

TOLEDO PLANNING COMMISSION MINUTES

A regular meeting of the Toledo Planning Commission was called to order at 6:30 pm by Vice President Cora Warfield. Commissioners present: Jonathan Mix, Brian Lundgren, Ruthanne Morris, Ricky Dyson, and Terri Neimann (arrived at 6:34 pm). Excused was President Anne Learned-Ellis.

Staff present: Contract Planner (CP) Justin Peterson, City Manager (CM) Judy Richter, City Attorney (CA) Mike Adams, and Secretary Arlene Inukai.

VISITORS: Jim Chambers, Debbie Scacco, Beth Goodman, Ariel Kane, Eric Chambers

APPROVAL OF THE OCTOBER 12, 2022, MINUTES:

It was moved and seconded (Mix/Lundgren) to approve the October 12, 2022, minutes as circulated and reviewed by the Planning Commission. The **motion passed** unanimously, noting the absence of Neimann and Learned-Ellis.

At this time, Commissioner Neimann joined the meeting.

PUBLIC HEARING: COMPREHENSIVE LAND USE PLAN AMENDMENT FOR THE TOLEDO HOUSING CAPACITY ANALYSIS (FILE #PA-2-22), REQUESTED BY CITY OF TOLEDO:

Vice President Warfield opened the public hearing by stating the nature and purpose. There were no declarations of ex parte contact, bias, or conflict of interest. The statements of rights and relevances and rights to appeal were then read for all of the public hearings scheduled tonight.

Staff Report: CP Peterson introduced Beth Goodman of ECONorthwest, consultants for the Housing Capacity Analysis (HCA) project.

Ms. Goodman provided a presentation to review the project and findings, as highlighted below:

- An Advisory Committee was formed and met four times. An online Open House was held to receive public comments. The Planning Commission and City Council held a worksession and both will hold public hearings to review the plan.
- The HCA would be an appendix to the Comprehensive Plan. It contains a Buildable Lands Inventory, demographic information, and housing affordability information.
- Reviewed the Buildable Lands Inventory map showing a significant amount of constrained areas. There are approximately 7 acres of Single-Family Residential lands, 7 acres of General Residential lands, 26 acres of Low-Density Residential lands, and 2 acres of Medium Density Residential lands that are unconstrained buildable lands.
- Because of the required population forecast, Toledo's growth is modest, with 15 new dwelling units needed for the 20-year period. Based on the amount of unconstrained buildable lands, Toledo has the capacity for 245 new dwelling units.
- Reviewed affordable housing figures and number of owners/renters experiencing cost-burdened housing.

- Several recommendations for future code updates came out of the project, including land swaps within the Urban Growth Boundary, streamlining the application procedures, increasing the timeline for development projects, clarifying manufactured home park standards, additional housing options within the Commercial Zone/Main Street District, updates to the System Development Charge methodology, implementing programs for tax exemptions for low-income housing, and Toledo recently adopted the Urban Renewal district, which supports residential development projects and funds could be used for residential projects.

Commissioners discussed how to offer guidance or assistance to developers to encourage residential development. CP Peterson noted that the City does not have a public outreach program for housing development, but staff is available for help and to provide information. Commissioners suggested using the newsletter or brochures to provide information.

CP Peterson reviewed the staff report, highlighting the criteria in the Statewide Planning Goals and the Comprehensive Plan. He clarified that the Planning Commission would make a recommendation to the City Council for adoption of the HCA as an appendix to the Comprehensive Plan. In a memo distributed tonight, he provided additional language to Finding #5 to address Goal 10-Housing. This is in response to a suggestion from Oregon Fair Housing Council. The proposed language would expand existing Finding #5 as presented in the staff report. CP Peterson continued review of the staff report, noting that possible development code updates may be the second step in the process. The Planning Commission has three options for their recommendation: 1) recommend approval, 2) recommend approval with modifications, or 3) recommend denial.

Commissioner Mix noted the amount of constrained lands, but received clarification that the sites can still be developed but may have special standards.

Public Testimony: None.

Questions by Commission: None.

Deliberations: The public hearing was closed and the Commission entered into deliberations. Commissioners discussed the difficulty of developing in the constrained areas. They reviewed Option 2 of the staff report recommendation.

