

Conflicts of interest snag central city plan

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Jim Redden. September 26, 2017.

Commissioner Amada Fritz wants review of allowable height increases on properties where conflicts were not declared by advisory committee members



Commissioner Amanda Fritz wants to review some of the preliminary decisions to increase the maximum allowable heights for new construction projects in certain downtown locations in the proposed update of the Central City Plan.

The proposed update, known as Central City 2035 or CC2035 for short, includes recommendations from the West Quadrant Plan that were adopted by the Planning and Sustaining Commission and the council in early 2015. After those votes, the city ombudsman ruled the members of the Stakeholders Advisory Committee that helped draft the plan should have declared conflicts of interest for all potentially affected properties they either own or are owned by family members, their businesses or their employers.

Now Fritz has asked the staff of the Bureau of Planning and Sustainability working on CC2035 to prepare a map showing all properties where potential conflicts of interest should have been declared in the West Quadrant, which

includes the Downtown, Goose Hollow, Old Town/Chinatown, Pearl West End, South Downtown/University and South Waterfront districts.

"I want the council (which of course has two members who did not vote on the West Quadrant Plan) to look again at each of the sites with potential conflict of interest of SAC members, and decide afresh whether the change from the previous zoning/height/FAR (floor area ratio) is appropriate place-making that considers the testimony of all stakeholders," Fritz emailed the Portland Tribune.

Although the map has yet to be sent to the council, Fritz has already identified one such property where she disagrees with the proposed height increase — the west end of the Morrison Bridge, where the Melvin Mark Development Co. has proposed a mixed-use project. Several company officials served on the committee but did not declare conflicts when it came up.

The maximum allowable height of that property is proposed to be increased from 75 feet to 250 feet. Fritz believes it should stay the same.

"My concerns include shade on the Greenway, not following the required step-down to the river since the building immediately east is lower than the allowed height given in the amendment, potential interference with Central Eastside freight movement to the west side and I-5 south if the ramps are altered/eliminated, and interrupting the ambience of Southwest Naito," Fritz says.

Commissioner Nick Fish agrees the committee members should have declared their potential conflicts, but believes it is more important to review recommended changes in the update to make sure they are the right decisions.

"The question is not who might benefit from an increase, it's whether the increase is the right outcome. Those are policy questions separate from whether there are winners and losers," Fish tells the Portland Tribune.

Complicating the issue is the fact that the recommended maximum allowable heights in the plan are not all exactly the same as those in CC2035 on all properties. Some were adjusted by the staff working on the project or the commission for a variety of reasons before the final proposed update was forwarded to the council.

At the same time, Fish will introduce a reform package for all advisory committees next month. Among other things, it will include standard bylaws that must be followed and a clear mandate that members disclose all potential conflicts. Fish says he is working with commissioners Fritz and Chloe Eudaly on the package, which he considers long overdue.



Undeclared conflicts

It is not unusual for the city to appoint stakeholder advisory committees whose members own properties or operate businesses in the areas they are studying. In fact, that is fundamental to the concept of such committees — the members are expected to have a stake in the areas under discussion.

Up until the ombudsman's ruling in November 2015, none of the members were expected to declare conflicts of interest before voting on recommendations that potentially affected their properties. Their recommendations were only that, recommendations. The City Council always made the final decisions after additional public hearings — and will again with CC2035.

But, on June 12, 2015, the City Ombudsman's Office received an extraordinarily detailed 44-page complaint alleged undeclared conflicts of interest by 10 of the 22 members of the West Quadrant Stakeholder Advisory Committee. They included such well-known figures as civic activist Anne Naito-Campbell and developers Greg Goodman, Dan Petrusich and John Peterson.

The fact that they, their families, businesses or employees owned properties in the downtown area was hardly news. The Goodman name is synonymous with underdeveloped downtown surface parking lots, after all. But the complaint charged they had not publicly disclosed their conflicts as required by state law.

"The ethics violations were so egregious that several property owners or professionals with known West Quadrant property interests advocated openly for increased height limits or more favorable zoning for their properties or developments without disclosing their conflicts or recusing themselves," said the letter, which arrived the month after the council adopted the West Quadrant Plan.

In addition to being well researched, the complaint was also anonymous. It said those filing it were afraid of being

sued for making the accusations.

"We would like very much to go on the record with these concerns, but because of the potential threat of Strategic Lawsuits Against Public Participation (SLAPP) by one or more of the economic interests mentioned, we have been advised by counsel to remain anonymous," the letter said.

After researching Oregon laws and court rulings, Ombudsman Margie Sollinger responded on Oct. 21, 2015, that, despite city tradition, advisory committee members are in fact public officials subject to the state's conflict of interest disclosure requirements.

"I have concluded that the Bureau of Planning and Sustainability did not properly train SAC members about their legal obligations. I have also concluded that it appears likely that individual SAC members did not comply with their obligations to disclose potential conflicts of interest," she wrote.

Sollinger did not propose that their votes be invalidated, however, but instead said Planning and Sustainability staff should survey them on their potential conflicts and report on the results before the Planning and Sustainability Commission and the City Council voted on the proposed Central City update that incorporated the committee's recommendations.

That happened, with nine members declaring potential conflicts in the area. Three did not respond to the survey, including Goodman.



Call for review

Despite the survey, when the Planning and Sustainability Commission held a hearing on the proposed Central City

Plan update, some witnesses said the West Quadrant planning process should be done over because of the undeclared potential conflicts.

"It is imperative to pull all aspects of the height increases and review them with a new, independent group," testified Michael Mehaffy, executive director of the Portland-based Sustasis Foundation.

That did not happen, however. Only two commission members even responded to the criticism. Alternative transportation activist Chris Smith, who was chairing the hearing, said "sunshine" is the best policy after Mehaffy's comments. And vice chair Andre Baugh said he would like more information on the issue, "if there is a legal problem."

Instead, the commission approved the update without taking any further action on the issue on May 23 of this year and forwarded it to the City Council for final consideration.

Since the council first began its hearings on CC2035 on Sept. 7, several witnesses have echoed Mehaffy's testimony and said the potentially conflicted proposed height increases should be reexamined. It is difficult to separate their concern over the undeclared conflicts with the proposed increases, however — most also oppose many if not most of them, arguing that such taller buildings will harm the character and livability of the downtown area.

For example, during the first council hearing, Wendy Rahm, a retired professor who serves on the board of the Architectural Heritage Center, called for a new committee to be created to review the potentially conflicted properties. But she also called for building heights to be limited to 100 feet in part of the area to preserve their sense of place.

It is unclear how much time a property-by-property review of the potentially conflicted parcels would add to the council's schedule for approving the update. Additional council hearings and other deliberations are already expected to span more than six months.