

**Final Meeting Minutes**  
**CANBY PLANNING COMMISSION**  
6:00 PM – February 27, 2023  
City Council Chambers – Virtual Meeting via Zoom

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**PRESENT** – Commissioners Michael Hutchinson, Judi Jarosh, Matt Ellison, Dan Ewert, Craig Lewelling

**ABSENT** – None

**STAFF** – Don Hardy, Planning Director, Joe Lindsey, City Attorney, and Laney Fouse Lawrence, Recording Secretary

**OTHERS** – Ryan Potter, AICP, Planning Manager

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**1. CALL TO ORDER**

The meeting was called to order at 6:00 PM.

**2. CONSENT ITEMS**

a. Draft Meeting Minutes – May 9, 2022

**Motion:** A motion was made by Commissioner Ewert and seconded by Commissioner Jarosh to approve the draft meeting minutes from May 9, 2022. Motion approved 5/0.

**3. CITIZEN INPUT ON NON-AGENDA ITEMS** – None

**4. NEW BUSINESS** – None

**5. PUBLIC HEARINGS** – None

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**PLANNING COMMISSION WORK SESSION**

The Planning Commission met in a Work Session to discuss:

- **Planning Commission Processes and Procedure.** Presenters: Joseph Lindsay, City Attorney, and Don Hardy, Planning Director.

Attorney Joe Lindsey summarized what commissioners should do prior to hearings along with recommendations for avoiding conflicts of interest and biased decision-making. Ex parte contact was explained and how it is important to publicly disclose any ex parte contact prior to the start of public hearings.

Chair Ellison asked if self-led site visits could be considered ex parte contact.

Commissioner Hutchinson brought up how easy a quorum can be formed once an email chain has started discussing hearing matters.

Commissioner Ewert stated he'd like all members to state any involvement or ex parte contact prior to beginning the hearing. Any contact/involvement with the applicant should be mentioned even if it will not deter the commissioner from participating or in the case that the commissioner is needed to form the quorum.

Attorney Lindsey explained that any form of site visitation would be considered ex parte but may not necessarily be considered a concern for the opposing party within the hearing. Any form of deliberation regarding three or more commissioners automatically forms a quorum and is considered highly impartial.

Chair Ellison asked to what extent would be able to participate in the hearing for an upcoming project for which he will be the plumber working on the project. He will be in direct contact with the applicant.

Attorney Lindsey stated Ellison would still be counted towards the quorum but would not be able to participate in the hearing by any means according to the Oregon code of ethics. In order to try and create the best record possible, property rights, community rights, and the rights of the hearing process must all be followed.

Director Hardy mentioned if a preponderance of evidence is provided by an opponent, the applicant should ask for a continuance of the hearing aside from closing the hearing and deliberating after. He asked the Commission to weigh out whether or not the evidence is vital to the decision-making process or could be embodied in a condition of approval.

Commissioner Ewert mentioned that there have been a few cases where the staff report and the applicant's narrative do not coincide. This has also happened during an applicant's presentation where they verbally made a statement that did not match the statement in their narrative. Ewert discussed this has become an issue when it comes time for the Commission to deliberate and ask staff questions about the project. If staff and the applicant are not in agreement over all the information, it makes it hard for the Commission to gain clarification once the hearing has closed. Once the hearing has closed both the applicant and the opponent are not allowed to speak or answer any questions the Commission may have. If the Commission wants to entertain a motion to reopen the hearing, that would be allowed.

Lindsey reminded the Commission that other forms of communication such as texts, emails, phone calls, and private one-on-one meetings are all considered forms of evidence and may be subject to a records request. A principled approach must also be kept throughout a hearing, meaning the Commission should not be clouded by emotions or politics. He reminded the Commission that staff go through rigorous vetting processes prior to presenting essential findings and conclusions. He advised the Commission to acknowledge staff recommendations and their analysis regarding hearing topics and future projects.

Chair Ellison asked what would happen to the quorum if there were to be a tie vote.

Lindsey mentioned the decision may proceed to City Council, but he said he needs to do more research to be certain. He explained that an approval takes a majority vote so by default a tied vote would result in a denial. He advised the Commission to keep in mind the difference between factual evidence and expert testimony when voting on a decision.

