



PLANNING COMMISSION

April 3, 2018

MINUTES

I. CALL TO ORDER

Chair Judi Roland called the meeting to order at 7:00 p.m. in the Council Chambers located on the first floor of Auburn City Hall, 25 West Main Street, Auburn, WA.

a.) ROLL CALL/ESTABLISHMENT OF QUORUM

Planning Commission Members present were: Chair Judi Roland, Commissioner Mason, Vice-Chair Lee, Commissioner Stephens, and Commissioner Moutzouris. Commissioner Shin was excused. Chair Roland announced that Commissioner Smith has resigned from the Planning Commission. Chair Roland expressed her appreciation for the years of service former Commissioner Smith provided the Planning Commission and the citizens of Auburn.

Staff present included: City Attorney Dan Heid, Interim Community Development Director Jeff Tate, Planning Services Manager Jeff Dixon, Development Services Manager Jason Krum and Planning Administrative Assistant Tina Kriss.

Members of the public present: Eleven students from the Auburn Riverside High School Civics Class.

b.) PLEDGE OF ALLEGEANCE

II. APPROVAL OF MINUTES

A. February 6, 2018

Commissioner Lee moved and Commissioner Mason seconded to approve the minutes from the February 6, 2018 meeting as written.

MOTION CARRIED UNANIMOUSLY. 5-0

III. PUBLIC COMMENT

There was no public present for comments.

IV. PUBLIC HEARING

No items were brought forward for public hearing.

V. OTHER BUSINESS

A. Community Development Division presentation from City's Civics Academy

Interim Director Tate explained that in 2016 the City of Auburn started the Civics Academy to provide interested community members a class on civic engagement to learn how Auburn city government runs. As part of the class, staff from various city departments take turns providing a presentation and answering questions from participants who apply for the class which is held at City Hall.

Interim Director Tate, Planning Services Manager Dixon, and Development Services Manager Krum provided an abbreviated presentation that is provided to the academy

participants to provide information specifically on the subject of the Community Development Department.

B. Planning Commission Rules of Procedure

Interim Director Tate explained that at the last regular Planning Commission meeting of February 6th, the Commission took action on an amendment to the Commission's 'Rules of Procedure', adding text to Section VII. ABSENCE OF MEMBERS, Paragraph 1, Pages 5 and 6. Also considered was a second action to not accept another paragraph that was an addition recommended by staff. The 'Rules of Procedure' distributed in tonight's packet reflects the added text under Section VII. ABSENCE OF MEMBERS as acted upon that meeting (dated February 6, 2018).

Interim Director Tate explained that in addition to the February 6th revisions, the Commission asked City Attorney Heid to return to discuss audience participation within the 'Rules of Procedure', this discussion may result in further revisions to the document.

City Attorney Heid distributed case law information to the Planning Commission along with a newly drafted 'Rules of Procedure' document containing staff proposed draft language as an option to consider to address sections discussed at the last meeting. The new draft was dated May 8, 2018.

One topic the Commission had expressed concerns about was addressing audience disruptions in the meeting, City Attorney Heid explained his concern that in order to address the disruption of a meeting it would be beneficial to compare this to how the court decisions look at rights under the First Amendment regarding public meetings. In the case law information provided to the Commission, *Norse v. City of Santa Cruz*, (US District Court (9th Cir.) Court of Appeals) the Court determined that by allowing a public comment opportunity the body is not able to limit the period for public forums unless the subject is legislative in nature. City Attorney Heid explained that there is no legal requirement that the Planning Commission provide an opportunity for public comment for subjects that are not on the agenda for public hearing. In essence, the board cannot invite wide-ranging comments at one point during the meeting and seek to limit comment at another.

Attorney Heid indicated the Ninth Circuit Court of Appeals ruled in favor of a plaintiff allowing the lawsuit because City Council violated his rights to express his free speech, it later ruled that because public comment was allowed, his rights were violated because his public comment was not legislative in nature. By opening the door for wide-ranging public comment, the board recognizes the limitations of control and the United States 9th Circuit Court of Appeals clarified within the decision that in order for someone to be disturbing the meeting, it must be something that disrupts the meeting business, not a secondary or momentary noise, something that prevents the body from moving forward in a reasonable fashion. A momentary or secondary distraction, or disruption under the United States 9th Circuit Court would not constitute disruption to the business of the meeting.

