

PLANNING COMMISSION MEETING MINUTES-DRAFT ONLY

**Tuesday
November 13, 2012**

The regular meeting of the Ontario Planning Commission was called to order at 7:00 pm in the Council Chambers of City Hall. Commission members present were Chairman Michael Rudd, Rita Kanrich, Cindy Graversen, and Mike Allen. Max Twombly and Greg Tuttle were excused. There was one vacant seat that was being advertised.

City Staff present were City Manager, Jay Henry, and Planning and Zoning Technician Marcy Skinner. City Council ex-officio Ron Verini was excused. Oregon Department of Land Conservation and Development NE Regional Representative Grant Young was present.

The meeting was recorded on tape and the tape is on file at City Annex. The Agenda for this meeting was emailed and/or hand delivered on or before November 5, 2012. Copies of the Agenda were available at City Hall.

Chairman Michael Rudd led everyone in the Pledge of Allegiance.

CONSENT AGENDA

Rita Kanrich moved, seconded by Cindy Graversen, to adopt the Agenda as presented. Roll call vote: Allen-yes; Tuttle-excused; Graversen-yes; Kanrich-yes; Rudd-yes; Twombly-excused. Motion carried 4/0/1/2.

ADOPTION OF MINUTES

Rita Kanrich moved, seconded by Cindy Graversen to approve the minutes of the October 8, 2012 meeting, as amended. Roll call vote: Allen-yes; Tuttle-excused; Graversen-yes; Kanrich-yes; Rudd-yes; Twombly-excused. Motion carried 4/0/1/2.

There were no unscheduled public appearances.

PUBLIC HEARING ACTION 2012-08-09CPAMD

The location is north of a mobile home court at 1021 SE 9th Ave, Assessor's Map 18S47E10 , Tax Lot 2000. The applicant is Mr. and Mrs. Bowdish. They are requesting to change a vacant 6.2 acre parcel from (RMH) Mobile Home Park zoning to (C-1) Neighborhood Commercial.

Marcy Skinner, Planning and Zoning Technician, gave a staff report explaining that the applicants would like to do a Comprehensive Plan Amendment amending the zoning map from RMH, Mobile Home Park zoning classification to C-1, Neighborhood Commercial.

Martin Justus, Ontario, "As far as, I'm going to address the State Department of Conservation Development first and then the City's response to our proposal. Zoning off of the City, our parcel in question is over here, it's the pink parcel zoned Mobile Home Park. We, the property is fronting Claude Road is zoned Heavy Industrial. The dark green one and then the surrounding pieces are Urban Reserve. (There is a shuffling of papers and I could not make out what was being said). This is the partition plat that was filed in 2008 which divided the two pieces. This is the tax plat that shows SE 10th Street as being platted in and SE 7th Avenue as being platted in. As far as the Department of Conservation and Land Development, we appreciate the department's comments and concerns but we ask that any concerns and comments they have be set aside for the following reasons. As applicants we were not made officially aware of any department concerns with our application until last Friday so we didn't even know that, we officially got anything from them until Friday and then the email from Marcy.....the City.....there. I did

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have a phone conversation with Grant on October 9th, I emailed correspondence I sent to Cliff Bentz and to Bob Walker, explaining to him the conversation that I had and asking him to help me get this meeting set so I went through that process so I could have this opportunity to speak with you. Um, so that's my first reason for not setting aside what they have to say. Second is, the Department has no jurisdiction in this matter. The property in question and all surrounding properties are within the city limits and none are publically owned. So, to have this matter go to their department for comment wasn't necessary. It's controlling and planning and zoning is why without an argue there.

