

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, August 24, 2010
6:30 PM**

COMMISSIONERS PRESENT

Nick Harris, Vice Chair
Lisa Batey
Scott Churchill
Teresa Bresaw
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelper, Associate Planner

COMMISSIONERS ABSENT

Jeff Klein, Chair
Chris Wilson

1.0 Call to Order – Procedural Matters

Vice Chair Harris called the meeting to order at 6:37 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 May 25, 2010 –*continued from July 27, 2010*

Katie Mangle, Planning Director, noted that revised drafts of the May 25, 2010 Planning Commission meeting minutes were distributed to the Commissioners at the dais that included some changes Commissioner Batey suggested via email to both staff and the Commissioner. Administrative Specialist II Alicia Stoutenburg had listened to the tapes and made some changes based on the audio record, but some of the suggested changes did not coincide with what was actually stated at the meeting.

Commissioner Batey explained that at the bottom of Page 4, she believed the minutes were written in a way that sounded more definite that the Corps had said there would be no delay, and it was not that conclusive.

- **Commissioner Bresaw** believed that was the perception.
- Changes on Pages 8 and 9 were to make the record a bit clearer; Page 13 was important because she did not believe Ms. Herrigel wanted to be on the record stating that construction would definitely begin in Summer 2011.
- On Page 7, in Line 221 she was certain that “non-motorized boat launch” was being referred to as opposed to “boat ramp”. The boat ramp has been at the center of the Riverfront Park Plan for several years; stating that it had been removed in the July 2008 version is not true. Line 226 stating the access was primarily a pedestrian access for view the water only was also untrue.

Ms. Mangle clarified that Line 226 was written as stated on the recording. The minutes should be a record of the meeting and not what was meant to be said. She was hesitant to change the statement in Lines 224 through 226, because it seemed to be a sentence that just was not stated correctly. Lines 221 and 222 could be made more straightforward by inserting “**non-motorized**” to clarify the meaning, if the Commission was confident that was what the speaker

meant. The proper way to address misstatements would be for the Commission to note in the current meeting's minutes that the Commission acknowledged that a statement was intended to mean something different, so it was in the record.

- She confirmed that Commissioners should ask for clarification about uncertain statements made by staff or other Commissioners.

Commissioner Batey moved to approve the revised, distributed copy of the May 25, 2010 Planning Commission minutes, and annotate in the August 24, 2010 minutes that the references on Page 7 to "boat ramp" may have been intended to reference the non-motorized boat launch, not the actual motorboat ramp. Commissioner Bresaw seconded the motion, which was approved 3 to 0 to 2 with Commissioners Churchill and Gamba abstaining.

2.2 June 29, 2010

Commissioner Bresaw moved to approve the June 29, 2010 Planning Commission minutes as written. Commissioner Gamba seconded, passed 4 to 0 to 1 with Commissioner Batey abstaining.

3.0 Information Items– None

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings – None

6.0 Worksession Items

6.1 Summary: Natural Resources Overlay Project briefing #6
Staff Person: Brett Kelver

Brett Kelver, Associate Planner, presented the staff report, reviewing the background, projected timeline, and Code issues regarding the Natural Resources Overlay (NRO) project.

The Commission and staff discussed the NRO, including comments and questions as follows:

- Except for the one larger property seeking to add Habitat Conservation Area (HCA) to their property, staff had sent all the changes they felt appropriate to the HCA Inventory Maps to Metro to see if they agreed with the methodology used. Most changes suggested to Metro for the HCA Inventory Maps regard areas designated as HCA that are actually paved, have a structure, or are small isolated areas.
 - Staff would like people at the open house to look at displayed maps to see what has been identified as HCA on their property. If they see some error, staff might present a secondary list of corrections to Metro if they align with the methodology used by staff. Staff did not want to present information at the open house without knowing that the suggested changes would comply with Title 13.
 - The City was in a position to take a more detailed look at the HCA resources identified in the city. About 730 properties were identified as being touched by HCA and staff had done a good job of looking section by section and identifying areas where things might be inaccurately captured.
 - Staff focused more on cleaning up the edges of what was being identified as the resource. If only a corner of a house was designated as being in the HCA, staff carved around the structure rather than going in and surgically removing every structure. Property owners with lots completely covered by HCA would go through the map

