

MINUTES
CITY OF FAIRVIEW
CITY COUNCIL & PLANNING COMMISSION
September 10, 2013

Council Members

Mike Weatherby, Mayor (Meeting Chair)
Dan Kreamier
Ken Quinby *Excused*
Steve Prom
Steve Owen *Excused*
Lisa Barton Mullins
Tamie Arnold

Planning Commission Members

Steve Kaufman, Chair
Jan Shearer
Ed Jones
Gary Stonewall
Keith Kudrna
Jack McGiffin
Julius Arceo

Staff

Samantha Nelson, City Administrator
Allan Berry, Public Works Director
Chris Crean, City Attorney
Devree Leymaster, City Recorder

1. CALL TO ORDER: 6:30PM

ROLL CALL

2. WORK SESSION: RIVER FRONT DEVELOPMENT DISCUSSION

Mayor Weatherby introduced the agenda item and stated the goal is to have a constructive discussion that provides staff direction on how to proceed.

City Administrator Samantha Nelson presented a brief history. An application was received requesting a rezone, which included a draft code. The application was deemed incomplete and no action was taken. City Council (CC) requested Planning Commission (PC) review the city initiating and developing a river oriented use. PC recommended developing a master plan for the entire water front. CC requested staff contact Leland Consulting. Staff did and Leland recommended developing a master plan. For a full master plan, Leland estimated it would be \$250,000 over 2 years. Recently, Attorney Matt Wand gave testimony that Council could adopt a new zone by ordinance without going through PC and provided a revised draft code. The city attorney office does not recommend CC moving forward and there are inherent risks if they do so.

City Attorney Chris Crean referred to the memo provide by City Attorney David Doughman. This action requires a legislative process and CC is the ultimate policy maker. The Fairview Municipal Code specifies the process, which is a type IV process that includes PC. At least two public hearings, once before PC and one before CC, is required for all type IV applications. The CC does not have the authority to ignore their own code. There are also a number of state and local laws to comply with. To adopt the code, you must demonstrate compliance with Metro's functional plan and the State Wide Planning Goals.

PC Vice Chair Shearer remarked PC is familiar with the type IV process and has followed it many times before. The PC is charged with being responsible for citizen involvement and input in land use policy decisions.

Commissioner Arceo inquired how long the process would take. City Attorney Crean replied theoretically the public hearing portion could take 2 months; PC public hearing one month, and CC public hearing and adoption the next. To begin the process a formal application must be submitted. That is a policy decision as to whether you wait for an application to be submitted from an outside party or CC directs staff to develop the land use application and proceed. To prepare the application and ensure compliance with all procedural requirements could take approximately 2 months. From application to adoption could take 3 to 4 months in the best case scenario.

Council President Barton Mullins stated another attorney stated CC could just pass the ordinance and inquired if CC can absolutely not do that. City Attorney Crean replied no they cannot; they would be defying state law and the FMC.

Commissioner McGiffin inquired about the studies that may need to be done as part of the application process. City Attorney Crean responded an analysis of state and regional regulations will have to be done to identify any implications the proposed zone may have i.e. a traffic study if the proposed use significantly affects transportation facilities. The regulations are in state statute and must be complied with prior to adopting the zone.

Mayor Weatherby inquired about the role of the property owners, other than being informed of the hearings. City Attorney Crean replied property owners within a certain distance from the proposed zone will have to be notified. They will be able to participate and support or oppose like everyone else.

PC Vice Chair Shearer inquired if data isn't available for the height of the levee or, for example, a 1,000 year flood, what kind of background would have to be provided. City Attorney Crean responded it is very detailed and involves flood plain maps. The specific situation of the dykes may be taken into account. At a certain point in development those questions will have to be answered. You may want those questions answered before deciding on a zone; could potentially adopt a zone for a use that cannot be developed because it is in a flood plain.

PC Vice Chair Shearer remarked she expects the process to take longer than 3 to 4 months. City Attorney Crean replied given the professional appointed duties of PC and CC, you would want to look at the details closely i.e. flood plain and transportation and doing so increases the time frame. Commissioner Arceo inquired about the cost to hire consultants. City Attorney Crean replied the scope and how much information the consultant needs to gather, will determine the cost. The city could fund the studies or defer to the property owner. Who pays for the consultant can sometimes influence the results.

Councilor Kreamier inquired if the data, or some of it, could be requested from the Corp of Engineers for free. Public Works Director Allan Berry replied the Multnomah County Drainage District (MCDD) is in the recertification process for the levee. Information from MCDD suggests the best option is to fill the sites level with the levee, alleviating the levee issue. Staff is also being told no penetrations will be allowed through the dyke.

