

Tualatin Planning Commission

MINUTES OF September 20, 2023 (UNADOPTED)

TPC MEMBERS PRESENT:

William Beers, Chair

Janelle Thompson, Vice Chair
Bachhuber, Commissioner

TPC MEMBERS ABSENT:

Ursula Kuhn, Commissioner
Randall Hledik, Commissioner
Brittany Valli, Commissioner
Zach Wimer, Commissioner

STAFF PRESENT:

Steve Koper, Assistant Community
Development Director
Mike McCarthy, City Engineer
Lindsey Hagerman, Office
Coordinator

CALL TO ORDER AND ROLL CALL:

The meeting was called to order at 6:30 p.m. and roll call was taken.

COMMUNICATION FROM CITY STAFF

1. Metro Regional Transportation Plan (RTP) 2023 Update. Metro has released the Public Review Draft of their proposed Regional Transportation Plan (RTP). Staff will share information about City's Council's response to the RTP draft and how its proposed policies and plans in the RTP may impact people who live, work, or spend time in Tualatin.

Mike McCarthy, City Engineer introduced himself and provided an overview of the proposed Metro Regional Transportation Plan (RTP) update. He listed the key projects that are currently on the plan. He briefly explained the RTP is a 20 – year vision for transportation around the region. He noted its federally required for all Metro areas and is required to be updated every five years. He shared the push towards having the RTP adopted by the end of the year is due to the fact that a delay in adoption could delay federal funded projects.

Mr. McCarthy shared a visual context in how Tualatin Transportation Plan (TSP) fits in with the region. He noted that the Metro RTP ties in with Metro, Washington County, Clackamas County and State transportation plans. He shared the RTP policy goals which include: Mobility Options, Safe System, Equitable Transportation, Thriving Economy, Climate Action and Resilience. He shared 2023 Regional transportation Vision that states Everyone in the greater Portland region will have safe, reliable, affordable, efficient, and climate- friendly travel options that allow people to choose to drive less and support equitable, resilient, healthy and economically

vibrant communities.

Mr. McCarthy shared visual of Metro 2040 growth concept. He noted this visual supports RTP key projects: Southwest Corridor Light Rail, I-205 Abernethy Bridge Improvements, I-205 Widening (Stafford Rd to Hwy 213), I-5 Southbound at Boone Bridge, Highway 99W Corridor Study, High Capacity Transit Planning, Ice Age / Tonquin and other Regional Trails, TSMO (Using Technology to help transportation), and Many other smaller projects submitted by cities and counties.

Mr. McCarthy opined that the Metro RTP is based on the philosophy that if traffic gets worse more people will switch to walking, biking or transit. He noted the RTP also considers tolling and other measures before road widening. Mr. McCarthy's opinion is that people will not switch modes of transportation just because there is bad traffic.

Mr. McCarthy moved onto explain more detail on tolling. He noted this includes Metro Region climate change action plan which implies the region will need to implement tolling. He noted the Tualatin City Council submitted a comment letter on the RTP objecting specifically to the addition of tolling.

Mr. McCarthy explained the high capacity transit that was part of the RTP did not include study of traffic commuting outside of Metro Region such as Newberg, Woodburn and Salem. He noted this doesn't show the demand on 99W and WES/I-5 South corridors on the model.

Chair Beers asked clarification on traffic coming in from Vancouver, Washington as well. Mr. McCarthy answered he was uncertain if Clark County as a whole was part of the study but believes Vancouver was included.

Commissioner Bachhuber asked how consistent the traffic studies have been over time. Mr. McCarthy answered why he thinks it's important to take a look at traffic outside Metro.

Mr. McCarthy explained the another key policy proposal of the RTP is removal of the volume to capacity ratio. He explained that under the updated policy freeways are considered to operate acceptably unless speed is less than 35 mph for more than 4 hours per day. This same measure applies on other streets known as "throughways" but the standard is 20 mph rather than 35 mph.. He shared his opinion that freeways are our backbones and that even up to 4 hours of freeways operating at under 35 mph would be problematic. In particular, lower freeway speeds lead to diversion onto local roadways.

Chair Beers asked if there was anything in the policy to encourage telecommuting. Mr. McCarthy answered it's hard to note if a business will allow remote work. Steve Koper, Assistant Community Development Director, noted that under the Department of Environmental Quality's Employee Commute Options program, employers with more than 100 employees must provide a plan with commute options for employees designed to reduce the

number of cars driven to work in Portland and surrounding areas.

Vice Chair Thompson asked if there was any discussions about the mandated electric vehicles 2040. Mr. Koper answered there is an assumption people will switch over sooner to electric vehicles. Vice Chair Thompson asked how much public outreach has Metro done for this plan. Mr. McCarthy answered he has been getting a lot of comments.