It was moved and seconded (Neimann/Dyson) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, the Planning Commission finds that application file #PA-2-22 complies with the criteria identified in TMC 19.20.070(A)-(D) and recommends approval of the proposal by the City Council. The Planning Commission hereby adopts the staff report as findings, allowing for the correction of typographical and grammatical errors as needed. The Planning Commission also adopts the additional language to Finding #5, as presented tonight. The **motion passed** with Morris abstaining and noting the absence of Learned-Ellis.

PUBLIC HEARING: MINOR PARTITION TO CREATE TWO PARCELS FOR PROPERTY LOCATED AT 542 NW ASPEN STREET (FILE #MP-2-22), REQUESTED BY CAROL EDWARDS (JIM CHAMBERS AUTHORIZED AGENT):

Vice President Warfield opened the public hearing by stating the nature and purpose. Vice President Warfield reported she viewed the area, but there were no declarations of ex parte contact,

bias, or conflict of interest. The statements of rights and relevances and rights to appeal were previously read.

Staff Report: CP Peterson reviewed the staff report as on file at City Hall. He explained that the request is to partition 542 NW Aspen Street to create two parcels. The property is approximately 1.81 acres and has a house, garage, and outbuildings. Proposed Parcel 1 would be approximately 55,500 square feet and Proposed Parcel 2 would be 23,344 square feet. Notices of the public hearing were sent and no comments received. CP Peterson reviewed the R-S Zone standards, minor partition criteria, Comprehensive Plan goals, and existing utilities in the area. Both parcels would be over the minimum lot size. Sidewalks would not be required at this area. Both proposed parcels would have frontage onto Aspen Drive, while one lot remains a corner lot, adjacent to Skyline Drive. Because of the slope, access would not be taken from Skyline Drive. The proposed parcels would have an irregular shape because of the existing structures on the site. The final plat should show any utility and/or access easements that are needed to serve the two parcels.

The applicant proposes to remove the outbuildings shown as a chicken coop and greenhouse. The recommended conditions of approval require the structures to either be removed or be relocated to meet setback standards to the new property line. The house and garage meet setback standards. The driveway can remain and can be shared between the two parcels, but easements would have to be shown for the location. The applicant has not yet decided if they want to have a shared driveway or provide a new driveway/access point for the existing home. Staff recommends approval with the recommended conditions of approval.

Applicant Testimony: Jim Chambers of 565 NW Aspen Street, Toledo, represents the property owner, Carol Edwards. He reported they have a surveyor to work on the project, but it will take about 3-4 months. The driveway will depend on the layout for the new home site but the location can be included on the plat for clarity. The power company may have an easement for their service line to the existing home. There is an existing road easement along the east side of the property. Utilities may be relocated or the locations can be added to the plat for easement.

Proponent Testimony: None.

Opponent Testimony: None.

Other Interested Parties: None.

Questions by Commission: None.

Deliberations: The public hearing was closed and the Commission entered into deliberations.

It was moved and seconded (Lundgren/Dyson) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, the Planning Commission finds that the request by Carol Edwards and Jim Chambers (MP-2-22) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code, Section 16.08.070. The Planning Commission hereby adopts the staff report as findings, as well as any conditions of approval for MP-2-22, and allowing for the correction of typographical and grammatical errors. The **motion passed** unanimously, noting the absence of Learned-Ellis.

PUBLIC HEARING: APPEAL THE STAFF DECISION IN FLOODPLAIN DEVELOPMENT PERMIT #FP-2-22 AND A VARIANCE TO THE DEVELOPMENT STANDARDS IN THE FLOOD HAZARD PROTECTION ORDINANCE, FOR PROPERTY LOCATED IN THE DEPOT SLOUGH WATERWAY, ADJACENT TO 127 NW A STREET (FILE #FPV-1-22), REQUESTED BY THE PORT OF TOLEDO:

Vice President Warfield opened the public hearing by stating the nature and purpose. There were no declarations of ex parte contact, bias, or conflict of interest. The statements of rights and relevances and rights to appeal were previously read.

Staff Report: CP Peterson reviewed the staff report as on file at City Hall. He explained that the request is for a variance to the floodplain development code standards and appeal to the staff decision on the floodplain development permit. The Port of Toledo holds a Department of State Lands (DSL) waterway lease for the docks and improvements. The project site is adjacent to 127 NW A Street/367 SE Butler Bridge Road and adjacent to the Water Dependent Zone. Notices were sent to surrounding owners/public agencies and published. DLCD floodplain coordinator called to discuss the proposal, but no comments were submitted.