As an option, City Attorney Heid stated, there is no legal requirement that the Planning Commission provide a public comment period as a listed item on the agenda. Options to obtain public comment would be to hold a workshop on the item

and allow a public comment period. Under this scenario, the setting can be more relaxed and not as formal as a public hearing.

The Current Norse vs. Santa Cruz decision is the current law providing insight into what the courts have ruled. Chair Roland stated that there have been a very limited number of public comments at the Planning Commission meetings on items not listed on the agenda. If the public comment agenda listing was removed from the agenda (for those items not listed for public hearing), the public would not be able to make comments, be offensive, disruptive or problematic. They would not have an opportunity to talk unless it is in connection with the public hearing and the Chair would determine what comments are relevant with respect to the item before the public hearing.

Eliminating the public comment agenda listing provides the control of decorum the Planning Commission would like for the meeting. City Attorney Heid explained that the additional draft Planning Commission 'Rules of Procedure', distributed tonight, contains amendments; most were minor in nature but the substantive changes are summarized below:

- "Public Comment" was removed from IX. AGENDA
- The following new draft language was added to X. PUBLIC HEARINGS, 5.
 - "All testimony and comments by persons addressing the Commission shall be relevant and pertinent to issues before the Commission's public hearing. The Chair shall have the discretion to rule on the relevance of individual public testimony."
- The language "duly seconded and approved by a majority vote" was added to X. PUBLIC HEARINGS, 8.
- The following language was moved from XII. CONFLICTS OF INTEREST, Subsection 2.E. Appearance of Fairness; to X. PUBLIC HEARINGS, Subsection 10. Voting, F.
 - "No member may participate in any decision if the member had not reviewed the staff reports and testimony presented at the hearing on the matter. Such member may, however, listen to the recording of the hearing in order to satisfy this requirement."
- The word shall was replaced by "may" under XI. CONDUCT, 3.
- The following underlined draft language was added to XI. CONDUCT, 3.
 - No comments shall be made from any other location "other than the podium, lectern or table set up for people to address the Commission at a public hearing, unless approved in advance by the Chair" and anyone making out of order "irrelevant, distracting or offensive" comments may be subject to removal from the meeting.

The Commission and staff discussed the risk of keeping the public comment agenda listing and using time limits. City Attorney Heid explained that though a time limit is set allowing public comment, the Commission must be assured they are not abridging the First Amendment right of free speech.

City Attorney Heid encouraged the Commission to review the handouts regarding the case law and pointed out that the McQuillin Municipal Law Report discusses the issues that are involved in the other cases.

Staff pointed out and reminded the commission that one other discussion held by the Planning Commission, at the previous meeting, was to relocate the existing provision about a Planning Commissioner listening to the recording to participate in subsequent decision making. Based on that discussion, Subsection 2.E. Appearance of Fairness was moved to X. PUBLIC HEARINGS, Subsection 10. Voting, F.

- “No member may participate in any decision if the member had not reviewed the staff reports and testimony presented at the hearing on the matter. Such member may, however, listen to the recording of the hearing in order to satisfy this requirement.”

After discussing the options presented by City Attorney Heid and considering staff's recommendations for the 'Rules of Procedure', the Commission asked staff to further refine the proposed amendments and bring them back to the Commission for review and possible action at the next meeting.

VI. COMMUNITY DEVELOPMENT REPORT

Interim Director Tate reported that two Design Review Applications have been submitted to the City for projects on the two downtown blocks located across the street and south of City Hall. One consists of a 7-story mixed-used building with 161 Senior Housing dwelling units on upper floors and ground floor commercial space facing both West Main Street and the City's Plaza Park. Parking is proposed partially on the ground level and on a level below grade. No building permit applications have been submitted as they are in the Design Review phase.

The other Design Review application is for the block south of The Sunbreak Café. The property includes the entire block under one ownership, the little red house located on the property has been acquired and will be removed for the development. The development will include a 7-story building with 240 dwelling units. The mixed use design will have 1st and 2nd floor parking. The commercial space will be oriented towards Division Street with two live-work units on the southeast corner.

Staff also reported that the Auburn School District is working toward a multi-year plan to redevelop several Auburn schools; two new schools will be built.

FEMA (Federal Emergency Management Agency) is in the process of updating floodplain maps. The Current maps in effect date from 1995 and by early 2019 the city will have new updated maps provided by FEMA.

The next Planning Commission meeting is scheduled for May 8, 2018.

VII. ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Roland adjourned the meeting at 8:53 p.m.