Mr. McCarthy spoke about the next steps for Regional Transportation Plan which include discussions with regional elected, staff level committees and adoption before the end of the calendar year.

Commissioner Bachhuber asked if this pretty typical, and how far away is this from status quo. Mr. McCarthy again shared his opinion that Metro has been pushing towards a direction to get everyone to walk, bike transit. Mr. Koper noted that previous modeling has shown that widening freeways does not necessarily meet previously set mobility targets and so Metro is trying a new approach.

2. Tualatin is updating its Transportation System Plan. Information about the update is attached. The Planning Commission will be asked to appoint a representative to the Community Advisory Committee for the TSP update.

Mr. Koper shared brief overview of the upcoming Transportation System Plan (TSP) update, what a Transportation System Plan is, and noted last update was in 2013 and overdue for an update. He noted the City is going to have a Community Advisory Committee (CAC) for the project to help provide community input into the plan. He shared Commissioner Hledik has volunteered to be on the committee as a liaison and asked commissioners for their feedback on him being on the committee. Commissioners had no objection and support the committee idea.

3. Information legal training. Topics to be covered include types of public meetings, land use hearings, legal requirements, and roles, criteria, and decisions.

Mr. Koper presented overview of legal training of the nights' discussion. He noted being an expert in Planning is not a requirement and that the best thing to do is to ask for help.

Mr. Koper went over the authority the committee has. He stressed the importance the Commissioners act as a unified body, highlighting that the Municipal codes does not empower individual Commissioners independently. He stated the commissioners are expected to abide by Commission decisions, whether or not they voted on the prevailing side. Personal opinions and comments should be expressed only if the member makes clear that they are acting in an individual capacity and not representing the City's position.

Mr. Koper noted that according to ORS 192.660 et seq. elected and appointed officials must

meet in public to make or deliberate towards decisions. He mentioned that a quorum can happen outside of meeting times, but cautioned that participants must refrain from discussing any pertinent topics during these informal interactions.

Mr. Koper shared an example of a Facebook post explaining what a “serial” meeting is. He noted this type of meeting occurs when a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action takes place between a quorum of a governing body. He told the Commissioners if they have questions they can be directed them to staff, but staff cannot act as an intermediary and play “telephone.” He noted the best practice is to be on the record and on the mike.

Mr. Koper noted some best practices to keep in mind. He let Commissioners know to refrain from using the “reply all” function on emails. He explained “serial communications” include: via e-mail, telephone, face-to-face or even social media postings, such as Facebook. He pointed out to be aware at social gatherings to avoid any discussion of official government business.

Mr. Koper moved onto Land Use Roles and explained the Commissioner’s role as “recommender.” He stated the Commissioners’ role is to recommend and make suggestions to the Council regarding preparation and revision of plans for the growth, development, and beautification of areas both inside the corporate limits of Tualatin and also within the City's urban growth boundary [...] including [...] Land use, including Plan Text and Plan Map Amendments (PTA and PMA). He explained meetings which involve their recommendation are conducted similar to a legislative hearing (even for quasi-judicial matters), which is conducted as a public meeting with fewer procedural requirements than a quasi-judicial hearing.

Chair Beers discussed his previous involvement in the Planning Advisory Committee, focusing on the primary task of reviewing sign variances and highlighted its evolution over the years.

Commissioner Bachhuber about the history of the Planning Commission’s land use role. He shared his opinion on feeling like a rubber stamp committee. Mr. Koper answered the the Planning Commission was created to satisfy statewide planning Goal 1, citizen participation. He highlighted the steps involved in processing applications to develop a robust proposal that aligns with the specified criteria. Additionally he provided detailed explanations regarding the conditions that need to be met for approval.

Mr. Koper elaborated on the special procedures necessary for Quasi-Judicial hearings, emphasizing the need to safeguard the due process rights of all parties involved. He highlighted that such hearing must outline the procedures and criteria, disclose relevant information, be conducted in public, and follow a structured process of opening, closing, and deliberation. Ultimately quasi-judicial hearings must result in a final written decision containing specific findings related to the applicable criteria.

Mr. Koper explained ex-parte communications include: any communication (written, oral or

electronic), made to a decision-maker, concerning the subject matter of the quasi-judicial hearing; and occur while the matter is pending. Ex-parte communications can occur at any time after a formal application is filed and before the final decision is made. He shared some examples of what this communication would look like.

Mr. Koper discussed the procedure for addressing ex-parte communication, highlighting that it can usually be resolved through the fundamental rights of being heard, having an impartial tribunal, and right to present and counter evidence. He provided examples of bias-related concerns and explained how these issues are addressed during the hearing process.