- verification process and correct the map if they were doing an addition on their house or some other project.
- An area indicated to be removed near Spring Park on Page 45 (1S1E35D) was a hole in the original map that the City had to accept at this point.
 - A note should be made to Metro for consistency. The area is a large wetland with a channel that is wet 8 months of the year, if not more. It is in the Sparrow Street right-of-way.
 - The Zoning Code in general does not apply to items in the right-of-way.
 - A specific process is required to add HCA areas to the map, but staff could talk to Metro about known HCA areas that do not appear on the maps so they are identified for when analysis is done.
 - Another vacant block on the bottom left corner of Page 45 near Arnell's year-round boat dock would be covered by the WQR buffer.
 - Staff was trying to determine the process for owners who believe there should be more HCA on their property than what was shown. No incentives exist to encourage people to do so. It would be easier for people to agree with the map unless they are motivated to correct it.
 - Gary Michael's property on 19th Ave has a lot of HCA that the owner is managing and considers himself a steward of the preserves. Staff believed it bothers him that the land is shown inaccurately, and that if it is going to be regulated, the mapping should be more thorough.
 - One incentive for wanting to change the map would be to try to guarantee some protection for the property once it passes on to another owner.
 - Going through the more detailed process would more accurately identify more valuable portions of HCA on the property; however, the potential exists that some HCA shown on the map may be pared away to fit the actual conditions following a deeper analysis.
 - The waterfront edge shown on Page 46, 2S1E02A seemed like a section that would obviously be HCA, being right on the river bank, yet it was excluded.
 - The middle of the river is considered HCA as well because of how the inventory was done. WQRs and HCAs overlap to some degree.
 - That particular area was not a concern because it is not in the city and because it was already protected by the WQR Overlay.
 - Another inaccuracy was noted near the railroad just south of the city limits where a lot of vegetation exists. The inaccuracy was probably based on the scale of the original inventory. .
 - The actual maps which become part of the record are not consistent. The map seemed to be marked sloppily and had holes.
 - The Metro representative explained that a higher level inventory was done using aerial photography and the information Metro had available about the location of streams, rivers, etc. Some variation existed and changed from one taking of aerial photos to another.
 - In general, staff was trying to list questionable areas, including those noted by the Commission, so that they are part of the record, and at least would be considered appropriately when an application came in that dealt with HCA later.
 - Another inconsistency was on Pages 47 and 48 with regard to Kellogg Creek and the trestle section. Page 47 included the trestle on the west side of Hwy 99/McLoughlin Blvd where as Page 48 showed it as being removed from the HCA.
 - Why exclude the trestle on the southwest side of McLoughlin Blvd when currently trees, plants, etc., exist beneath it. If the trestle was ever removed, then the overlay would be in place.