Thirdly, the Department's requirements for the application process are far too burdensome on the individual property owners. I was told by Grant that we should have hired a consultant to submit the application and Grant and I went around and around on a very lengthy discussion about why a zone change should require the hiring of a consultant. That we were asking for a simple zoning change and with a consultant we'd have to pay consulting fees and we've had...plus the cost of any studies and requirements that they would require and through that conversation with Grant, he's like, 'I'm not saying no, I'm just saying that your application's not complete' and I'm saying that we shouldn't have to go through, we shouldn't have to go through those hurdles for this change. In the study, lastly, in the studies that will be required should be on the development of the property, right? The current owners are not developing the property, they're selling it to a prospective developer. You want to know if that developer's going to be Safeway stores, we don't know if it's going to be 7-11, we don't know if it's going to be Winco so to have a traffic study to have all these studies done now on a piece of property that we don't know what it's going to need is not only redundant, it's expensive and there's no reason for it because we don't know who's gonna buy it yet, what they're gonna do with it. So, I'm just saying that we should be able to come to you, make this application and let you decide if it's a logical, reasonable thing to do without having the state's input on that so that's my argument on that side of things, okay? Now, as part of your packet, you received statements of fact and from the City as to this particular property and I just want to respond to some of the things around there. Our point that we did not receive a copy of the report that you all have in your packets.....until today when we went down to City Planning and requested a copy. Um, so we get that, we didn't have what you have in your packet until today. Second, your statements say that Christine and Alan Bowdish own the mobile park next door to this parcel, they do not. They are not owners of that mobile home park at all. Okay, then it also says that this property is landlocked. Well I showed you right here that when the partition was made, that the city insisted that they put in these platted SE 7th Avenue and SE 10th Street, right, so there's no way the property could be landlocked. It's by city requirement that these streets are platted into the parcel. Secondly is, parcel 2003 is currently owned by Alan and Christine Bowdish, right, so they could easily get the easement from tax lot 2003 to lot 2001 so land lock is totally out of the deal so the city's report is inaccurate, okay, and then it also stated in the statement of fact that properties next to the freeway have virtually....well if you look across the street, properties that's still able to build, visibility and frontage are some of the most desired properties in the commercial development. So we look across the freeway the Toyota dealership, Staples, Wingers and then we make the argument of affordable housing or is this inexpensive housing? I'm a real estate broker, 25 years' experience, specialized in affordable housing issues. Affordable housing is defined as a housing that the occupant is paying no more than thirty percent of his or her income for gross housing costs. Affordable housing opportunities need to ownership, manufactured housing is allowed in all areas zoned residential so if right now someone wants to come in and there's a lot, a single lot residential lot in the city, they can put a manufactured house on it. There's no reason keeping anyone from doing that. The State says that the City has to allow it, there's no reason to have a designated parcel for that kind of....Okay a mobile home park's been considered inexpensive housing options which should not be confused with affordable. Heating and cooling costs tend to be much higher. Older mobile homes require more maintenance. Mobile homes depreciate in value over time. Mobile homes that are in parks that are not physically attached to the ground are not considered real property. Once a manufactured home is moved into a park and moved again to a permanent foundation they no longer qualify for traditional mortgages, mortgage loans. The way I read the staff report is that low and moderate income families always have lived on the other side of the railroad tracks. If you read the report, it gives you a definition

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of what's happened insidethis area has always been low and moderate housing, basically saying it should stay that way, okay. With this zoning change, a zoning change would encourage the redevelopment of the entire area. The opportunity for commercial development of the surrounding parcels. So we have the opportunity, if we get this piece changed, we have the opportunity to turn that whole corner into a commercially viable piece of property for the City if we're pro-growth, right, we have to do this or otherwise....we've got a lot of big box stores over here and everybody living over there, right, so we have to promote commercial growth here, and this is one of our first opportunities to do that".

Commissioner Allen asked who had done the original plat for the site and asked if the second parcel was the existing Mobile Home park, the first parcel needed the zone change and the third parcel would remain the same zoning and contained a well house that was no longer in use.

Chairman Rudd asked if there were any concerns with the development of the streets.

Jay Henry, City Manager, said that he had not heard of any concerns.

Chairman Allen asked who would develop the streets.

Mr. Justus, "Well, it would obviously be any developer that comes in, it would be their responsibility. Its part of the process of developing a property would be to put in these streets. It's just part of the cost of developing the land".

Commissioner Kanrich stated that there was not any access to the property except the gravel road that comes through the trailer park.

Mr. Justus, "Oh, as a Real Estate Agent? Well the reason why the Real Estate Broker has recommended a zoning change is because the highest a best use. Right? If I'm going to market this piece of property with freeway frontage, right, I need to be able to market to a wide range of people".

Commissioner Kanrich said that it didn't have freeway frontage.

Mr. Justus, "It has freeway visibility, not frontage".

Commissioner Allen asked if there was any kind of future development agreement with the City to put the street in.

Mr. Justus, "That's the reason why that street is platted is because the City required that to be part of their...the City owns the land right now, right? Cuz it's platted, it's the tax lot which has its boundaries, correct? So that the owner has the...".

