



**Planning Commission Meeting
January 30, 2018
Banks City Hall, Banks, OR
MEETING MINUTES**

Acting Chair Rachel Nelson called the meeting to order at 6:30 pm. The proceedings were recorded in digital format.

ROLL CALL

Present were: Philip Darrah, Jeremy Bench, Chris Zechmann, Rachel Nelson, Marsha Kirk, and Sam Van Dyke.

Attending: Jolynn Becker, City Manager; Stacey Goldstein, City Planner; Angie Lanter, City Recorder and Dan Kearns, City Attorney

APPROVAL OF MINUTES

1. Approval of minutes from the September 26, 2017 meeting.
Commissioner Kirk moved to approve the Planning Commission minutes of September 26, 2017 as presented. Commissioner Bench seconded the motion, which passed unanimously.

CITY COUNCIL REPORT

2. Verbal Report from City Manager – City Manager Becker reported on the action items of the January 9, 2018 regular City Council meeting.

PUBLIC COMMENT – There was none.

WORK SESSION

3. Planning Commission 101 - City Attorney Kearns reviewed the two major functions of the Planning Commission and explained the differences between quasi-judicial and legislative matters. He also described the different necessary disclosures and summarized the Commissioners' roles and responsibilities in a hearing.

4. Draft #3 of the Sign Code Rewrite

This item was addressed following Public Hearings.

City Attorney Kearns stated sign codes could create a lot of litigation because they affect people's expressive rights under the First Amendment. He described federal and state constitution protections for expressive conduct, such as signs and speech, referencing the 2015 U.S. Supreme Court case, *Reed v. Town of Gilbert*, which reinforced the principal that only content-neutral code regulations were permissible, meaning the sign code could address when, where, and how signs are displayed.

He presented his suggested changes for the draft Sign Code rewrite, which ensured content-neutral regulations. He recommended striking the items highlighted in yellow, noting there were a number of ways to regulate signage as long as the requirements or restrictions were content neutral.

Key comments and discussion regarding the draft Sign Code were as follows:

- Political speech was the most protected speech under both state and federal constitutions. He explained why political signs in a public right-of-way should be left alone because it could be argued that those areas were similar to a public forum. However, signs demonstrating a public safety hazard could be removed or prohibited.
- The City could prohibit billboards without regulating the content by placing size limitations on the signs. Signs with flashing lights or moving parts could be prohibited because they were content-neutral bases for regulations. Political lawn signs and garage sale signs were tricky; home occupation signs were easily regulated with sign code dimensions.
- Political or garage sale signs could not be expressly prohibited in the public right-of-way. However, because it is public property, sign permits with a specific time duration could be required for signage in the public right-of-way. The permits must be able to be renewed to accommodate time frames like the primary and general election cycles, for example. Having different timeframe options was also suggested.
- Reasonable fees could be attached to the sign permit. Different fee schedules could be created for nonprofit organizations. Refunding sign permit fees when signs were removed was a good way to incentivize compliance.
- Garage sale and other signs in the public right-of-way were a big issue within the city, and were removed by City staff, who enforced the Sign Code. There were often three to four signs a week in the median on Oak Way, especially during the summer.
- PGE does not allow signs to be posted on the utility poles. Posting signs on trees was allowed.
- The City's existing blanket prohibition of political signs in the public right-of-way was not legal and needed changed.
- No sign permit would be required for signs on private property, unless other regulations applied, such as those from an HOA.
- With a permit program in place, the City could rightfully remove signs placed without a permit. Signage would be allowed without a permit, so the City would not be infringing on the expressive rights of citizens.
- Real estate signs would also be regulated. Signs advertising open houses would be temporary signs and typically removed within 24 hours. For Sale signs with posts in the ground could be required to maintain a certain distance for walking on the sidewalk or for parked cars.
- Staff was still discussing including additional language about permitting for temporary signs.
- Home occupation signage was discussed. The way to regulate home occupation signs was to limit signs that could be displayed in a residential zone.
- One test was if the regulation was narrowly tailored to achieve a legitimate government interest. For example, there was a compelling government interest in maintaining traffic safety, so regulations regarding political lawn signs should be narrowly tailored so the signs could be prohibited in a right-of-way if there was a demonstrative public safety issue.
 - The government interest in limiting signs in a residential zone would need to be determined and then that regulation would have to be narrowly tailored to achieve that objective. For example, the draft Sign Code limited size to address aesthetics, which are important in residential areas.
 - With regard to home occupation signage, the Home Occupation Permit form should reference the current City Code so that when the City amends the Sign

