

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, January 11, 2011  
6:30 PM**

**COMMISSIONERS PRESENT**

Jeff Klein, Chair  
Lisa Batey  
Chris Wilson  
Mark Gamba  
Nick Harris  
Scott Churchill

**STAFF PRESENT**

Katie Mangle, Planning Director  
Brett Kelper, Associate Planner  
Li Alligood, Assistant Planner

**1.0 Call to Order – Procedural Matters**

Chair Klein called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

**2.0 Planning Commission Minutes**

**2.1 October 26, 2010**

Commissioner Gamba moved to approve the October 26, 2010, Planning Commission meeting minutes as presented. Commissioner Batey seconded the motion, which passed unanimously. Chair Klein noted he was not in attendance at the October 26, 2010 meeting, but voted yes.

**3.0 Information Items**

There were no information items.

**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 Resource Overlay Project briefing**

Staff Person: Brett Kelper

**Brett Kelper, Associate Planner**, presented the Natural Resource Overlay (NRO) Project via multimedia display. The two main components of the project involved amending the draft code and draft maps, essentially adding Habitat Conservation Area (HCA) regulations to existing rules for water quality resources. The draft maps and a summary of the project were presented last Thursday at the open house that was attended by 35 to 40 people. Staff answered questions mainly about what the NRO project was and how it would affect those attending. No significant changes were suggested to the maps.

Staff made the following clarifications for the Commission:

- A10% change in the setback or up to a 10% change in some lot dimensions would be allowed. Changes in setback adjustments could be utilized on any side of the property. The idea was to allow people to use these adjustments to avoid impacts to the resource area. If proposed changes would not work within the overlay guidelines, the variance process would be required.

- The City would need to get some degree of signoff from Metro about the City's code, draft maps, and methodology for making future corrections/amendments at this initial stage. Metro would want to ensure that the Code and maps that the City was adopting met the statewide goals. Staff was still sorting out the process for adjusting the maps; perhaps Metro could get notice and have opportunity to comment as part of the normal notification process when map changes were proposed. The City preferred that Metro feel comfortable with the maps and process so that making adjustments according to the outlined methodology was not a major deal.
- The City had to get Metro's concurrence, but at the regional scale the maps were almost identical; changes being made were very localized, and both Metro and the City would be in agreement next year. The Code already outlined the process if someone disagreed with the map. Metro's level of involvement depended on the scale of the changes being made. Changes at a tax lot level would not rise to the level of concern for the region. If a whole watershed was taken out, Metro would want to talk about it. Minor adjustments at the local level could be easily addressed, but if someone wanted to challenge the location of a significant area, they would need to go through a substantial review including revisiting the original inventory analysis.
- The key question at the open house had come from property owners with no resources on their property, but who had received the notification letter because they were within the 100 ft disturbance boundary and wanted to know what they needed to do. Staff advised that if the work outside the resource area was close enough and rose to the level of disturbance, the City just wanted to see how the resource would be protected.
  - There were people on both sides of the issue; some wished the rules did more to protect resources, while others believed there was enough regulation and questioned why more was being added.
- Staff would like to bring the package to the Commission in March for an official hearing recommendation to take to City Council for adoption. The Commission was asked to at least look at the commentary document by January 31, 2011, to help identify any concerns or questions. Suggestions about specific language in the Code would also be helpful.

**Chair Klein** stated that a lot of meetings had been held on the Natural Resource Overlay, which was also brought before the public a number of times. He felt confident in moving forward.

**Mr. Kelper** invited members of the advisory group to offer their comments.

**Dick Shook, 4815 SE Casa Del Rey Dr**, stated he lived in unincorporated Clackamas County and had participated in a number of the meetings. As a neighbor of North Clackamas Park, his main concern was how the development of the north side of North Clackamas Park would proceed; it seemed closely tied with this procedure. While his property was located well within the 100 ft disturbance boundary, no further development was anticipated where he lived. He believed that Metro had not included some areas that should have been, which he understood would be addressed in the future as procedures were established.