Commissioner Allen said that it's been dedicated but that the City has to accept the dedication of the street. The City would not bear the cost of the street and there should have been some type of Deferred Improvement Agreement with the City.

Mrs. Bowdish, "There is an agreement in place with the City. It was agreed to upon the partition happening".

Commissioner Allen asked Mrs. Bowdish asked if when the property was developed, then the owner would agree to pay for the improvement of the street.

Mrs. Bowdish agreed.

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Commissioner Allen looked at the title report of the property and stated that he did not see the Future/Deferred Improvement Agreement on the title report. He said that the applicant should check into it with the Public Works department. He could not read the dedication information on the title either.

Mr. Justus, "We're totally open to that. We just want to make sure...and obviously during the partition process, the owners agreed to give up their, to dedicate that land to the City for future use".

Commissioner Allen said that the problem would be that now that the mobile home park is not owned by Mr. and Mrs. Bowdish, typically the adjacent owner of the street that's being developed would pay for their portion .

Mrs. Bowdish, "Can I make a comment on that? The partition was done prior to the sale of the mobile home park, I was the owner of the mobile home park at that time and so the partition was done with the condition that the road would go in and so that was agreed to with myself, then we sold the mobile home park afterwards".

Commissioner Allen asked they put any kind of conditions on the current mobile home park owners.

Mrs. Bowdish, "They know that that strip...and for record, they have not paid for that improvement, whoever develops that next section".

Commissioner Rudd asked if there were any opponents.

Grant Young, Oregon Department of Land Conservation and Development NE Regional Representative (DLCD), "I have to apologize for my levity when I walked in, we go back a few years so I'll try to start things off with a little laughter, generally at the expense of myself. Anyway, thank you, our Department thanks you, for the opportunity to comment and participate in this matter, which is a legislative matter. You know you're basically changing your zoning map and your comp plan map so when you're doing a legislative matter, Mike, you don't need to worry about conflicts of interests or ex-parte contact because you're lobbying, well, you aren't even making the decision, you're recommending to the counsel so I'm going to switch back and forth between my familiarity with process and your ordinance because I wrote it, the last update that was done to it, and then speaking for our department. So, right now I'm speaking to process and your code. In a legislative matter, your City Council is the local decision making body so people are free to lobby them and then do things as they wish and so there's really no conflict of interest or ex-parte contact. It's just like people going to the State legislature and having their say about a certain bill or whatever ruling, you know, basically the same process. Don't worry about that when you come to the next legislative matter. If it's a zone or code change or stuff like that. It makes things simpler. Being a legislative matter, the Department is required to have notice of these matters so speaking to one of the applicant's or proponent's comments that notice is not required to be send to DLCD and we have no jurisdiction on the matter, that's not accurate. Right in notice requirements in statute and administrative rule, the City is required to send us notice of legislative changes within 35 days. It's different with a Conditional Use and things like that and it can be up to the City to send the notice but we are entitled under state law to receive notice of that and so we did and I took a look at this and first of all, let me say that the department is interested in a positive outcome for the City and we really see without looking at the specifics of the transportation work that needs to be done under Goal 12, there really isn't any reason why this can't happen. The work just needs to be done. You have our letter of comment that we found deficiencies in Goal 9, Goal 10, and Goal 12; basically the ones I addressed. The information for Goal 9 & Goal 10; Goal 9 is Economic Opportunity which talks about your supply of industrial and commercial lands, employment lands, and then Goal 10 is housing. And so when you change your comprehensive plan map or you change a piece of ground from one classification to the other from employment lands to housing, or from commercial to industrial for that matter, you need to look at your comprehensive plan to see what