- Code in the future, the forms would not need to be redone.
- The City should identify the specific problems with different types of signage in order to narrowly tailor the regulation to legally address that issue.
 - Feather signs were prohibited in the C-zone (Section 8.60.070.3.j), but the Commission understood they would be prohibited entirely. Following discussion about feather signs being allowed in the Industrial Zone, feather signs would be added to Section 8.60.060.3 to prohibit them in residential zones.
 - The Commission agreed the portions of the draft highlighted in yellow would be deleted. City Attorney Kearns noted that those items should be handled in the Temporary Sign section.
 - A permitting process for temporary signs would be added to the draft Sign Code to address garage sale, sport sign-ups, and other signs in the right-of-way, and allow City Staff to remove noncompliant signs. A blanket permit was suggested for realtor open house signs.
 - Ultimately, the sign permit form would be placed on the website for accessibility during after-hours.
 - Deleting Section 8.60.050.i, Basis for Design was recommended because determining compatibility with the Banks Branding Guidebook could be more subjective. A lot of thought was needed to determine how it would be implemented. As proposed, it was not workable in the Code.
 - It was agreed to strike the Basis for Design section for now but it could be added in the future after more thought was given to the time, place, and material, and the intention of the regulation.

Staff would make the changes discussed and present the new draft to the Commission for a hearing at the February meeting.

The Planning Commission proceeded to Building Permit Reviews at this time.

PUBLIC HEARINGS

5. FP 17-01 Final Plat Approval request for a 3-lot partition in the R-5 Zone. Mike and Donna VandenDries, 42205 NW Banks Road.

Chair Nelson called the quasi-judicial hearing to order at 6:45 pm and read the hearing procedures. She confirmed there were no declarations of ex parte contacts, conflicts of interest or bias. No members of the audience challenged the participation of any Planning Commissioner.

City Planner Goldstein presented the Staff report for the Final Plat Approval request, noting Staff recommended approval of the Final Plat application, subject to the conditions.

Chair Nelson called for the Applicant's testimony.

Mike VandenDries, 21540 NW Franson Way, Apt 2201, Hillsboro, stated his engineer had covered everything with the city engineer and city planner and that he had nothing further to add.

Chair Nelson confirmed there was no public testimony in favor of or neutral to the application. She noted the letter presented at the dais and submitted for the record from Dustin Penny opposing the application.

Commissioner Bunch asked if the letter's concern about erosion was addressed by the engineers. City Planner Goldstein confirmed the Applicant addressed things like storm drainage and erosion control, which were covered by their engineer and reviewed by the city engineer for consistency with the City's master plans. City Attorney Kearns added the

issues raised in the letter related more to how the property was developed in terms of erosion control, grading, etc. The applicant had to demonstrate that these items complied with City Code at the preliminary plat stage. The issues relevant to a final plat were whether or not the application corresponded to the conditions imposed at the preliminary plat level. Such concerns were very typical for neighboring property owners.

Chair Nelson noted the person who wrote the letter was in the audience and explained that from a public concern standpoint, she wanted to ensure those issues had been addressed. She called for the Applicant's final rebuttal.

Mr. VandenDries stated the application was reviewed by Clean Water Services in addition to a city engineer and the applicant's engineer. The preliminary application approval included provisions that no stormwater runoff would impact any drainage systems or streams in the nearby area. He added that a geologist reviewed the property and found everything to be acceptable for building.

Chair Nelson closed the public hearing at 6:56 pm and called for deliberation.