**Commissioner Gamba** noted some items were at odds with each other, for example, gardening was not permitted but agriculture was an outright use.

- Proposed Code Amendment 19.322.1, Intent, C.8, the section's intent was to preserve existing native vegetation, and specifically called out no gardens??.
- Under Exempt activities, Item 19.322.4.A.6 on 6.1 Page 10 of the packet, it states "agriculture practices or uses...provided that such activities or uses do not result in

increased direct stormwater discharges to WQR areas.” He asked if the definable difference was making money from the specified activity.

**Mr. Kelper** suggested differentiating between existing versus new agriculture in Item 6. In general, the principal of the overlay was to not remove or expand what had already been done. For example, existing lawns and gardens would not need to be removed, but no further expansion of either should occur. He agreed it seemed inconsistent if a new property owner was allowed to plow in a riparian area because agricultural, including new agriculture, was allowed. They were taking from existing language, which also was unclear in this way.

Discussion continued with the following comments:

- The City should work to stop activities such as tilling and the use of pesticides and herbicides, specifically those that would harm resources. New food growing methods, such as permaculture and food forests, do not cause runoff into the creek. The Code should allow nondestructive food growing, whether new or already existing, and try to move agriculture, whether new or already existing, in that direction.
  - The point was the City did not want people encroaching further into the resource area.
  - Item 6 discussed above could be revised to be more specific about low impact agricultural usage. Commissioner Gamba offered to help with the language.
- There was a way to allow people to grow food very sustainably and noninvasively within a Water Quality Resource (WQR) area while also helping existing agriculture that was tilling and causing runoff into the creeks. It was a little more work, but food could be grown just as effectively without tilling.
  - Change the activities allowed in the WQR/riparian area to something like no tilling or herbicides/pesticides allowed no matter how long the use is there, existing or new. A phase out period could be used for existing uses.
- There was discussion on how the rule on pesticides would be enforced. Instead of completely exempting sustainable agriculture, the City could require that a plan be submitted to ensure the appropriate practices were being followed.
  - Growing food should not be outright prohibited.
  - The wording “only native plants” should not be used.
- With a minor correction to point Item 6, the Code already covered the concerns fairly well. A main principal is not to do new disturbance. The Code was not prohibiting food growth as long as what was being planted in the riparian area was not on the nuisance list and was planted in a way that did not require wholesale type of tilling, which was quantified by a 150-sq ft area.
  - The word “garden” needed to be addressed.
  - "Preserve existing native vegetation or other..." was the important language in the Code.
  - In most riparian areas, existing native vegetation had been choked out by blackberry and other invasive species. People should be encouraged and allowed to clean up the invasive species and plant food, without allowing any tilling within the WQR, whether an existing or new use.
  - The argument is that one cannot make money if tilling is not allowed, but other options were available. It was an invalid argument.
  - The scale or method should be considered. This Code was not only limited to agriculture; existing gardens within the WQR would also be affected.
- The goal was to at least hold the line on any new disturbance in the WQR. The draft Code was written to state if tilling or agriculture was disturbing more than 140 sq. ft., a plan was required to show how the resource area was not being impacted.

- Sustainable gardening was outside Metro's compliance with regard to this issue. The Code could be reconsidered and rewritten in the future when someone submits a sustainable garden plan and contests the restriction.
- Exempt activities, those exempt from further review, were not necessarily precluded from submitting a plan showing the City how construction would be managed. The exemption only meant that the activity did not need a higher land use review.
- The difference was between the City's current practice and what was envisioned under the Code in terms of trying to enforce limits on pesticide or herbicide use.
- The first step in trying to enforce limits on pesticide or herbicide use was to make the Code very clear that certain pesticides/herbicides could not be used. Staff was not sure how proactive the City could be in catching people using these substances. Enforcement would likely follow the current practice of complaint driven enforcement. With more resources, providing proactive education about alternatives would be helpful. Spills occurring in or near certain water quality areas bring involvement from any state agencies.
- No stump grinding did not elicit any concerns from the advisory group. Allowing people to find a way to remove the stump without creating an erosion problem or removing the root was deemed reasonable; otherwise more review would be required so the City could consider how that activity was being done.
  - Depending on how it is done, stump grinding did not remove the root wad since they only go down six inches; was that disturbing the soil?
  - The discussion involved how to get stump grinding equipment to the location. Staff set it up to be able to have productive conversations on a case-by-case basis, rather than one answer for all situations.
  - Stump grinding would probably be addressed through a Type 1 review to consider a plan for how the rest of the resource is protected.
- Commissioner Gamba was asked to distribute his other questions to the Commission via email following his meeting with staff.