it says about the supply. Is there an adequate supply of residential land? And that gets a little bit complicated because you're talking about under Goal 10 you're not talking about just any old commercial or any old industrial; you're talking about land available for different types of housing. And applicants correct in Ontario's code basically allows mobile homes or manufactured homes in any zone in the city that allows single family homes. That's one of the requirements built in. You have to make provisions in your code for different types housing. However, Ontario, and I know from familiarity that the City does have an excess supply of residential land. I just don't know if it has an excess supply of mobile home parks. But I was able to find the section that speaks to that in the Urbanization Report with not a lot of work. And you need to find out if there's also you need to look at whether or not there's a deficit of commercial ground, you know, this isn't a dominimous matter which is under two acres, you're talking about 6 acres or is it 8?(Someone in the audience said that it was 6.2). So you're talking about 6 acres which means there's a burden to bear. You need to be able to say based on your comprehensive plan, what's in it, we have a deficit of commercial land and we have a surplus of land available for low income housing and here's the pages in the comprehensive plan where it is and so you know this is a prime candidate for location for a rezone. The next thing that you need to do is consider the transportation impacts, I mean that's kind of the four cornerstones of Oregon's program, is making sure that you have an adequate land supply in all zones for 20 years and then making sure that whatever you have is appropriately planned for for sewer, water, and transportation facilities. Sewer and water are Goal 11 and it's pretty obvious I mean even though it wasn't covered in the staff report I would guess that there's city water and sewer there of an adequate size to serve a parcel that's rezoned to commercial, although it wasn't addressed. But I didn't see any findings that addressed that. So switching back to Planning Director role, you probably could look at that and make some findings that it appears that the sewer and water is adequate based on the information that the applicant submitted. Okay, back to Department, the Transportation Study, the applicant is correct that there will have to be a traffic impact study done when an actual development occurs on that property. We're not talking about that, we're talking about the planning so that when that Transportation Study is done, the developer knows from looking at your Transportation System Plan, what type of street that he needs to put in there and where if there's any problems or projects that in the Transportation System Plan that are listed for that facility. A Transportation System Plan is nothing more than an Engineer looking at everything's that within your Urban Growth Boundary and doing modeling on trip generation and how may trips are gonna come out of this area of land that's zoned commercial or residential or industrial and they do that with these books that they have. They assume a certain level of build out and they do a trip generation. They look at your existing streets and roads and intersections and crash data to see what's adequate for 20 years' worth of traffic increase and what's not adequate and they put what's inadequate down on a list of projects and then they assign a cost to each project. They list some sources of potential funding and have a nice day. So that's done for an existing zoning. This property was formally commercial and in 2000 or thereabouts when the City embarked into Periodic Review and made their first attempt at expanding the UGB there was a Transportation System Plan in place. So 2000 up to 2006 there was a certain Transportation System Plan in place. It modeled this property as commercial. Whereas residential when it was changed to commercial to residential in 2000, that transportation plan modeled that. We adopted, if you remember, a new Transportation System Plan with updated modeling in 2006 when I was here. One of the first things we had to keep continuing the hearing forever because the contractor didn't have his work done and we were missing some little pieces and it just seemed like to be the never ending story but we did get that done. So that modeled this ground and the impact on the streets that served it as residential ground. That trip generation figure for residential land versus commercial is incredibly different. Commercial, according to what your zone allows, even between light commercial, which is what the applicant is asking for, and residential; the trip generation figures are different and so what the State rule requires, 12, the transportation planning rule, is that you look to see whether or not your proposed rezone and in this language, it's right in the rule, will have a significant effect on existing or planned transportation facilities and to do that you need to assume a certain build out at the zone you're proposing so you can get trip generation figures, compare those with what it was residentially and then look at the streets around it,

the data on the streets around it, to see what level of uses appearing now and what the Transportation System Plan says about that. It might have said residential, you know, there's an intersection up here that's gonna fail in ten years, it might or might not depending on the economic climate and how growth occurs but you need to look at that. This might move that up to two years. You don't know unless the work is done and that is the work that we're asking for. So, what the rule requires and what the Department is pointing out is that this work has not been submitted. You know, Goal 12 has not been satisfied. You don't know if you rezone this, if there's gonna be a life safety problem. You don't know what the developer is going to need to answer for. Here's a potential situation; you go ahead and the City Council approves this and somebody comes in there with a good development that the City wants for commercial and suddenly when they do their traffic study that's required by the code, you figure out that that intersection is triggered at that level of development and it's gonna cost that guy a million and a half bucks because the City doesn't have it and the developer walks away. That's the purpose of doing the planning at this time, so every bodies on the same page when the actual development occurs, you know from a practical standpoint and so that is what the department is requesting. (Mr. Justus asks a question) Sure, you get rebuttal time after this".

Chairman Rudd said that he would allow the Commissioners to ask questions of Mr. Young.

Commissioner Graversen asked Grant if what he was saying was that now was a great time to do the Transportation Study, even before the property is sold or what kind of business is determined.