Commissioner Jarosh asked if the City ever cycles through different consultants, such as traffic consultants, or if we always use the same ones. She mentioned in the corporate world companies will often switch their consultants as a safety measure to ensure information is staying impartial. She stated her concerns about the City intrinsically trusting long time consultants.

Director Hardy mentioned that DKS works almost 90% in the public traffic sector. Since DKS only works for public agencies, there is no conflict-of-interest present. Applicants/developers are not required to use DKS as their traffic engineer, but about 95% of them willingly choose to use them.

Commissioner Ewert stated his concerns about using DKS and his opinion that they would not provide an applicant with a negative traffic analysis.

Director Hardy stated there are fundamental metrics used by these consultants to prove whether a project results in traffic impacts, and to what degree. Traffic is measured by the level of service within a given area. He clarified that DKS essentially operates as an extension of the City and they are hired to put together analysis using adopted City thresholds.

Planning Manager Potter mentioned that he and Hardy heavily scrutinize the traffic studies once they are submitted by DKS. They often make edits and have numerous questions and requests for more information or graphics that help support their analysis.

Director Hardy reminded the Commission that ODOT and Clackamas County review traffic studies for all major projects. The City must have concurrence from the other agencies that are involved in the review process.

Chair Ellison stated that the way he sees it, is that the city hires DKS as a subcontractor to protect our code and create a traffic plan that is consistent with it. The applicant is paying DKS to complete the same level of work that a City employee would be responsible for performing.

Commissioner Ewert stated he'd like to see traffic studies presented in a differently packaged manner to make it easier for the Commissioners to understand. He'd also like to see a broader scope with bigger areas presented, which should be discussed at a different time.

Commissioner Hutchinson asked at what point does the City want Ivy street to become a B grade street and what are the standards. He emphasized the need for DKS to include and

reference the City's standards within the code when performing their analysis. The engineering firm should analyze the change they expect to happen relative to the existing standards.

Director Hardy mentioned the standards are set in the code and will be re-evaluated as part of the Comprehensive Plan and Transportation System Plan updates.

Commissioner Ewert asked if the applicant has the ability to ask for a continuance if the Commission has a tie vote and can not break it.

Lindsey said there are two ways the applicant can try and get an approval. They can ask for a continuance and wait until there is an odd number of commissioners in the forum and try and re-adjudicate the project. Or the Commission could write a denial with findings that could be appealed at the City Council.

Director Hardy discussed the clear and objective standards and what those are versus discretionary standards of the state. Setbacks, allowable uses, amount of impervious surface, building height, and parking standards, etc. all have clear and objective standards in the code, while discretionary standards are subject to conditional use permits, variances and modifications. Hardy explained that upcoming state legislation will affect how the City can regulate development, particularly with the potential passing of House Bill 3414. The bill will make it difficult for the City to deny variances related to housing.

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## **6. ITEMS OF INTEREST/REPORT FROM PLANNING STAFF**

- a. The next Planning Commission meeting will be held on March 13, 2023, at 6:00 pm.
- b. Planning Director's Update

Director Hardy mentioned that the work session will be moved to 5:30 pm on March 1<sup>st</sup>. The next hearings will take place on March 13<sup>th</sup> to discuss the Housing Production Strategy (HPS) and on March 27<sup>th</sup> for the Economic Opportunities Analysis. Adoption by City Council will move forward in April or May.

An update on the Walnut Street extension was provided to the Commission.

## **7. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

Commissioner Ewert emphasized the need to get the community more involved in meetings, especially when there is an open house. He feels it is hard to make decisions for the community when they don't communicate their thoughts.

Director Hardy mentioned that City Staff have been working with a consulting firm's outreach group to help gather public input during the comprehensive plan update. Commissioners further discussed methods and approaches for getting the community to respond to surveys and future city decisions.

Commissioner Lewelling asked for access to material regarding the road system in the industrial park.

## **8. ADJOURNMENT**

***Motion:*** A motion was made by Commissioner Hutchinson and seconded by Commissioner Lewelling to adjourn the meeting. Motion passed 5/0.

**Meeting adjourned at 8:16 PM.**