**Les Poole, 15115 SE Lee St, Clackamas County**, stated he had been involved with a similar issue in Damascus with their Comprehensive Plan. He liked a lot of what was being done and hoped the sensitivity of the proposed Code would be applied to the upcoming transportation projects and that the Commission would consider the issues from different perspectives, such as farmers, TriMet, etc.

- He noted there was a real gray area about the source of the numbers given for the buffers, which was contentious in Damascus and Lane County recently. He did not believe a 200-ft buffer on the Willamette River was big enough. He did not support taking away backyards, but the sensitivity to Kellogg Creek, Three Creeks, or the Willamette River should not be the same as small pockets or wetlands. Having a one-size-fits-all to create fairness was generally overkill in some areas and not enough in others.
- Considering the economy, he reminded that every decision being made had costs attached. Revisiting and revising this Code was fine, but people were very worried about their property values and getting the economy going again. He cautioned the Commission about too much micromanagement. People get jumpy about their land.

**Ms. Mangle** stated that the public hearing for the Natural Resource Overlay Project would be held in March and the Commission's recommendation would go to City Council around the end of April. The plan was to time this one Code chapter with the broader Land Use and Development Review (LUDR) Code Tune-up project. Ideally, the proposed Natural Resource Overlay Code would go into effect in May.

- The Commission would be asked to act on the 98% draft and provide a list of things for staff to continue working on as staff takes the Code chapter to City Council, similar to what was done with the Transportation System Plan.
- As noted, no annotations were made to the map at the open house. Some negative comments were received, but none that would influence the Code. Specific concerns were addressed and the Code was distributed so additional comments might be received.
- All the property owners would get notification again due to the Measure 56 required notice. The comment period was still open. Staff would collect the comments received and note conversations had so the Commission had that information. The notes from the advisory group meetings, which were pretty robust conversations, were all online on the project website.

6.2 Summary: Residential Development Standards  
Staff Person: Katie Mangle

**Katie Mangle, Planning Director**, stated in addition to the Natural Resource Overlay and LUDR Code Tune-up projects, the Residential Development Standards project was also a high priority. Research was being done to understand the history in Milwaukie of how the City ended up with the current Code. The material provided to the Commission would be referenced as the project proceeded.

**Li Alligood, Assistant Planner**, reviewed the staff report attachments with these key comments:

- The Code history memorandum was a comprehensive history of residential development standards from the initial adoption of the City's zoning ordinance to the present. It was extremely disjointed, and a lot of it was contradictory.
  - Many of the changes made were in response to very specific issues or requirements from Metro or the State to come into compliance with some kind of specific policy.
  - There had not been a comprehensive overhaul to the residential development standards since 1979, and even that was more of a refinement than an overhaul. Some new zones were introduced and the uses specified more clearly, but she knew of no comprehensive review or analysis of the residential development standards.
  - The current design standards for single-family residences were adopted in 2002, but none applied for multifamily residential development or infill compatibility standards.
- The Comprehensive Plan (Comp Plan) had a really strong direction for its residential design standards and called for individual neighborhood design standards. Most of the residential design policies outlined in the Comp Plan had not yet been implemented by the Code. Though the plan was written in 1988, there were still quite a few areas where they had not been able to implement the policies that were adopted in the Comp Plan.
- The Code summary on 6.2 Page 29 outlined what was currently allowed by the Code and identified the current standards.

