



City of Tualatin

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OFFICIAL

TUALATIN PLANNING COMMISSION/ARB JOINT MEETING MINUTES OF MARCH 20, 2017

TPC MEMBERS PRESENT:

Bill Beers
Kenneth Ball
Alan Aplin
Angela Demeo
Travis Stout
Janelle Thompson

STAFF PRESENT

Aquilla Hurd-Ravich
Sean Brady
Lynette Sanford

ARB MEMBERS PRESENT:

Jeff DeHaan
John Howorth
Patrick Gaynor
Chris Goodell
Carol Bellows
Angela Niggli

TPC MEMBER ABSENT: Skip Stanaway, Mona St. Clair

GUESTS:

1. CALL TO ORDER AND ROLL CALL:

Beer Beers, Planning Commission Chair, called the meeting to order at 6:30 pm and reviewed the agenda. The Tualatin Planning Commission and Architectural Review Board members introduced themselves.

2. COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA):

None

3. COMMUNICATION FROM CITY STAFF:

A. Land Use Hearings – A Briefing

Sean Brady, City Attorney, presented an informational briefing about land use hearings (legislative and quasi-judicial). He covered topics including each type of hearing and process, appeals, ex-parte contacts and communications, bias, and conflicts of interest.

These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of one year from the date of the meeting and are available upon request.

This briefing included a PowerPoint presentation.

Mr. Brady stated that there are two types of land use hearings: Legislative and Quasi-Judicial. Legislative is where the body is sitting as a legislator and there is no requirement for the body to enact. Examples include zoning and re-zoning changes including plan map and plan text amendments. A quasi-judicial hearing is where the body sits as a judge to consider and apply evidence to criteria in the code. This is used for site-specific zoning or map changes and a written decision must be made within 120 days.

Mr. Brady discussed ex-parte contact. Forms of ex-parte contact include site visits, discussing newspaper articles, and discussions with the applicant or audience members. If this occurs, it must be announced immediately before the public hearing begins or resumes. The decision-making body allows all parties to the proceeding the opportunity to question the decision-maker to clarify the contact, and to present evidence and argument to rebut the substance of what was discussed outside of the hearing.

Mr. Beers stated that during the building of the Nyberg Rivers site, there was a sign variance for LA Fitness. Mr. Beers questioned that if a person was on the site visiting another business, is that considered ex-parte contact? Mr. Brady answered that the site visit should be disclosed.

Mr. Beers inquired about solicited contact such as emails. Mr. Brady responded that if the email is received and opened, it will need to be disclosed.

Mr. Brady stated that to cure an ex-part contact, the nature and the substance of the contact must be stated at the next public hearing immediately after the contact occurs. The decision-making body allows all parties to the proceeding the opportunity to question the decision-maker to clarify the contact, and to present evidence and argument to rebut the substance of what was discussed outside of the hearing. Mr. Brady noted that if a person does not cure, it violates the substantial rights of parties and is a basis for invalidating the decision.

Mr. Brady acknowledged that another issue that can substantially impair a party's ability to receive a full and fair hearing is bias. Actual bias is a prejudice to prejudgment of the case to such a degree that the decision-maker is incapable of making a decision of the merits. This includes personal bias, personal prejudice and interest in the outcome.

Mr. Brady discussed conflicts of interest. This includes actual conflict and potential conflict. The required action of actual conflict is to disclose the nature of the conflict and reason for abstention, refrain from discussions, and refrain from voting. The required action if potential conflict is to disclose the nature of the conflict and you may participate in discussions and voting. A person may still choose recusal, but it is not required.

Mr. Ball mentioned that he works for a company that is associated with Trimet/Max, but

works in a different sector. Mr. Ball wondered if it would be a conflict of interest if his employer is associated with the case but he isn't directly. Mr. Brady responded that if his company had an application submitted to the TPC that will be a conflict of interest. Mr. Brady added that if they have a question regarding whether conflict exists, they can consult with the Oregon Government Ethics Commission (OGEC) or the City Attorney.

Mr. Aplin asked if he receives an email after the hearing closes, does he have to disclose it even if he doesn't read it. Mr. Brady responded affirmatively.

Mr. DeHaan asked what the potential penalties are. Mr. Brady answered that they could be fined by the Ethics Commission and they would have to hire their own attorney – the City Attorney is prohibited from being involved. An ex-parte contact is a City issue.

Mr. Aplin asked if the ARB is quasi-judicial. Mr. Brady answered affirmatively. Ms. Hurd-Ravich added that the TPC handles mostly legislative matters.

Mr. Ball asked if LUBA members are appointed. Mr. Brady answered affirmatively.

Ms. Bellows asked if it would be an ex-parte conflict if she conferred with a colleague regarding landscaping. Mr. Brady stated that if it affects her decision, then yes. She asked if she can bring the colleague into the hearing. Mr. Brady answered affirmatively.

Mr. Gaynor stated that he does not live in Tualatin and may want to visit a site to become familiar with the area. Mr. Brady responded that he can visit a site as long as he discloses it. Ms. Hurd-Ravich added that if the ARB visits a site as a group, it would be considered a public meeting and a notice would need to be sent out.

4. FUTURE ACTION ITEMS

Ms. Hurd-Ravich stated that future action items for TPC include a Plan Map Amendment and a Food Cart Ordinance. There are currently no meetings planned for the ARB.

5. ANNOUNCEMENTS/PLANNING COMMISSION COMMUNICATION

None.

6. ADJOURNMENT

Mr. Beers adjourned the meeting at 7:34 PM.

Lynette Sanford, Office Coordinator