In July, the City of Toledo and Port of Toledo staff met with FEMA representative to discuss the project and floodplain standards. The Port of Toledo prepared a Joint Permit Application for submittal to Oregon Department of State Lands and Army Corp of Engineers. The City of Toledo is required to review Joint Permit Applications for land use compatibility to local zoning and development codes. The City signed the land use compatibility (LUC) statement with the condition for a floodplain development permit for the project. Staff reached a determination (Attachment E of the staff report) for the floodplain permit. Because the work would occur in the floodway, staff's determination was that the Port would have to submit a hydrologic and hydraulic (H&H) analysis report, performed by an engineer. This is the requirement that is being appealed and the Port's requesting a variance to the H&H analysis.

CP Peterson reviewed the Planning Commission's authority to review variance requests, code criteria, Water Dependent Zone standards, estuary management standards, and floodway standards. The proposed project would replace the existing gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The work would occur in the floodway.

In 2019, the City updated the flood hazard ordinance based on the model ordinance and federal standards and adopted new floodplain maps, in accordance with FEMA's requirements to stay in compliance with the flood insurance program. The ordinance allows an appeal or variance to the standards. However, the variance criteria is clear that the Planning Commission considers all technical evaluations and criteria standards in the sections, and a variance shall not be issued within a floodway if it increases the flood levels. The H&H report was in the staff determination in order to see that there is no increase of flood levels.

CP Peterson reviewed the "development" definition and FEMA's guidance document for flood risk. The document also noted the 'no-rise' requirement. Staff had no discretion when it came to this requirement, but the Planning Commission has the discretion if the request meets the criteria. Portions of the variance criteria still come back to the need of the technical evaluation. An H&H analysis would determine if there is an increase in flood levels.

The applicant's letter of October 22, 2022, requests the variance for two projects, the current

pilings/gangway work, and the future dredging project that has not been submitted yet. CP Peterson reviewed the application materials, noting the following applicant statements, 1) requiring the H&H analysis would be a poor use of public funding, and 2) there would be zero impact to flood waters.

CP Peterson clarified it's the City's duty to implement the flood hazard ordinance. FEMA could conduct a community assistance visit which can affect the flood insurance program and the program could be suspended if the standards are not followed. CA Adams added that the City has to adopt FEMA's standards in order to participate in the flood insurance program. He noted that the criteria specifies "technical evaluation", however, the term is not defined. There's only the reference to the H&H analysis. Language in the federal standards are identical to the adopted language in Toledo's flood ordinance.

CA Adams stated that staff does not have what is needed in order to recommend approval. The Planning Commission's options are listed in the staff report, one including continuing the hearing, leaving the record open for additional information. The Planning Commission can approve the variance request, but will need to draft findings to support the approval or denial of the request.

Commissioners discussed the H&H report and if the variance to waive the report has an impact on the flood insurance program and flood levels. CP Peterson stated that they met with FEMA in July to get clarity on the requirements and they stand by the original H&H analysis determination. CA Adams added it's been a complicated process and not ideal for the Port. He clarified his role in this application process and drafting the staff report.

Commissioner Dyson asked if the request was primarily due to the \$13,500 cost of the study. CP Peterson believes the expense is the main reason, but suggested the Port address the question.

Applicant Testimony: Port Manager Debbie Scacco reported they are seeking the variance to the H&H analysis because it is a very expensive study for a minor project. She provided a PowerPoint presentation, summarized below:

- Port of Toledo's Mission Statement was reviewed with the Commission.
- The Port's tax levies are \$251,870. They provide several jobs, maintain several facilities, and have very limited income.
- The project will maintain handicap accessibility and obtains compliance with the grant funding requirements.
 - Two new steel pilings will have a +5 CY permanent affect
 - Removing three existing pilings will have a -3 CY permanent affect
 - Excavating the ADA gangway will have a -11 CY permanent affect
 - Causing a net -9 CY permanent affect to the waterway
- The existing boathouse blocks access to the dock and needs to be relocated. This project is needed to stay in compliance with the transient dock funding requirements. Two new pilings will be needed for the new location, but three existing pilings will be removed. New ADA gangway will also be added.
- Reviewed code definitions and TMC 15.16.190(D)(1-11), providing the following statements:
 - The danger that materials may be swept onto other lands to the injury of others;
Project has no effect and makes no changes to current conditions
 - The danger to life and property due to flooding or erosion damage;
Project has no effect and makes no changes to current conditions