**Ms. Mangle** stated the consultant was developing site prototypes and illustrations, which most people would identify with. The public involvement process would begin with a survey.

- In November, the Commission discussed creating a subcommittee of the Commission to carry the weight of the project. Following that conversation, she still recommended a subcommittee or steering committee of interested Commissioners, but also wanted to initiate separate stakeholder groups, whether the Neighborhood District Association (NDA) Land Use Committees (LUCs), developers, or people interested in doing duplexes, to allow some conversations to occur outside of the subcommittee meetings.

- Some people would not want to come to 7 subcommittee meetings, and better conversations could be had within some smaller groups.
- A web survey would reach a broad array of people and identify people who want to be involved on the stakeholder groups or subcommittee.
- The draft survey questions were included in the packet as Attachment 1, and Survey Monkey or a similar tool would be utilized.

Discussion between the Commission and staff continued as follows:

- The 1988 Comp Plan was essentially irrelevant, and needed to be revisited, revised, or worked around. The process should move in a way that the future was being considered as opposed to the status quo.
  - **Ms. Mangle** agreed the Comp Plan needed to be updated but it could not be done with this project. They had to figure out a strategy on how to accomplish the update and how to obtain funding for it. It would be a 3-year process.
  - The Commission should focus on pushing issues within the constraints of the Comp Plan. Every Code project usually resulted in some tweaking of the Comp Plan, but this was limited and usually had to be within the general policy direction. Environmentally, and in terms of urban design, much of what the Comp Plan actually called for was not implemented yet.
  - Staff had been waiting to do this Code project for 2 years. They needed to finish this project, which would take a year, while also building the case to do the broader Comprehensive Plan update. The project would also help generate a list of other items to work on as well as next steps.
- Some Commissioners had been waiting for this project for 5 or 6 years. There were residential structures built in Milwaukie that would never have been built, had the residential development and design standards been done 6 years ago. As important as the Comp Plan was, this Code project has been wanted for a very long time.
  - This was more painful in that the City was asking people to do something different than they were used to, and Council also needed to make a decision that would have ramifications for Joe Public.
  - The direction staff was taking with this Code project was very good because there was a lot of outreach. NDA leadership groups have expressed interest in playing a role in the Code project. The project also had the appeal for many people to join in and see what a difficult process this would be because they were asking more from Milwaukie's citizens.

Commissioners offered various suggestions to refine the survey questions.

**Ms. Mangle** reminded about the discussion to broaden and design the different housing types in Milwaukie. Previously in Milwaukie, housing types and design were more about density or complying with Metro. Staff wanted the City to provide the different housing types that Milwaukie needed to be a healthy community; that people needed in the future.

- A lot of the public conversation would be about this issue. This needed to be more than a kind of esoteric conversation about the future, because specific goals were needed to shift the direction of design overall in the city.
- She distributed her top 10 things she wanted to address with the project, noting that the last item should state, "Allow ~~attached~~ **detached** ADUs" because the City already allowed attached ADUs.
- She asked for discussion about housing types/design and the Commissioners' top 10 list.

**Chair Klein** agreed more than half of the items on Ms. Mangle's list would probably appear on his list as well. Some of the more procedural items would not be on his list.

- He was uncertain about reducing the lot size for duplexes or the broader array of conditional uses.
- Half of Item #4 he did not like, which was to reduce lot coverage requirements; the half he did like was adding proportional (**inaudible**).

**Commissioner Gamba** liked the exact opposite on #4.

**Commissioner Churchill:**

- Agreed with Chair Klein. Setting minimum side lot setbacks results in a closer to zero lot line development; this was not in keeping with current standards, but may be the vision of where the city needed to be 20 years in the future. Although lot coverage was different than setbacks, they were tied together.
  - **Ms. Mangle** stated that because the lot coverage was so low in Milwaukie, it led to taller buildings.
- Believed a bulk and mass analysis could help control that. He agreed separating #4 into 2 questions was a good idea.