Mr. Young answered that it was required. "When you do a Transportation Plan, you're basically trying to determine what the facilities will handle and what will be needed in twenty years for a certain level of growth. And so, when you do this planning, you look at literally at street surfaces, at widths, at where they're running, intersections that they connect to, this traffic is either going to go to Fifth Street or to Idaho and we all know that Idaho has problems. Fifth Street, if I remember right, was forecast to be pretty adequate until almost up the end of the twenty year planning period, like 2016. So it was in pretty good shape. But, that's what you're looking at, if that's in the plan, this street is going to be a collector or minor collector classification or a residential local street or an arterial; you assign a classification to it based on the zoning. This is residential zoning now, if it gets changed to commercial then you have a heck of a lot more trips, do you need to change that classification? You can't tell that unless you do the work. So, you end up with a set standards, you know type of street, width, surface, classification, where the access can be on those streets according to the classification and that goes in the plan. Done, for a rezone, no need to build anything, no need to; you're just rezoning, you just gotta do the planning. The time to buildings to decide whether it's going to be an arterial or a collector or whatever or you need to improve the intersection is when a guy comes in and he looks at that property and goes, 'I want to do this on that property' then you know what his trip generation is gonna be. And you know what his traffic load is going to be and he has a transportation engineer do a traffic impact study from the actual development so he knows what improvements he's going to have to do according to the Transportation Plan, that's how it works. But this planning is simply to put it in the plan so the developer and the City both have some certainty at the time when he comes to develop and does his transportation impact study.

Commissioner Graversen commented that it would be different ratings based on whether it was residential or commercial not necessarily what it would be at some point in the future.

Mr. Young, "Right, you assume full build out on it with some pretty intense uses. It's kind of overkill. ODOT wants to see things like this and I don't know that ODOT ever got a copy of this but rezones, they're also entitled to notice under the law and so, I didn't hear anything from ODOT, which usually I do when we see something like this. So they either don't have any concerns or they looked at it and they're not worried about it or they didn't get to look at it. I don't know which. So this is going to go in the plan so that you so that you know how much you're going to have to spend as a developer if there's any

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improvements that are required. Basically, this work will end up with, will compare what's gonna to be needed with what is in the plan already and if it finds that it's adequate then you can make a finding of no significant impact, the transportation facility. You're done at that point. If there is a significant impact, then you get into the additional planning. You get into, okay, here's what the plan says, here's what's going to be needed, this is a project that will solve that here, here's another project, here's another project, these are how much it's gonna to cost and these are same sources of funding that are in the plan now so probably what's going to pay for it. And then so, it's more work and it's more complicated then I make it sound but basically that's your bottom line. The objective of the whole land use plan, Oregon system, is...it looks a lot of times like obstructivism and delay and everything but it's trying to give certainty. It's trying to get the best possible results for people within any community when they decide what sort of development they want, they have plans for it, if you want to change it, great change your plans and that work has not been done".

Commissioner Allen said he had looked at a Transportation Plan a while ago he thought that SE 5th Avenue was designated as an arterial.

Mr. Young answered that it was either an arterial or could have been a major collector.

Commissioner Graversen commented that SE 5th Avenue was already having some problems.

Mr. Young, "It has issues and plus' but with the Public Works plan the City does a tremendous job of keeping up with their Master Plan, street Master Plan, sewer and water, they always have. It's unusually good for a City of this size. There's projects, there's things that are to happen on fifth. You know, depending on time and money".

Commissioner Allen said that there seemed to be a change of use of the City in general. We had a tremendous growth on the East side and there was a lack of land for mobile home parks. He thought that no one would want to develop a mobile home park. He felt that a mobile home park would be too costly to develop. Commercial development was coming from across the freeway. Every time there was a major development or some type of development, they had to do some sort of comprehensive traffic study beforehand.

Ms. Skinner commented that according to the Transportation System Plan, SE 5th Avenue was considered a major collector.

Commissioner Allen said that there had been great planning for Idaho and to look at how it ended up.

Mr. Young, "What you're looking at is growth. At the time the Transportation System Plan is adopted it says, these streets are functioning well, this intersection has a problem, and you know at a certain point which is usually a number of trips or number of crashes or safety problems its constant work, Mike, it really is. There's a lot of politics involved in these land use decisions too. When a developer comes in and he wants to do something and his transportation impact study says that he needs to do this or that and he needs to pay these System Development Charges and if he gets a break from these SDCs from the City Council or he get a pass on a transportation impact study that it was pretty obviously has some flaws in it then, then you fall a little bit further behind."