- As a matter of consistency, that area should either all be included or all removed.
- Inconsistencies also exist regarding Monroe St because habitat was also shown crossing Washington St and Harrison St, too.
 - Staff removed areas where a paved surface existed with no canopy over it. Areas with a canopy over the street were left in, such as on 19th Ave near Gary Michael's property. Though the rules do not apply to the right-of-way, the understanding is that there is canopy and therefore habitat, so someone could be affected by proximity to that canopy. There had been some discussion and debate, but staff decided for the time being that areas with complete canopy over a paved service would be left in.
 - If someone wanted to do something on their property, the City would verify their proximity to what was being shown as complete canopy and validate their plan for how they would manage construction to mitigate effects on that canopy.
- A canopy was noted that had been excluded, which looked like an alignment challenge with Metro's original map that might be skewed, causing the exclusion.
 - The Metro representative involved with the original inventory suggested going tit for tat, carving out and adding areas to the inventory, but admitted she was not involved in the Code part of it, or the cross-referencing with economic development value, etc. The inventory involved aerial photography, and some distances/relationships to water features and streams. Identifying those specific distances seemed like a more thorough analysis.
 - Some limitations exist as far as what the City is allowed to do. To expand the HCA area, the City would have to do the scientific analysis, as well as an Economic, Social, Environmental, and Energy (ESEE) analysis, which must be verified by the State. Staff was just trying to do some easy things to make the given maps a bit better for Milwaukie.
 - Ideally, it would be great if staff could do the analysis, but the City does not have a local wetlands inventory or other needed items. Given the budget and current scope, staff wanted the maps done consistently. Commissioners should note and send to staff anything they do not think is quite right. Staff will do the same thing at the open house as well.
 - Every time someone is affected by the NRO, the first step in the process would be to look at the map and verify that it is correct. While it is presumed to be correct in some way, opportunity exists to correct the map every time as well.
 - Talking to other jurisdictions, some of which have been implementing these maps for a year or 2 now, map verification is really where the action is, so the HCA Inventory Maps are really living maps in that regard.
 - Metro might provide more specific direction about how to make nominal map corrections to include certain areas where more specific analysis was not necessary.
- Issues involving the model Code's 100 ft trigger boundary were noted. Staff questioned whether 100 ft is the right distance for Milwaukie, which is highly residential. The WQR Overlay includes a 50 ft buffer, so in most cases the water quality feature is already protected. Reducing the trigger distance to 50 ft is being considered because staff wants to verify the boundary and make sure measures are taken to protect the resource, even when it is not on the property on which a project is proposed.
- Staff would do most of the boundary verification for the applicant by using the HCA maps and tax lot information. A surveyor would not be required.
 - Staff has discussed not charging a fee for either the construction management plan or boundary verification to get people to go through staff.
 - The cost to the City needs to be considered.
- The current draft Code states that applicants separated from the resource by a paved roadway would not need to go through the boundary verification process.

- With regard to areas like 19th Ave and the large canopy, staff would look for the paved street during the boundary verification process, when the applicant would bring in site photos and more detailed information about conditions on their property. If the HCA comes through the right-of-way right on the edge of an applicant's property, staff would not require boundary verification or a construction management plan because the paved roadway separates the applicant from the rest of the resource, even with canopy overhead.
 - It would get confusing when an applicant has HCA that is paved like Monroe St, creating a situation where 2 rules oppose one another.
 - If the roadway is exempted, it raises the question why the canopy would be retained on the map if the applicant would be exempt anyway.
- In many places, the roadway's location is uncertain. The Inventory Map is based on aerial photos where the roadway is covered in canopy, and on many Milwaukie streets the whole roadway is not paved. A perfect example would be SE 19th Ave; staff could not go in and do the mapping with the City's current resources.
- If no resource existed on the property, staff wanted to limit what the applicant submitted to just showing that everyone knows where the boundary is located and confirming that the resource was not actually on the applicant's property. The applicant may need to provide a construction management plan depending on what is actually proposed on the property.
 - The list of prohibitions about what can and cannot be done in the resource area, like using weed and feed, would not apply to the applicant if no resource area exists on the property.
- The 50-ft trigger boundary could work in some areas, but the grade of the ground was also important to consider.

Mr. Kelper reviewed different scenarios including residential properties considering construction and what limitations there might be on disturbance of the HCA as well as how a partition scenario might be considered with HCA involved.

Planning Commission Discussion

- The Code needed to be definitive about what is considered disturbance. Would temporary disturbance count, like digging a trench for pipes, or only what is ultimately seen at the end of the project?
 - Although not reviewed by the Commission, mitigation is still required.
- Adjustments like leniency options for setbacks were built into the Code. Owners could push development closer to the front setback, for example, to stay out of the resource. This principle from the model Code provided flexibility for owners, and enabled them to avoid having to request an official variance from the Commission. Many zones have a 20-ft front yard setback, which is pretty big. The model Code suggested a zero front yard setback. Should 5, 10, or 15 ft be considered?
 - Neighbors would care about side setbacks and should have some input.
 - Varying front yard setbacks was a big concern because it gets into the discussion about sidewalks and why people do not want them because they are right at their front door. Allowing the front setback to vary substantially means building closer to where the street improvements would be, perhaps resulting in people being more resistant to street improvements.
 - Front yard setbacks should be no less than 15 ft.
 - Rather than reducing the front yard setback to avoid the HCA, mitigate for some loss of resource/canopy cover by building more habitat canopy in the front yard.