- The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
Project has no effect and makes no changes to current conditions
- The importance of the services provided by the proposed facility to the community;
Existing facility. The project is needed to maintain ADA access to marina, ADA kayak launch, and community boathouses
- The necessity to the facility of a waterfront location, where applicable;
Functionally Dependent Use – existing development
- The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
Functionally Dependent Use – existing development
- The compatibility of the proposed use with existing and anticipated development;
Existing development=100% compatible
- The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
*Staff Report confirms compatibility to:
2000 Toledo Comprehensive Land Use Plan:
Article 2 Objective 2A & 2B with Outright Use per TMC 17.32.020,
Article 5 Goals 2 & 3 has been satisfied by: Army Corps of Engineers Permit NWP 2022-329 and DSL permit 63925-RF (contingent upon City of Toledo's approval of FP-2-22.)
Article 5 Goal 3: to facilitate processing of land use applications.
The City's floodplain code is obstructive to basic management of "functionally dependent use" facilities.
Article 7 Goal 1: Prevent loss of life/property:
Project has no effect and makes no changes to current conditions
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.
Estuary Management Zone and 2000 Toledo Comprehensive Land Use Plan, Article 16 Objective 1 & 6.
Project is for functionally dependent use of an existing facility and would have no effect on natural resources.
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.*
- The safety of access to the property in the times of flood for ordinary and emergency vehicles;
Project has no effect and makes no changes to current conditions
- The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
Project has no effect and makes no changes to current conditions
- The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
Project has no effect and makes no changes to current conditions
- In review of TMC 15.16.200, the applicant provided the following information:
 - *Not new construction or not a substantial improvement.*
 - *Minimum necessary to meet goals of securing relocated boathouse and providing ADA access. Project was included in 2021 Port of Toledo Strategic Business Plan Update, pg 35.*

- *No flood level increase – minor project with common sense evaluation.*
- *Variances should only be issued upon good and sufficient cause: 1) Project retains the Port's compliance with grant terms for the Transient Dock project, 2) Secures the boathouse to ensure no damage to dock infrastructure, protecting a community asset, 3) Provides continued ADA access to the Marina and Community Boathouse Programs. (See Port Mission Statement #4), and 4) Cost of engineer's analysis is prohibitive, estimate \$13,500 is 5% of the Port's annual tax receipts. (See Port Mission Statement #5).*
- *Hardship: If this project is not completed the Ports options are, 1) Refund grant funds for Transient Dock \$380,000, an extreme hardship considering our limited tax base, 2) Relocate boathouse without piling, risking failure of dock system and damage to moored vessels during a storm event, 3) Loss of ADA access to the Marina, Community Boathouse programs, including free family boating, and ADA kayak launch.*
- *Determination that variance will not result in increased flood heights. This is a minor project that should rely on common sense and does not require an engineer's analysis to determine no affect to flood heights. Reference: FEMA Guidance for Floodway Analysis and Mapping Guidance Document 79, December 2020, page 34, paragraph 3. "Communities can exercise some discretion and common sense in determining which development requires permits or a hydraulic analysis." Section 11.1.1. Exemptions for Minor Projects: "There are other developments within the floodway that will require permits but can be allowed once the community determines that they are not an obstruction to floodwaters."*
- *Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that 15.16.200B-D are met.*
- *Notification of variance for construction does not apply.*
- **TMC 15.16.220(D) Conflict with existing laws or ordinances:**
 - *Staff report advises that a variance would directly conflict with 44CFR 60.3(d)(3) however, Federal Guidance as quoted above allows for common sense and minor project exemptions.*
 - *TMC 15.16.19 (B) Allows the Planning Commission to hear and decide appeals.*
 - *TMC 15.16.050 defines "Appeal" as a request to review any provision and "Variance" as a grant of relief from the terms of a flood plain management regulation.*
- **TMC 15.16.190(D) In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter.**