Commissioner Allen brought up the idea of a toll bridge between Idaho and Oregon.

Mr. Young, "I don't know, there's a lot of benefit that comes from a City that has 11,000 at night and 30,000 in the daytime".

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Commissioner Allen said that he was surprised that people don't understand that Ontario is trying to support an infrastructure of 40-50,000 citizens on a tax base of less than 10,000. He remembered that every development on the East side of the freeway had to do the study.

Mr. Young, "Carl's Junior went in, you know, when I was a planner and they did a Transportation Impact Study said hey we need a new this, this, and this".

Commissioner Allen told the applicants and Mr. Justus that he was a pro-development guy and in the long run, doing the Impact Study would be to their benefit.

Commissioner Kanrich commented that they did not know what development would be coming. She felt that the easiest way to sell the property would be to zone it commercial but that they would need to do the things that the State said they would need to do.

Commissioner Rudd said that not only would they need to follow what the State said but that the Ontario Planning and Zoning code. He said that in the past, the report would have comments from the Public Works Department and sometimes Fire Department. But he understood that the main objection was the lack of a Transportation Plan and not meeting Goal 12.

Mr. Young, "As noted in the comments. There's some other Goal 9 and Goal 10....too. I do have a couple more things that I heard from the applicant that caused me some concern on a procedural note so I'd like to switch back to process. The applicant, let's see, he noted that he didn't get his packet until today and he didn't get a copy of my comments until yesterday or something like that so, I'm not sure but I think the code, I think, that the code requires that the applicant and the Planning Commission are sent a copy of everything seven days prior to the hearing. I know the Planning Commission does, that's reflected in State Statute, you might want to take a look at your code. So that's a procedural point which if the City Council denied that technically the applicant could take to LUBA and LUBA would say 'do over' so we have an issue here with the 120 day limitation and to spite not having notice all this would be....if appealed. Would be to hear the same material again six months later after a tremendous expense to the City and the parties and so that's kind of a dead end if the work hasn't been done so I don't know how tothat. Is I can see

Going to LUBA and be at the same place

Commissioner Rudd was going to ask if the PC could give a continuance but because the 120 time limit is getting close, a continuance would not be possible.

Mr. Young, "Um, there is some things you can do how you can address that. And, you'd want to check with, is Larry Sullivan still your City Attorney? So you'd want to check with Larry but there's a couple different ways to address that. Number one, you request the applicant's submit in writing that they're releasing you from the 120 day time limitation until such time as the work is done. If we're talking about continuing the matter until the work gets done. You can do that, or, you can say well why don't you withdraw the application, you know, submit that in writing and reapply and we won't charge you. So you're still getting two applications for the price of one. So there's a couple different ways to handle that. So, remember, you know it's a pretty good proposal and it's a developer and it's a real estate guy and a couple applicants looking forward. It's probably not a bad thing, like I said, my department doesn't see pending the outcome of the Goal 12 study, why this shouldn't be able to go. You just need to do the work and it's not a bad project so it'd be to everybody's benefit to conclude it positively, including ours".

Commissioner Rudd asked if Mr. Justus had a rebuttal.

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Mr. Justus, "Sure, I think my issue's with the process, okay. So, I totally understand why we would need, why everyone says a logical point traffic study first and give that developer all the information he needs. Right, we want a house. Okay, you buy a house and you do your inspections right? And you do your purchase price, you do your inspections, right? Oh! The furnace is broken, right? We'll have to fix the furnace. Who's going to do that? The seller, buyer, broker? Who's gonna do that? That's when those questions are answered. Try to answer them now is a burden on the property owner, right? I'm not saying don't have a traffic study, I'm saying with that part what the state's trying to do is put this burden on the property owner that's restricts. Right? We need to be able, if we're gonna have growth right and not push it across the river right we need to say yes we want controlled growth we wantwe don't want 50 units on there us building onto Fifth Avenue. All of this would be harming the developer say okay now it's gonna cost a million five, right? We find that out during the due diligence process in line, right? That's when the seller says, I don't want 250 that's when the developer can go to the City and say 'I have this problem, we have this great opportunity for employment here, right, can we wave property taxes for five years so that they can pay for roads to be built up so that we can have 40 employees?' right? But by doing it this way we say stop right then I sit there and say to the purchaser, I've got a million five on this improvements over here on this intersection by the way, you still want to pay money for this, right? What are the chances of really finding a buyer for that? When, if we do it in reverse process right we have a buyer we have a seller we have the consummation of a deal. And once we have that right we have more chances of getting it done versus putting more obstacles in front of it. I'm not saying don't remove the obstacles, I'm saying put them in a different place. Okay? That's my argument, right, and I think that if you look at historically with the way the State has approached new development, it has stifled it, right? With us sitting here on the border with Idaho that has a very liberal development and us laying a very restrictive one, we push development across the river. Now is an opportunity to say no, State we need a change and we can do that tonight and you can sit there and say, we need a change. And we can go to State and go to Cliff and say look you know we're not saying that we're not up to abandon growth we're not saying...we're just saying, give us the opportunity to have it. I think that that's what I'm doing tonight".