Commissioner Bunch noted his only concern was with the runoff but because all the grading requirements must be met for the County's permitting prior to building, it was a moot point.

Commissioner Darrah moved to approve FP 17-01 Final Plat Approval request for a 3-lot partition in the R-5 Zone. Commissioner Kirk seconded the motion, which passed unanimously.

6. MOD 17-01 Master Plan Modification Application to Phase 9 of the Arbor Village Planned Unit Development, to modify the setback standards applicable to certain Lots of the Site. The amendments are as follows:

- (1) For Lots 2-14, 16-21, and 25-37, this Application seeks to reduce the applicable side yard setback of Condition 6 from five (5) to four (4) feet;

- (2) For corner Lots 9, 18, 19, and 25, this Application seeks to reduce the applicable street side setback of Condition 6 from fifteen (15) to ten (10) feet;

- (3) For all Lots this Application seeks to reduce the applicable front yard setbacks of Condition 6 for the front of homes from twenty (20) to fifteen (15) feet, but maintain the twenty (20) foot setback for garages; and

- (4) For all Lots at the site all uncovered decks and/or patios lower than thirty (30) inches above grade to encroach into required rear yard and side yard setbacks behind front building lines, provided that said uncovered decks or patios are not closer than three (3) feet to a property line.

Chair Nelson called the quasi-judicial hearing to order at 6:57 pm and read the hearing procedures. She called for any declarations of ex parte contacts, conflicts of interest or bias.

Commissioner Zechmann declared a potential bias/conflict of interest in that his property backed up against Lots 29 and 30 in the application.

Chair Nelson confirmed there were no further declarations. No members of the audience challenged the participation of any Planning Commissioner.

City Planner Goldstein presented the Staff report, reviewing the requested amendments, noting the requests were not uncommon for planned unit developments (PUD) or

subdivisions. She believed the Applicant did a good job of providing the rationale for the requests, which would allow for different housing styles and options not currently found in Banks or Arbor Village, even more off-street parking than was previously approved, and bigger back yards. Staff recommended approval of the application as conditioned.

Commissioner Bench asked which of the seven public benefits listed on Page 10 of the Staff report were provided by the modifications. City Planner Goldstein believed the Applicant's proposal supported Item 1 regarding a variety of housing types, with the provision for three-car garages on some lots and the diverse streetscapes provided by the homes being closer to the street. She agreed the homes would be sold at market rates and did not address the public benefit of affordable housing.

Chair Nelson called for the Applicant's testimony.

Michael Robinson, Land Use Attorney, 1211 SW 5th St, Ste # 1900, Portland, OR 97204, representing the Applicant, West Hills Development, provided handouts to the Commission and Staff. He presented the application, referencing several displayed exhibits, noting the Applicant agreed with the Staff report's findings and conditions for approval. His key comments were as follows:

- He reviewed the requested modifications to Condition 6, noting there would still be 8 ft between homes and that the fourth request clarified an omission in the Code to allow low, uncovered decks and patios within a certain distance of the property line to provide more usable outdoor space.
- The Applicant believed the application met Public Benefits (1) and (2). Because not all of the lots would have modified setbacks, a greater variety of housing (1) would be provided. The Code was silent on decks and patios, and the requested modification regarding those features provided more usable open space (2), allowing families to be outdoors.
 - People looking for homes, especially in Banks with its grade school system, wanted three things, larger homes, three-car garages, and usable outdoor space for barbeques and parties. The requested adjustments to the setbacks would provide these elements, which would increase home values, and in turn, property taxes.
- The application did not propose a reduction to the structures' rear yard setbacks, or any changes the number of lots, density, or road access.
- He assured Lennar Homes understood its commitment to fulfill the agreement the property owner had entered into with the City to rebuild certain sidewalks and curbs and install certain new street trees.