**Commissioner Batey** clarified that what was being asked was to increase lot coverage allowance, not reduce it, which would allow homes to be bigger on the property.

**Commissioner Gamba** stated a 7,000 sq ft space was required for permitted duplexes in an R-7 zone which did not make sense; this had nothing to do with setbacks. He was interested in the concept of being able to put 4 clustered homes on an R-10 or R-7 that then share a common area or garden area, for example. The current Code did not remotely allow this sort of thing. Ms. Mangle's #8 was high on his list of changes to make.

**Chair Klein** stated that the existing structures in his neighborhood were pretty close to the structures that would be there in 10, 20, or 50 years. He believed the City should expand or rezone areas so that different types of densities could be considered to accomplish certain goals.

- Allowing people to go for maximum lot coverage would be nearly impossible in some existing neighborhoods unless they were destroyed or someone brought a large tract or block of houses and bulldozed them to redesign them in that manner.
- People could take advantage of lot coverage to expand or build a house that would not be representative of a particular neighborhood, such as the (**inaudible**) where every aspect of that house did not (**inaudible**). Every possible dimension of the house was maxed out.

Discussion continued about items the Commissioners' wanted to address with the project and the survey as follows:

- Create a consciousness in development about how the sun strikes a property when placing a home on a given lot for the purpose of passive and active solar energy and growing area on the rest of the property. Too much energy was placed on looks, not on function. A form follows function approach should be adopted.
  - **Ms. Mangle** explained that procedurally, #3 regarding a 2-track review process would allow for a more discretionary review of more projects. Currently, all single-family homes and "needed housing" must go through a clear and objective building permit process, which limited how much discretion they could have. Different procedural tools were needed so that the discretionary process was considered as attractive, opening the door

- for other design elements, including aesthetics, solar access, and site design that could be reviewed.
- Item #3 also tied into the Development Review application included with Ms. Shanks' tune-up Code project.
  - Mass. Item 1 addressed many issues, such as some of the concerns with the Columbia Care Services Balfour House and parking in front.
    - **Ms. Mangle** clarified that the parking issue had been addressed.
  - People would be informed of the online survey through the NDAs, the City's committees and commissions, as well as to a list of potential applicants; people who were denied pursuing applications for duplexes, ADUs, etc. Further suggestions were welcome.
  - Blend Questions 8 and 9 into one; strike Question 9 and add some of those boxes to Question 8. The idea was to think about all the neighborhoods and locations rather than residential development in other neighborhoods. It was about their perspective on Milwaukie as a whole, not on neighborhoods other than their own.
    - Staff's intent was to test what people wanted in other neighborhoods.
    - Changing Question 12 as suggested to be about what character of the neighborhoods was worth preserving was an effective way to get at the same issue.
    - The questions were very informative as written. They would indicate what people wanted to happen, but eliminate the 'not in my back yard' component.
    - The question was not about whether respondents wanted development or not. When discussing single-family design, people tended to think everyone should have certain design elements, a sort of Craftsman-style house. However, those did not exist in most Milwaukie neighborhoods, so the definition of blending changes throughout the city.
    - The separate questions had some value, because they would reveal what neighborhood a respondent lived in; Question 8 was "within your neighborhood, what is your opinion." Historic Milwaukie residents were anticipated to want more of a blending.
      - Question 9 provided a different perspective on Question 12, clarifying whether blending depended on the neighborhood.
    - A different way to ask the question might be "when a successful development was found, what were some things that were successful about it, for example, it blended in, it was different, the orientation of the grid, it had adjacent retail, etc.?"

**David Mealey, 5111 SE Lake Rd**, stated he annexed into the City about 1½ to 2 years ago. He encouraged the Commission to include #7 to allow a broader array of uses in the design review. The letter he sent covered most of his arguments toward the issue.