Chairman Rudd thanked Mr. Justus and asked Grant Young if he would like to respond. Grant did not want to respond and the public hearing portion was closed. He asked about the Findings of Fact.

Commissioner Allen commented on a developer of much of the property on the East side of Ontario named Mark Zimmel. He thought that Mr. Justus should talk to Mr. Zimmel who liked to know what the cost of the infrastructure would cost beforehand. He thought that the City was trying to be transparent and have everyone on the same page. It helped Mr. Zimmel know how much to pay for the real estate and how much it would cost up front.

Mr. Justus, "I'm there, but we're talking about a six acre parcel not a hundred acre parcel".

Commissioner Allen stated that the size doesn't matter in the eyes of the State of Oregon. The State laws had been in place for a long time and the City would not fight with the DLCD.

Commissioner Rudd was concerned because the staff report stated that the site was not presently served by potable water.

Commissioner Allen that the water could be brought to the site but at the cost of the applicant.

Mr. Young, "Let me make some procedural suggestions. So, that's okay, you have a staff report and in the staff report contains a set of information. You have testimony from the applicant and you have an exhibit that they submitted. You probably need to decide whether you're going to give that exhibit a number and keep it or if you already have the information that's on that exhibit pretty much in graph form on your

packages. If you do you don't need to, you know, submit a new exhibit but you should address it, that's like the first thing. Your decision needs to be based on information and findings of fact so you have a choice of information to accept. You have the applicant's submittal, you have his testimony, you have the staff report, and you have my letter of comment and my testimony in your decision you need to say, 'well we're gonna put this aside we're gonna accept this as the reason for the decision of our findings and point to something. It's all in the record but you need to point to it as the basis for your decision and permanently get it on the record and that's it. You know, it's just you have that other stuff there and if you're going to rely on something I said or the applicant said in testimony you should say, you know, we're gonna consider these things, we're gonna accept those, we're gonna accept this statement or that statement or whatever and add that to the staff report or we're gonna junk the staff report and adopt these as findings of fact and this is what we're basing it on".

Commissioner Rudd stated asked Mr. Young if the contents of the PC packet would be included in the record. Grant answered that it was. Mr. Rudd said that the DLCD letter would be included as part of the findings of fact. He stated that a problem would be the transportation study. It would be less extensive as what would be necessary when there's a buyer but that one that would show that when the property develops, the existing property study will take care of the concerns. He was not sure have to verbalize it. The PC was used to seeing a letter from an accredited engineer for those kind of studies.

Mr. Justus asked if the City had an engineer. "The City doesn't have an engineer? We have a traffic report that the City has a traffic report you don't have an engineer. You want us to hire an engineer to interpret your report. Is that what I'm hearing?".

Jay Henry, Ontario City Manager, answered that currently the City was in the process of hiring an engineer. The PW Director was a registered engineer but was specialized in another area.

Mr. Justus, "What I'm hearing is the commission is saying that we do have a traffic report. We need you to hire an engineer to review our traffic report and issue a letter of finding, issue a finding on that report, correct, is that what I'm, okay I just want to make sure that I'm clear on what the City's asking?"

Mr. Henry agreed.

Chairman Rudd said that the PC could look at a continuance which would run out all the time and there would need to be a resubmittal. He asked if the applicant would want to withdraw their application to allow time for the information to be included and resubmitted.

Mr. Justus, "I would be more open to you accepting the change contingent on the finding of the traffic study".

Chairman Rudd said that they had to make a recommendation to the City Council by December 3.