- In that case, however, the front yard would not be designated HCA, while the boundary of the HCA would be reduced. The next applicant who wants to develop could push it back a little further.
- The question was what is the intent of the HCA. If the intent is to provide canopy, then recreating more HCA canopy by mitigating for an area with no tree canopy being lost in the HCA was appropriate.
 - That canopy would no longer be classified HCA, so people could cut down trees in the front yard, because now their house extends into what used to be HCA. There would be no way to counter balance the HCA in any meaningful way long term.
 - A tree ordinance could be created to preserve trees in the front yard.
 - It seemed that Metro saw value in canopy identified well out of the range of the 100 ft from the water resource as habitat canopy, so providing more canopy should be a trade off.
 - Short term it made perfect sense, but the problem is that long term the HCA has been pushed out historically, and a little island of the HCA has not been placed in the front yard where somebody cannot affect it.
 - Only HCA property where there truly is no canopy would be taken out.
- The idea from a policy making standpoint was not to have a burden on the property owner, but find incentives to help people avoid the resource and mitigate impacts, etc.
 - Having reduced front setbacks was site-contingent. Island Station had mostly 60 ft rights-of-way, and sidewalks might not be built at the edge of the right-of-way. The slope on 19th Ave made building a sidewalk unfeasible, so reducing the setback to 10 ft might make sense in some situations. In other places, it would be a real problem.
 - Perhaps the setback variances should be a Type III quasi-judicial review, not an outright allowed reduction.
 - The current 20-ft setback involved more than aesthetics; scale is also important. Adjusting front yard setbacks was a slippery slope that could result in everything having a 5-ft front yard.
 - Developing into HCA areas with no tree canopy was not as much of a detriment. Some areas were designated HCA because they were in the floodplain.
 - Exchanging front yard areas with areas designated as having canopy value in the HCA that were outside the 100-ft water resource setback but had no canopy should be an option.
 - The need to have tools to trade off with the homeowner was understood, but the last resource would be reducing the front yard setback because effectually it brings in the scale of the street, and narrows the solar access and solar window of that street.
- Reduced front setbacks seemed contrary to the new TSP that created a new vision for Milwaukie with improved streets, sidewalks, and bike lanes. Allowing owners to build closer to the street just increases the resistance to improvements. Most people think the right-of-way is their front lawn. There are areas where the right-of-way is half of what people consider their front lawns.
- Aesthetics were also an issue because the size of the street makes a big difference on how close structures should be built to the street.
 - For example, people would complain if the City could build River Rd according to the TSP. Their perception is that a sidewalk would be put in 5 ft from their front door, because they were originally allowed to build really close to the lot lines and not made to maintain the 20 ft setback.
- The draft Code was setup to let property owners with a significant amount of natural resources do a partition if they met certain nondiscretionary standards, which would be a

Type II review. If those standards could not be met, the applicant would come before the Commission and may need to do the full impact evaluation of how the partition would affect the property, resource, etc. Staff sought input from the Commission about what would be a good and fair tool to use as incentive to limit impacts to natural resources.