City Administrator Nelson summarized City Attorney Crean's recommendations prior to PC and considering the zone, there are studies that need be done. A traffic study depending on what type of development and determining what infrastructure currently exists and will it meet the demand of the

proposed use, considering the current limitations of the dyke. The city either identifies those needs through their own consultant or a developer provides the information with their application. City Attorney Crean replied yes, and suggested staff develops options i.e. master plan or one property, and what information is needed with approximate costs for each option.

Mayor Weatherby commented he understands traffic studies are done by the developer and inquired if this is a separate study. City Attorney Crean replied yes. In order to rezone property must demonstrate there are adequate transportation facilities to serve it. Per state regulations, the trigger is if the new zone significantly affects the transportation facility, you have to demonstrate either adequate facilities exist or identify what is needed and demonstrate viable funding to make those changes.

City Attorney Crean commented another consideration is the overall impact on the city's land inventory. What happens to the industrial, commercial and residential zone base? If industrial land is rezoned, do you rezone elsewhere?

Council President Barton Mullins commented the river properties already have a zone and the request is to rezone. Can the city create the zone or wait for a developer to submit an application requesting it. City Attorney Crean replied yes, the city can create the zone. The first step is to articulate what it is that is wanted and why is it a more appropriate zone. At some time in the past the city determined the current zone is what was wanted. Council President Barton Mullins inquired if it is better to leave as is or wait for an applicant to request a change. City Attorney Crean replied if the belief is the current zone is still appropriate, then leave as is; if believe a different zone is more appropriate, then change.

Councilor Kreamier inquired if another current zone could apply to those properties and if a rezone to that zone could be requested. City Attorney Crean replied maybe; would need to research the different zones.

Commissioner Kudrna inquired what the disadvantages were of developing a code prior to placing it on a property. City Attorney Crean replied there is a risk someone could challenge it when a code is adopted but not applied to a property and provided two examples of challenged decisions after the fact. One challenge was upheld, the other was not; which brings up the question of finality, if someone can come back later and challenge it.

PC Vice Chair Shearer inquired about modifying an existing zone, adding the additional types of activities needed to apply to a water front development. City Attorney Crean responded a current zone could be used as a template and modified, possibly adding the marina concept. It would probably still need a different name. In theory, an entirely new code doesn't have to be adopted; an existing code could be modified.

Councilor Arnold commented the master plan process did seem complicated; however, there is an interest and a request to rezone a specific property. The city would benefit from the economic development and it may motivate future development. Councilor Arnold proposed the city initiating the process and moving it along for at least the one property.

Councilor Prom inquired if there is support for a river oriented zone. The group responded yes. Commissioner Stonewall commented he supports the concept, but is concerned about the infrastructure needs, traffic and utilities, and those questions need to be answered first. PC Chair Kaufman remarked he has seen decisions get pushed through to quickly without the entire scope being vetted and researched, in

the long run it leads to more problems and time, than if the process slowed down and was done right from the beginning.

PC Chair Kaufman expressed concern about the cost and time to complete a master plan process, but is hesitant to zone one property. Commissioner Stonewall remarked, need to determine if it is feasible to develop. Without Metro property there are 3 properties. Council President Barton Mullins inquired if the Fort James property owners had been contacted and had any interest. Staff responded no, no contact has been made yet and clarified even if the zone is created, Fort James could continue under the current zone.

Mayor Weatherby summarized the consensus is to direct staff to prepare options and approximate costs for a new zone that maximizes use and includes 3 properties. Planning Commission will begin information hearings to consider a zone change for the 3 properties. Councilor Kreamier inquired about the time frame for informational hearings and review, and presenting the information at a joint PC/CC meeting. Commissioner's Stonewall and Kudrna thought it may be done by December. PC Chair Shearer proposed January.

3.ADJOURNMENT

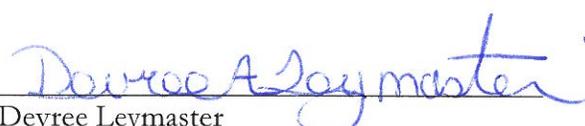
Commissioner Stonewall moved to adjourn the meeting and PC Vice Chair Shearer seconded. The motion passed, and the meeting adjourned at 7:30PM.

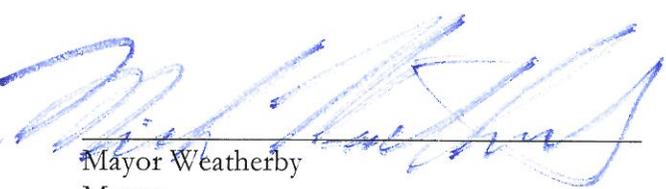
AYES: 12

NOES: 0

ABSTAINED: 0

A complete recording of these City Council proceedings is available by contacting the City of Fairview Administration Office, 1300 NE Village Street, Fairview, Oregon 97024.


Devree Leymaster
City Recorder


Mayor Weatherby
Mayor

Oct. 17, 2013
Date of Signing