Mr. Justus, "You can recommend an approval with us giving that letter, right, put in it subject to, and then if we don't have the letter then we can do a continuance with the City Council, yes?".

Chairman Rudd said that it would put the PC acting with insufficient information. He said that he would need to see that information to vote.

Mr. Justus, "Are you saying that right now are you saying you feel it's a yes...for an engineer that said that the traffic, the current traffic patterns meet the for that six acres, meet the current requirements, right, you would say yes? Okay so".

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Chairman Rudd said that that was correct or if it said the opposite he would vote no.

Mr. Justus, "So right now I'm hearing you say, yeah its contingent on getting the work done, correct? I'm hearing you say yes, if you get the letter that says yes, I'll say yes".

Chairman Rudd said that he would not make a recommendation until then.

Mr. Justus, "So what happens is that we hold a continuance and we move into a new council, correct? Because the new council starts in January?"

Chairman Rudd said that is why he was wanting the applicant to withdraw. He asked if staff would mind waving the fees if the applicant withdrew his application and then resubmitted the application when it was complete. If the Planning Commission recommended denial to the City Council and the City Council denied the action, then the applicant would have to resubmit their application and pay the fees again. Every member of the Planning Commission was pro-business. Mr. Rudd said that he supported this development but the I's needed to be dotted and the t's would need to be crossed. He asked if the applicants would want to withdraw their application.

Mr. Justus, "There would be no charge to resubmit? And then we take the exact same application and resubmit? We're adding a letter from an engineer?"

Mr. Henry agreed that he needed to address all the comments from DLCD.

Mr. Justus, "All the comments from DLCD?"

Commissioner Graversen said she thought he needed to address all the comments from DLCD.

Mr. Henry said that if he was going to resubmit, he felt that he should address all of the DLCD comments.

Mr. Justus, "I understand, so again I want to make sure that we're clear, the City's saying okay go to our urban development plan that we have, hire, find the information that the state's requesting, put it back together and give it back to us because we already have the urban development plan but we want you to find out where it says in the plan what we need you to do".

Mr. Henry said that the legality of it was for him to come back and address what the state's comments and the City would wave their fees. He also said they the applicant's would need to sign a release of the 120 day land use limitation with their withdrawal to cover the City.

Mr. Justus, "So, if we go to the 120 days, if we go through the 120 days without a response, where does that put us, on our side?"

Mr. Young, "Well, you could do a release from the 120 day time period, check with Larry Sullivan and make sure that that absolutely gives you, you know outside you're free and clear. Um, a withdrawal. Because a release from the 120 days would be actually a better thing it's like a, and then you'd want to continue it to a date and time certain and if the work isn't in you keep continuing it but you release them from the 120 days, set a specified time period if you want, you know you have to have this in within six months and then you don't have to re-notice, you don't have any expense to the City and they don't have any expense for another application. Or, a withdrawal, which negates it right here, I mean it doesn't even go to City Council it's just done and that then you're going to give them a freebie on reapplying but the City then has notice you have to give notice again cuz it's a new hearing. So, actually a release from the 120 days would be a better deal".

Chairman Rudd asked Mr. Young if a motion would be needed to accept the release of the 120 day limitation. Mr. Young said yes.

Mr. Young, "Yeah, I mean that shows it's all your decision. I mean, for now it's going to proceed to, well if they want to continuance you give it to them contingent upon that release and then it doesn't go to the City Council. You know on December whatever it is, but at that hearing because people that get notice will have to open the notice and say that, well the Planning Commission doesn't have a recommendation yet so we're continuing it for a month, or whatever and that just keeps it rolling ahead so it's all your decision they can grant a continuance if they give you a release you should, yeah, that should be a motion".

Chairman Rudd moved, seconded by Cindy Graversen, to accept a release of the 120 day requirement contingent on it being provided within five days. Roll call vote: Rudd-yes; Allen-yes; Kanrich-yes; Graversen-yes; Tuttle-excused; Twombly-excused. Motion carried 4/0/1/2.

DISCUSSION

There was discussion of some various topics.

REPORTS

Marcy Skinner reported on the permit activity.

ADJOURN

Mike Allen moved, seconded by Cindy Graversen to adjourn. Roll call vote: Rudd-yes; Allen-yes; Kanrich-yes; Graversen-yes; Tuttle-excused; Twombly-excused. Motion carried 4/0/1/2.

Michael Rudd, Chairman

Marcy Skinner, Planning & Zoning Technician