- One suggestion was to transfer the required density to provide the least disturbance to a resource.
 - Again, the accuracy of the maps is critical to avoid innumerable headaches later.
 - Commissioners Batey and Gamba had no issue with transferring the density.
 - Allowing a density transfer was considered as a tool only for properties with HCA because the City was imposing a higher level of regulation on properties covered by HCA. It was also another tool to encourage people to design away from and protect the resources without necessarily having to go through an entire minor quasi judicial process to do so. Allowing other properties the opportunity to transfer densities could be discussed later.
 - While other property owners might question why they could not do the same, the City would have an answer for them.
 - The land owned by the Wetlands Conservancy [near Gary Michael's property] was actually created as a result of this type of allowance. When the subdivision was created, that developer was allowed to cluster the same number of units a little tighter together with some slightly smaller lots to be able to set aside that wetland. The City previously had that type of allowance, but lost it at some point. Without the allowance, the whole parcel would probably have been developed.
 - The need to create a toolbox that allows some compensation was understood, so staff was not forced to deny an applicant a reasonable use of land. However, the results of such tools were of concern. It could create higher density triplexes, resulting in more traffic generation and a decrease in the neighborhood's value.
 - **Mr. Kever** agreed these were fair points. However, he added that by transferring the density in the example, 2 lots would not be developed at all, and instead of having 3 houses, 3 units would be built together, which may mean that the street does not need to be a through street but could continue as a dead-end street.
- The 3 concepts staff sought feedback about from the Commission were:
 - Onsite density transfer, concentrating development onsite.
 - Offsite density transfer, which would not be easy for the City to track.
 - Allow the owner 30% more density if they develop outside of the HCA; however, the community would probably not be interested in increasing density.
- Development did not run the City; it was the balance of property rights versus other protections.
- The impact of a triplex affecting property values could be controlled to some degree by design standards and some things being worked on in the Code revision project. The City should have 2-, 3-, and 4-unit infill developments, such as those seen in Sellwood and southeast Portland.
 - Onsite density transfer was not bad; the issue was how to control the quality of the project.
- The matter was complex enough that it should come before the Commission as a minor quasi-judicial review.
- **Ms. Mangle** suggested drafting this part of the Code and returning for review at another worksession with the understanding that it could be removed; decision making levels would also be included.

Mr. Kelder continued by discussing ordinary activities, like landscaping and maintenance which the Code would allow to continue. The City wanted to avoid property owners tearing out a designated resource area to install lawns, gardens, etc., but to maintain them where they exist.

Commissioner Gamba:

- Believed normal farming activities needed to be further defined. Was a 10 ft by 10 ft garden plot considered a normal farming activity? Language regarding the exempt activities was clear, but what is farming? A tractor pulling a plow causes a level of disturbance and destruction to the life in the soil that was only now being recognized. Nothing will grow in soil that has been farmed for too long; not tilling the soil will enable things to grow there forever.
 - **Mr. Kelder** explained that the language about farming in the draft Code actually came from the current Code, which relates to the WQR protection. His understood that the idea was to have an allowance for farming activity as long as that activity is not producing a direct discharge into the WQR.
- Stated that was a very limited view on the problems it is causing.
 - **Mr. Kelder** understood, adding that the WQR protections came from another Metro title the City addressed in the early 2000's.
 - He confirmed that Commissioner Gamba wanted staff to spend time now to see if a greater level of protection should exist or discussion occur about activities that could impact the WQR.
 - The trigger in the current language was 'does it increase stormwater discharge to the Water Quality Resource area'.
- Noted the need for a construction plan if within 100 ft of a resource because of dust that might be raised. Fields being plowed should cause similar concerns.

Mr. Kelder concluded by reviewing clarifications made regarding tree removal, restoration, and natural resource management plans, which would provide property owners with a long-term view of managing their property and blanket approval of their plan.

- He displayed a sample construction management plan, and an Oregon City boundary verification form where someone would go out into the field and make some observations about their property to help facilitate administration of the Code.
- Another worksession would be held before the open house, which was to inform people about how their property could be affected by the NRO, and also connect them with other resources, ideas and information.
- Information requested by the Commission about permitting and monitoring things like dripping lawnmowers would be sent to the Commissioners via email.

Commissioner Bresaw asked if anyone in the audience had any comments.

Don Jost, said he lives on a level lot off Lake Rd near the North Clackamas School District office. He was concerned about the 50-100 ft boundary, which has been discussed several times. His view was that 100 ft was way too far of an encroachment into the property owner's property. Most lots in the c are less than 10,000 sq. ft, which means most have a 100 ft property line. If a property owner wants to add a patio or deck, they would have to go through this process, and it didn't make any sense to him. Reducing the trigger boundary to 50 ft would eliminate a lot of problems.

- His neighbor has a Christmas tree farm and there are issues there because certainly the property drains into the WQR.

The following section recorded as mostly inaudible, and has been inferred from notes and audio.