Mike Anders, Lennar Homes, 11807 NE 99th St, #1170, Vancouver, WA 98682, referenced the displayed exhibit indicating the lots for which variances were requested with yellow highlight. He explained that as the builder, Lennar preplanned the entire neighborhood so the homes scheduled to be built were the homes Lennar planned to build, including how they were positioned on the lots. He noted that even though the variances were for a large portion of the community, variances were not requested on every single home site because some lots were not affected. Similarly, the requested setbacks for the corner lots were only for four lots; Lot 26 did not need it.

- With regard to livability, the submitted site plan included the rear yard dimensions from the home to the lot line. The Applicant envisioned a variety of housing types with some of the porches in the front of the homes being front forward as opposed to garage forward, and some were garage forward units. The homes were not all in a straight line, some were off set and some were forward. Lennar believed that with parking as an issue, a big selling point would be the three-car garages, which had driven some of the decision making processes.

Mr. Robinson and Mr. Anders addressed questions from the Commission as follows:

- The dashed line shown between the natural resource tract and public open space indicated retaining walls. The plan before the Commission matched the lots and open space in the Master Plan that was originally approved by the Commission.
 - Lennar took an "everything's included" approach in that each home came with full front and rear yard landscaping, as well as fencing, including fencing at the rear of the lot lines. There were no plans for front yard fencing.
 - For lots that backed up to properties with fencing already in place, Lennar planned to work with the individual property owners. If a fence needed replacing, Lennar would talk with the property owner and, in some cases, offer to re-fence their rear yard, just as Dan Grimberg of West Hills had offered previously.
- The proposed fence line was the actual property line. The Applicant was not aware of any encroachments.
- The Applicant believed the application met all three of the approval criteria and had provided substantial evidence to find that they were met. Under Public Benefit, the Applicant believed they met both Items (1) and (2). Mr. Robinson also suggested that Item (7) was met, but noted Commissioner Bench's statement, adding that Item (7) was not limited to "affordable housing" because it stated "such as" and so, if pressed, he believed providing larger homes was a Public Benefit under Item (7).
- The applicant believed the proposal met Item (2) with regard to more open space or more usable open space. Currently, the Code was silent on what should be done with decks and patios, which the Applicant believed provide more usable open space rather than just sod or ground, but a place where people could do something.
 - Additionally, by bringing the home forward, the builder was able to increase the size of the rear yard on some of the lots, creating more usable space for the owners and less pervious space. For example, the rear yard of the home on Lot 20 was 35 ft from the house to the rear property line. If the home's porch was set farther back to align with the garage's 20-ft setback, the home would also be set back, making the driveway longer, but the rear yard smaller.
 - Even though the application focused principally on meeting Public Benefit (1), the Applicant also believed the proposal met Public Benefit (2), not just because of the decks and patios, but because more usable rear yard space was provided by setting the front of the homes, not the garages, forward on the lot. Most people did not spend their recreational time in the front yard, so providing more rear yard space was more functional open space for families.
- The Applicant clarified open space was not required to be public open space. Adding hard surfaces where people could recreate outside increased the usable open space, which was also increased by moving the structure forward.
- The open space had not been changed from the Applicant's required plat, which was approved by the Commission.

Chair Nelson confirmed there was no public testimony in favor of, opposed, or neutral to the application. She called for additional comments from Staff.

City Planner Goldstein noted Public Benefit (7) regarded other public benefit, which she believed was achieved by the off-street parking, which has been a big issue for Arbor Village. The idea that the Applicant would be able to provide three-car garages, in theory, allowed for more cars to be parked off street, which was another Public Benefit for the Commission to consider.

Staff agreed that although affordable housing parameters could be considered relative, federal requirements to qualify did exist; however, affordable housing was not part of the proposed application.

Chair Nelson closed the public record at 8:02 pm.

Commissioner Kirk commented that although everything in the application fit the criteria, she worried about such changes taking place in Banks, as it is unique from Portland or Beaverton where the changes would be considered normal. She did not believe this was necessarily the way the community wanted to go when the Code was set in 1997, and she worried about setting precedent with the setbacks for further development in the future.