Chair Beers asked if there was a refusal of quorum what would happen. Mr. Koper answered the hearing would have to be postponed.

Mr. Koper explained the concept of conflict of interest emphasizing that an actual conflict occurs when a decision or action leads to a financial gain or loss for oneself, relatives or afflicted businesses'. Conversely, a potential conflict arises when a decision or action could potentially lead to such outcomes.

Chair Beers asked if Councilor or Commissioner has an ex parte communication issue but an applicant does not raise it, do they have standing to raise this issue on appeal.

Mr. Koper answered generally not; most legal issues have to be raised or waived.

Mr. Koper discussed the process of addressing bias concerns. He emphasized the importance of openly acknowledging potential biases and declaring the ability to remain impartial. This proactive approach helps prevent any appearance of bias and eliminated grounds for challenging decisions later on. After announcing these potential biases, parties involved are given the opportunity to contest participation..

Mr. Koper provided an illustration of a conflict interest scenario. He highlighted decisions or recommendations made could lead to a financial gain or loss for oneself, relative or loss for oneself, relatives, or businesses associated with either party. Conflicts of interest occur in two ways: actual conflicts and potential conflicts. An actual conflict emerges when a decision directly results in a financial consequence, while a potential conflict arises when a decision could potentially lead to such outcomes for the parties involved.

Mr. Koper spoke about how to resolve conflicts. He noted for actual conflicts you must do the following: publicly announce the conflict; and refrain from participation in any official action on the issue including any discussion of the matter. For potential conflicts you must: publicly announce the potential conflict every time the issue arises; and after disclosure you may participate in any official action on the issue, including discussions and votes. He provided an example of how to address a conflict.

Mr. Koper explained Planning Commission's role which involves understand land use planning,

reflect the values of the community, educate the public on land use, understand opportunities and limits of PC authority, interpret and apply zoning ordinance provisions and make decisions/recommendations.

Mr. Koper outlined the responsibilities of the staff's role Planning Commission. He elaborated on how the staff reviews land use cases for completeness, assesses and approves or denies applications, prepares staff reports, handles public notice and other administration, and ensures they are consistent with the latest court cases and rulings from state and other entities.

Mr. Koper proceeded to discuss the decision-making criteria. He clarified that according to statutes, a land use decision must adhere to specific approval criteria. The decision-maker is required to apply these approval criteria to the presented facts. The decision must be made consistent with the approved criteria outlined in the zoning code. Even if the decision-maker disagrees with the criteria or believes that additional, un-adopted criteria should be considered, if the applicant demonstrates compliance with the established criteria, the application must be approved. Conversely, if the applicant fails to meet the necessary criteria, the decision-maker must deny the application, regardless of their opinion on reasonableness of the criteria.

He also noted regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent. A hearing body may not insert what has been omitted or omit what has been inserted. If two provisions conflict, the more specific provision controls. For example, if a property is located in a zone that allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

Mr. Koper spoke about decision-making criteria. He noted overall decisions have to be based on approval criteria and apply criteria to the facts. He shared an example which included a building height. He provided a specific example involving building height and elaborated extensively on the Norwood road criteria, the importance of relying on tangible approval standards.

Mr. Koper detailed the concept of findings and highlighted common mistakes to avoid. He clarified a typical pitfall, which involves deferring a necessary finding to a condition of approval to make it valid. Using an example of sidewalk installation, he explained how creating a condition of approval should be reasonable and feasible. He emphasized that conditions can only be imposed if they are rational and justifiable.

Chair Beers asked if Autumn Sunrise criteria would be a good example of this. Mr. Koper answered yes. He also shared a staff level example of abutting property with storm water conditions of approval.

Mr. Koper explained importance of precedence and how the Planning Commission is not bound by an interpretation of a provision made in a prior case, as a matter of law, unless the particular provision has been interpreted by LUBA or the courts. He noted there is more info included in

the packet in detail.

Mr. Koper explained the ultimate outcomes for a Quasi-Judicial hearing. He shared the final decision may result in approval, approval with conditions or denial. He illustrated this with an example from the Basalt Creek Employment zone, demonstrating how such cases provide valuable guidance to the City Council.

Chair Beers asked clarification on voting for Quasi-Judicial hearing if the vote was split. Mr. Koper explained there would need to be another hearing.

ADJOURNMENT

A motion to adjourn was made by Vice Chair Thompson seconded by Commissioner Bachhuber.

3 AYE

0 NAY

THE MOTION PASSED UNANIMOUSLY. The Planning Commission meeting was adjourned at 8:36 p.m.