Christopher Burkett, 4405 SE Bryant Court, said he appreciated the work staff was doing. It had been a long process and most jurisdictions just adopt Metro's model Code. His biggest concern regarded existing landscape and continuing to allow it. Some stipulations say it is exempt from a lot of these requirements, yet the requirements still impact landscaping, especially trees. Many situations are difficult to write into the Code that provide flexibility for what happens in the natural environment, like beavers felling trees, which creates a peculiar situation.

- He was concerned about how the Overlay would affect property owners with fully landscaped properties long term. If weeding was not done at certain intervals, would the property owner with HCA be out of compliance? How will owners who take care of their property and are responsible be affected? What about the removal of native species and planting of nonnative species? A person should be able to live on their property without these regulations.

Dick Shook, 4815 SE Casa Del Rae Dr, echoed concerns about the accuracy of the maps. It was hard for people to look at the maps when the streams' locations are not indicated correctly. For example Page 54, shows Kellogg Creek running through the baseball diamond at North Clackamas Park. It behooves the Commission to get the maps as accurate as possible. As a real stream advocate, he was concerned about someone looking at the map [inaudible]. He has a riparian corridor on his property [inaudible]. He was also concerned about what the Overlay will allow moving forward in water work [inaudible] gets pushed off for a year.

The Commission took a brief recess.

6.2 Summary: Development Review Process Tune-Up Code Project briefing #3
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, presented the staff report, reviewing the project's background and schedule, and overviews of Milwaukie Municipal Code (MMC) Chapters 19.600 Conditional Uses, 19.900 Amendments, 19.700 Variances, Exceptions, and Home Improvement Exceptions, and 19.800 Nonconforming Situations.

Discussion from the Commission about specific Code Chapters was as follows:

MCC 19.900 Amendments

- It was odd to have the rules for how to amend a document in the middle; they are usually at the beginning or the end.
 - Staff is considering a total reorganization of the Code so it would make more sense.

MCC 19.800 Nonconforming Situations:

The following section has missing audio for approximately 21.27 minutes, and has been inferred from notes.

Ms. Shanks asked for questions about nonconformities and the different types of variances.

Batey asked what kind of variance, nonconformity, and exceptions are used in other cities?

- Many cities use variances and exceptions, but the City of Milwaukie only has a use exception [when it] seems that a variance applies.

Ms. Shanks distributed two documents:

- A chart providing an overview of historical Code changes involving variances.
- A one-page table listing and describing the City's variance requests submitted over the last 5 years; many were quasi-judicial and did not meet Type II review criteria.
 - The table was to give a sense of the types of variances requested; ...doesn't preclude requesting a variance for anything.
 - The number of requested variances had fallen to about 4 or 5 since mid 1980s.

Commissioner Batey noted that the timing of Code changes shown on the chart was interesting, since more variances were allowed, following Mike Miller being on the Commission. Mr. Miller was adamant about variances being rarely given.

Staff clarified the table indicated submitted variance applications, not approvals. Many of the applications were withdrawn or never submitted.

- There were not a lot of variances relative to the number of applications received overall.

MCC 19.700 Variances, Exceptions, and Home Improvement Exceptions

Ms. Shanks and **Ms. Mangle** reviewed the background information, sample scenarios, key issues, and the subsequent proposed changes to MCC 19.700. Attachment 2 was included in the discussion.

- The purpose statement is for making the policy intent clear. Approval criteria are needed to implement that intent.
- Staff posed the question, "What kind of a tool should a variance be: a creative tool for better/best projects or a defensive tool?"
 - The Commission's answer/intent goes to purpose statement.

[Audio recording restarted.](#)

MCC 19.700 Variances, Exceptions, and Home Improvement Exceptions (HIE)

- **Ms. Shanks** read from Section 19.701, the introduction to the Variance Chapter, stating, "The Planning Director and/or the Planning Commission may attach conditions which it finds necessary to lessen the impact of the variance on nearby property and protect the general welfare of the City and achieve the purpose of this title." This was not called out as a purpose statement, but just generally talked about variances.