Staff report advises that there is no definition for "technical evaluation" in the code and interprets it to mean the engineer's analysis. If it is open for interpretation The Port proposes using the Joint Permit Application as approved by ACOE and DSL to support the decision.
- **Reviewed the next project for maintenance dredging.** Maintenance dredging is not part of the current project, but it is critical to maintain the floodway. The Port would like to see the Municipal Code amended to exempt maintenance dredging from the H&H analysis requirement.
- **In support of the request, she added that** 1) Port of Toledo provides functionally dependent infrastructure that supports the City's Comprehensive Plan and goals; 2) the Port should not be required by City Municipal Code to expend public funds for unneeded analysis; 3) the Port's project is minor in scope, replacing existing features and common sense can

determine the project will not decrease flood carrying capacity of floodway because federal guidance allows for the use of common sense, 4) TMC mirrors Federal 44 CFR 60.6 for variances and exceptions: both include provisions for variances to be issued if a determination can be made that the project does not increase flood heights, and 5) if TMC is written in a way that limits the Planning Commission's ability to grant variances and make exceptions, shouldn't that be corrected?

It was noted that the staff report contained the Waterway Lease application with the State, but did not have a copy of the Joint Permit Application. Both permits were approved, but they did not require the H&H analysis, only the City's floodplain permit requires the report. Ms. Scacco clarified that she spoke with DLCD's floodplain coordinator who provided information.

Commissioners discussed options to move forward with the application. Commissioner Dyson voiced that the proposed project should not expect a change in floodwaters and no displacement of water just to move the boathouse. Ms. Scacco agreed and noted that staff acknowledged this as well, but it is not in the code. The H&H analysis will be \$13,500, which is too difficult to justify when there will be zero effect. Commissioners discussed if an H&H report can address both the current project and the maintenance dredging project. Discussion continued on code requirements and impacts to the flood insurance program.

Commissioner Dyson asked if the Port does not want to pay \$13,500 and the City does not want to risk the flood insurance program, would the City pay for the study. Ms. Scacco noted that some communities have an in-house engineer, but the City does not.

Commissioners reviewed the project and received clarity that findings would have to be drafted in order to make a decision tonight. Commissioners suggested using the presentation materials submitted by Ms. Scacco tonight. Based on Commissioner questions, Ms. Scacco believes the H&H analysis is a newer requirement, so past projects were exempt.

Commissioners continued reviewed the decision options, possible findings, and if staff can bring back findings for approval. The Port's presentation can be shared with Commissioners and it can be the basis of the findings. In response to Commissioner questions, Ms. Scacco confirmed they do not have a required completion date on the project, as long as they are moving forward with reaching compliance. She clarified that the current location of the boathouse is between the docks and needs to be moved. This allows boats to tie-up on both sides of the transient dock.

Proponent Testimony: None.

Opponent Testimony: None.

Other Interested Parties: None.

Questions by Commission: Ms. Scacco answered Commissioner questions, stating that the ramp will not be in-water, it is on the bank. CP Peterson noted that it is hard to tell if the ramp is in the floodplain or floodway. He referenced the floodplain map for the location. Ms. Scacco offered to provide a copy of the approved Joint Permit Application for review.

Deliberations: The public hearing was closed and the Commission entered into deliberations. Commissioners discussed using the PowerPoint presentation as a starting point for the findings.

These will support the decision.

It was moved and seconded (Mix/Neimann) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, and based on findings presented in the public hearing, the Planning Commission finds that the request by the Port of Toledo (FPV-1-22) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code, Section 15.16.180 - 200. The Planning Commission hereby adopts the staff report as findings as modified by the findings made verbally in the November 9, 2022 public hearing and the Planning Commission directs staff to bring back at the next public hearing for adoption, as well as the conditions of approval for FPV-1-22, and allowing for the correction of typographical and grammatical errors. The **motion passed** unanimously, noting the absence of Learned-Ellis.

Staff will put the findings together and will have it on the agenda for review at the next meeting.

Commissioners Dyson and Warfield announced they will not be at the December meeting.

DISCUSSION ITEMS: Comprehensive Land Use Plan Update:

CP Peterson reviewed a memorandum showing the list of updates to the Comprehensive Plan chapters. There are 19 Statewide Goals and 17 are in the Toledo Comprehensive Plan. The Planning Commission has been reviewing one chapter each meeting and can revisit and fine-tune at the end of the project. The project is expected to be completed at the end of 2023.

STAFF COMMENTS: None.

COMMISSIONER COMMENTS: None.

There being no further business before the Commission, the meeting was adjourned at 9:15 pm.

Secretary

Vice President