Chair Nelson agreed, adding the Code was set as it was and the houses were already very close together. Although the decision was based primarily on public benefit, she believed the changes primarily benefited the developer.

While the introduction of three-car garages created some variety, the elevations indicated that more than 50 percent of the homes' front elevations were garage doors, which looked nice in the elevations due to the greenery and 15 ft shown on each side. However, the homes would be set side-by-side and only 8-feet apart, so with more than 50 percent of the homes' elevation being garage door a fortress of garage doors would be created that would not make for a very hospitable neighborhood. Larger homes with more bedrooms meant more people and more cars, which would not result in a net improvement of the cars on the street.

- She was not opposed to Modification Request (4), but believed the changes in setbacks in Requests (1), (2), and (3) would benefit the developer more than to the public. The Applicant stated Lot 9 was not developable without the setback changes, but there could be one less house.

Commissioner Kirk noted the 4-ft side yard setback and fence would be a narrow space for garbage cans, let alone moving furniture to the back yard.

Commissioner Bench believed maintaining the unique look and feel would be challenging for the homeowners association (HOA). The houses along Ashton Dr had reduced setbacks as well, and it was not very attractive. As long as the landscaping was attractive and maintained, it might work well; however, he believed it would be more challenging. He agreed the elevations were attractive, but adjacent properties were not included so one could see what the neighborhood would look like.

Comments were made about the challenges of selling the houses, which would be close to each other and in a line with the reduced setbacks, similar to those on Ashton Dr, the least marketable part of Arbor Village. The train would also be running behind some of the homes, which could affect sale ability.

Commissioner Van Dyke clarified the difficulty in selling was not the Commission's concern. The Applicant was trying to make them as attractive as possible for the ultimate buyer. The requested modifications were not making the project less desirable for Banks; while there might not be any public benefit, there was also no public detriment.

Chair Nelson stated her concern was that a public process was used to create the Code's setbacks, and the Applicant was asking to have them modified.

Commissioner Van Dyke noted the setbacks were created 30 years ago. He did not believe the Commission should look at what was done that long ago and apply it to what was happening now. Many parts of the Code have been rewritten.

Chair Nelson said she did not support rewriting Code for individual modifications, adding she did not see any public benefit.

Discussion continued about the criteria being met, the Applicant trying to get the maximum number of houses into the limited space, and the need for the setback modifications for a more pleasant design. Concerns were expressed about setting a precedent for future

developments; even though the setbacks were old, there were good reasons for them.

Staff reviewed the Code criteria for modifying the development standards, noting the Code anticipated and allowed for modifications if certain standards were met because prior code and standards may no longer be sufficient. The Public Benefit criteria were discretionary and could be anything the Commission or Council might deem to be a Public Benefit. The Applicant provided data to support what they viewed as a Public Benefit, such as the market demand for certain kinds, shapes, and sizes of housing. Whether the Public Benefit was legitimate and sufficient enough was the Commission's decision.

Chair Nelson highlighted the Public Benefit criteria, and questioned what public benefits were being provided. The decreased setbacks would allow for bigger homes on the lots, but she did not see a great variety of housing choices being introduced in the proposal other than the three-car garages.

Commissioner Van Dyke noted the proposed home designs were different than what was currently in Arbor Village, which he agreed had nothing to do with setbacks. Also, providing additional housing would enable more people to come to Banks, which he believed met Public Benefit (1). He did believe having more space between the homes would improve the aesthetics.

Chair Nelson agreed the reduced setbacks would make the neighborhood even less attractive, citing other areas in Arbor Village where the minimum setback requirements had been met and the homes were less attractive.

The Applicant confirmed from the audience that sprinkler systems would be included.

City Attorney Kearns stated the Applicant had requested the record be reopened to allow them the opportunity to address a new issue raised in terms of adhering to the original setbacks.

Chair Nelson reopened public testimony at 7:54 pm.

Mr. Robinson stated that the Commission had departed somewhat from the record by discussing things that were not in the evidentiary record, and the Applicant appreciated the opportunity to respond.