Discussion from the Commission continued as follows:

- The approval criteria are important; a purpose statement is more aspirational.
- A purpose statement shows intent; without a purpose statement, the spirit to which the Code was written is unknown.
 - The purpose statement in many other jurisdictions' codes talk about intent. Some Code criteria appear black and white, but sometimes it is difficult to know which way to go in a particular situation. A purpose statement provides a framework within which to interpret and apply the Code, which cannot cover every possible scenario.
- Views differed about whether the sample purpose statements provided in the packet were pretty much the same.

- If the City created a purpose statement, it would not talk about meeting the intent of the Code, but about providing some flexibility. Instead, it would possibly say that everything should meet the Code standards, unless there is potentially a taking.
 - Attachment 2, the memorandum from Angelo Planning Group, provides different approaches from cities that use variances as a problem-solving tool.
- No real industry standard exists about the differences between “variances,” “exceptions,” and “adjustments;” the cities had just chosen different words. Some used minor variances or special variances and defined it in a way that made sense for their community. The City of Milwaukie uses “variances,” “use exceptions,” and “home improvement exceptions.” Variance is generally the most common word used.
 - Some things should be easy to vary, and others more discretionary. Perhaps different words should be used to delineate that which was easy, like variances, and something more difficult to approve, or discretionary, where the Commission had to determine the best option for a particular situation.
- The Commission was asked to consider which approach to use with regard to variances: maintain the approach of never approving a variance unless certain and specific thresholds are met; or use a variance as a problem-solving tool to allow for small variations in certain situations, and also allow for other variations in larger, more complex projects to make them better. Once the Commission knows the direction to go, staff could craft a purpose statement.
 - Uncontested variances or those with non-confrontational reaction from the notification process should be a Type II review. Variances that result in confrontational responses by one or more adjacent property owners should be brought before the Commission.
 - The only approval criteria for altering nonconforming structures is not to have negative impact on adjacent properties, so staff advises property owners that approval will be easier with their neighbors support and if others agree that there is no impact.
 - Building into the system the potential for logic and review of a given project on an individual basis without being roped into Code that would cause someone to do the wrong thing or conflict with Code was a very large step forward.
 - It was frustrating to see the Commission find a solution that cannot be achieved due to the Code, leaving everyone frustrated. Situations will occur where someone will go through the whole process, but the Commission could still say the project is not good enough. Staff needed clear direction about the approach from the Commission in order to develop the right criteria.
 - There are so many exceptions to so many rules. It is very hard to be specific, because it is always the end result that is important.
 - The purpose statement should encourage something different than what is actually written; sometimes the applicant’s idea is better than what the Code will allow. Reading what other cities are doing provided good ideas.
- Nonconforming uses and nonconforming structures are two very different things that are addressed separately in the Code although included in the same chapter. Nonconforming structures relate to the types of variances people ask for, and alterations to such are a Type II review. Altering or expanding a nonconforming use is a Type III.
- What is the problem with the existing 10% rule? How often are there variances? Some variances on the list were only reviewed by the Commission because they were part of a larger, more complicated project other than what came before the Commission.
 - The biggest issue is that the approval criteria for the Type II and Type III are exactly the same. Type II reviews are supposed to be less discretionary, but the approval criteria really do require a lot of discretion to be made. The 10% standard is also very low.

- 10% of 10 ft is only 1 ft, while the applicant might need 2 ft. Staff encourages applicants to use the Home Improvement Exception (HIE) if they meet that criteria because the approval is more guaranteed.
- The problems result from the combination of the discretionary criteria and the 10% standard being very low.
- How can specific criteria be used when so many different things can be varied? Varying a side setback is very different than varying height.
 - The numeric standards are for pretty basic items, like setbacks, lot coverage, etc. Few numeric standards exist where a small variation in most instances would not have a great impact.
 - The issue is to cap the standard at the right number and create more appropriate approval criteria. Currently if someone met the 10% standard, the approval criteria state that no alternatives are available.
 - Perhaps the idea of 'no contest' would fit here; the application would be a Type II if it is 20% or less and no complaints are received.
- Numerical items would be the easier ones, but go-no go items like street improvements are harder cases.
 - Currently, no Type II variance exists for the easy items. The HIE is limited to duplexes and houses in existence for 5 years or more, and allows some variation to lot coverage and setbacks, but not height. Such variance requests would be easy and staff believes having small variations to enable owners to maintain their homes and make small alterations would be appropriate.
- The fee structure would be set so that the City could collect additional fees, which could be addressed as needed.
- Staff was not proposing any change to the time lapse for conditional uses or nonconforming uses. Discussion would include whether 6 months is the right period of time, and staff is also discussing having limits to nonconforming uses, all of which could be further discussed at the next meeting.

