles, Sumner, and Easterday voted in favor.

## 7. REVIEW OF PLANNING COMMISSION APPLICATION

The Planning Commission term of Commissioner Montgomery was due to expire October 31, 2022.

**CONSENSUS:** By a consensus of the Planning Commission, the Commission recommended to the Mayor, with Council approval, appointment of Jesse Newman to fill the vacancy created upon the expiration of Commissioner Montgomery's term.

## 8. PLANNING COMMISSION AGENDA FORECASTER

The Commission reviewed the agenda forecaster.

## 9. COMMISSIONER COMMENTS

There were none.

## 8. ADJOURNMENT

**Motion:** Commissioner Easterday made a motion to adjourn the meeting. Commissioner Sumner seconded the motion.

**Vote:** Passed by a vote of 6:0:0. Chair Haag, Commissioners, Hukill, Easterday, Newman, Miles, and Sumner voted in favor.

The meeting adjourned at 7:50 p.m.

The next Standing Planning Commission meeting was scheduled for Wednesday October 19, 2022, at 6:30 p.m.

Respectfully Submitted,

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Tere Andrews, Planning Commission Secretary

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Jeff Haag, Planning Commission Chair