- In response to comments on the Code standards, he reiterated City Attorney Kearns' comments with regard to the Master Plan, which expressly provided for modifications. While West Hills tried to anticipate what the setback should be, Lennar Homes, which was purchasing the subdivision, had a different building program. The fact that Lennar wanted to depart from the prior builder's standards should not be held against the Applicant because that was what a Master Plan anticipated. As long as the Commission found the substantial evidence satisfied the approval criteria, the modifications could be approved.
- He added that precedent was not established in a quasi-judicial hearing. Any future applicant seeking the same types of modifications were not entitled to them without making their own case satisfactorily to the Commission.
- He clarified that Lennar Homes' program meant that the subdivision was preplanned so the Applicant knew which homes would be built on the lots.
- He noted this was the first time appearing before the Commission without an opponent. He encouraged questions from the Commission while the record was open.

Chair Nelson confirmed there were no questions for the Applicant and closed the public record at 7:57 pm.

City Attorney Kearns explained the modification criteria were different for standard

subdivisions and PUDs. Applicants wanting to change the dimensions in a standard subdivision would have to apply for a variance. The criteria being considered in tonight's hearing were very subjective compared to the standard modification criteria.

Commissioner Bench believed the space between the houses along Ashton Dr was about 6 ft to 7 ft from wall to wall.

Staff confirmed the 120-day land use deadline was approximately April 1st, noting that a continuance was typically done if additional evidence was needed.

Commissioner VanDyke moved to approve Application MOD 17-01 based on the findings and subject to the conditions of approval contained in the Staff report . Commissioner Kirk seconded the motion, which passed unanimously.

Chair Nelson closed the public hearing at 8:02 pm.

7. City of Banks - Sign Permits.

- City Hall-13680 NW Main Street, Banks, OR 97106
- City Council Chambers-13690 NW Main Street, Banks, OR 97106
- Public Works - 42441 NW Market Street, Banks, OR 97106

City Planner Goldstein presented the Staff report, noting Staff recommended approval of all three sign permit applications as submitted.

The Commission supported Staff's approval of the applications.

The Planning Commission returned to Agenda Item 4 Draft Sign Code at this time.

BUILDING PERMIT REVIEWS – INFORMATION ONLY: None

VERBAL STAFF REPORTS AND UPDATES

9. Planning Project Updates

a. Economic Roadmap with Leland Consulting

City Manager Becker reported hotels have been added to the scope of work and Leland would be holding meetings with different organizations in town on February 1st to gather information. City Planner Goldstein added this was not a huge public-outreach type of project, but rather report-driven by the consultants, so it should be a short timeline of a couple of months. Staff expected to see that report by May or June.

b. Large Lot Single Family Residential

City Planner Goldstein reported there was a meeting today with property owners and their attorneys and she hoped this special project would wrap up soon. Staff would look at concepts with the landowners and talk with City Council to get additional direction on where the new residential zone should go. Once completed, Staff would bring it before the Planning Commission for review and a recommendation to take to City Council as a legislative matter. She confirmed the purpose of the project was to create one new zone and determine its location as well as adjust one or two existing zones.

OTHER BUSINESS

10. Planning Commission Chairperson and Chairperson Elections

Marsha Kirk moved to nominate Jeremy Bench for Planning Commission Chair. Rachel Nelson seconded the nomination. The motion passed unanimously.

Rachel Nelson moved to nominate Marsha Kirk for Planning Commission Vice Chair. Sam Van Dyke seconded the nomination. The motion passed unanimously.

Staff confirmed that the decision reached last year with West Hills, the prior developer,

about replanting certain street trees was a condition of approval that was attached to the plat.

City Manager Becker noted the Planning Commission's March meeting fell on Spring Break week. If there was nothing on the agenda, the meeting would be cancelled; otherwise the meeting would be held one week earlier.

Commissioner VanDyke noted he would not be at the April Planning Commission meeting.

ADJOURN: The Planning Commission meeting adjourned at 8:53 pm.

Submitted by: _____
Stacey Goldstein, City Planner