Ms. Mangle encouraged the Commission to further review the memorandum and Codes, which were available online. As a legislative amendment, the Commission could discuss the matter online via email. With the Commission's permission, staff would begin working with their consultant to develop reasonable criteria and decision-making. Further discussion about variances and nonconforming use would occur at the next meeting. Commissioners were invited to contact staff with any additional comments.

Ms. Shanks added she would contact Commissioner Batey and former Commissioner Mike Miller when the draft is ready for review.

7.0 Planning Department Other Business/Updates

7.1 CPA-10-02 Wastewater Master Plan

Ms. Mangle updated the Commission about the Wastewater Master Plan. Engineering staff has worked for several years to update the Master Plan, which would be adopted into the Comprehensive Plan, where all utility master plans should be located.

- Some of the delay in getting the Master Plan adopted stemmed from issues in how the Capital Improvement Plan is managed. Developing a good plan has been difficult in the context of some ongoing issues and negotiations. For instance, the Northeast Sewer Extension Project being implemented is already outdated and needs to be updated.
- The Engineering staff was continuing to work on drafting the plan and is working with the Citizens Utility Advisory Board and City Council. Some public outreach would be done this

fall. Staff anticipated holding an in-depth worksession with the Commission in September/October and a hearing for adoption in December.

- She explained that the Capital Improvement Plan was part of the budget and addressed by the Budget Committee and City Council. The Wastewater Master Plan is part of the Comprehensive Plan. Any changes to the Comprehensive Plan must come through the Commission before going to City Council. All of these plans and policies should fit together in a more understandable network, and was part of staff's ongoing effort to reorganize and clean up the City's systems.

8.0 Planning Commission Discussion Items

Commissioner Batey asked for an update on Riverfront Park.

- **Ms. Mangle** replied that JoAnn Herrigel had been working on the non-motorized boat ramp issue, as well as the outstanding design review issues. Ms. Herrigel has been contacting the Willamette River Keepers, and was very much in contact with the State permitting agencies. An answer was expected regarding the State permitting in December.

Vice Chair Harris announced the last concert of the Concert in the Park series would be held August 25th in Llewellyn Park featuring Curtis Delgado and Alan Hagar.

Commissioner Bresaw asked about a particular tree affected by the widening of Lake Rd for the project.

- **Ms. Mangle** replied that several people had asked about the tree, and the Engineering Director and project staff were going to verify which tree was being discussed and get an answer. The project was being designed to save as many trees as possible, but not all could be saved.

9.0 Forecast for Future Meetings:

- September 14, 2010
1. Worksession: CPA-10-02 Wastewater Master Plan
 2. Worksession: Development Review Process Tune-Up Code Project, review of draft chapters
- September 28, 2010
1. Worksession: Milwaukie's Comprehensive Plan – Thinking about, and Planning for, the Future


Ms. Mangle reviewed the forecast with these additional comments:

- The Wastewater Master Plan worksession would not be held at the next meeting, allowing for more focus on the Tune-Up Code Project.
- Kenny Asher, Community Development and Public Works Director, would be present at the September 28th meeting to discuss the South Downtown Concept Plan. Staff hoped to present the material first at the farmers' market and then to City Council for a blessing of sorts to continue work on the Concept.
- Discussion would begin on the Comprehensive Plan; staff hoped to do some long-range planning over the next year.
- No hearings were scheduled or in the works at this time. Two applications were expected to come in, but getting them to the Commission would take a few months.
- Urban Renewal was not off the table, but was part of the long-range planning conversation and downtown Code refresh and would be discussed more this fall. She would have an update in September. The City needs to decide whether to use it or not, and if not, how would that change the City's long-range plans.

Meeting adjourned at 9:43 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Stoutenburg, Administrative Specialist II



Jeff Klein, Chair