- He was told the City planned to eventually annex Lake Road. More and more of the outskirts of unincorporated area would be R-10 zones along major arterials. It would be a good idea to allow conditional uses as permitted about a mile up the road on Lake Road just because by happenchance they were in an R-3 Zone.

## **7.0 Planning Department Other Business/Updates**

### **7.1 Officer Elections**

**Ms. Mangle** reminded that the Bylaws adopted last year stated that officer elections were to be held at the first meeting of the year. She described the roles of the chair and vice chair positions. Although the officers' terms expired on March 31, the Bylaws mandated elections at the first of the year.

**Chair Klein** noted that the Commission currently had one vacancy and his term would end March 31 after 7 years on the Commission.



- City Council was now appointing all commissioners and committee members differently. People had commented about being uncomfortable being asked the interview questions on television. Now, interested candidates would speak with the Mayor, City Manager, and the department head that was the liaison for that particular committee/commission. The Mayor would then make a recommendation to Council about appointing the candidate.

**Ms. Mangle** stated 2 applications had been submitted for the vacancies on the Commission that have been on hold due to changing the appointment process, which she hoped would be up and running soon and the positions filled.

The Commission discussed the challenges and procedural issues of being Chair, and offered their input about serving in the officer positions. The Commission agreed that having a 3-month overlap would allow the outgoing Chair time to train the new Chair. Officer elections would be held but newly elected officers would not assume their positions until April 1, which would provide continuity for upcoming hearings and a preparation time for the new officers.

**Commissioner Gamba nominated Commissioner Batey for Planning Commission Chair. Chair Klein seconded the nomination. Commissioner Batey was unanimously elected Planning Commission Chair effective April 1.**

**Chair Klein nominated Commissioner Harris to continue as Planning Commission Vice Chair. Commissioner Wilson seconded the nomination. Commissioner Harris was unanimously elected Planning Commission Vice Chair effective April 1.**

#### 7.2 Annual meeting with City Council

**Ms. Mangle** noted that the annual meeting with City Council was not held last year because of all the changes and the absence of a City Manager. All commissions and committees needed to get back to meeting with Council once a year. March 1 was proposed as the meeting date. The Planning Commission would attend City Council's worksession. The purpose of the meeting was to discuss the annual work plan; not everyone had to attend, but attendance was encouraged.

#### 8.0 Planning Commission Discussion Items

**Ms. Mangle** stated some activity had been noticed at Lovena Farms and she found that they were just building a big barn. They had subdivided the land with the County with full participation of the City. The County, City and the property owners all know that no development could be done that required installation of plumbing fixtures until they annexed into the City.

- The barn probably would not be allowed in a residential area if the property fell under the City Code because the accessory structures Code was pretty restrictive.
- Lovena Farms was planning to build and move houses, which would trigger annexation, because the homes would have to connect to the City's sewer line.

**Chair Klein** noted a house currently existed there that was not present 3 years ago. The County circumvented every law they had to allow Lovena Farms to build that house. Since it was not on City sewer, he assumed they put in a septic system.

- Lovena Farms had a large shared parking lot that he did not believe would be allowed under the City's current Code and built a structure that should have gone through the City's development review process rather than the County, who treated it as an existing structure so it would not have to be annexed into the City.
- Many issues existed with dividing the property at this point.

**Ms. Mangle** clarified that Lovena Farms installed the curb improvements on the property's frontage at the City's request when the land division was done to create the lots for each house. The land division was done in the County, but the road was a City street. The City would not have allowed such a land division.

- Except for the septic issue on the new house 2 years ago, the City had been working closely with County staff on all that had been happening over the last year. Until annexed into the City, Lovena Farms was subject to the County's Code and had rights to do the land division and build the barn.
- Development was planned, which was why the land division was done.

**Chair Klein** stated the County had facilitated Lovena Farms to accomplish many things not allowed in the County's Code. He agreed Lovena Farms was trying to grandfather things in before being annexed into the City.

### 9.0 Forecast for Future Meetings:

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| January 25, 2011 | 1. Public Hearing: Land Use and Development Review Code Tune-Up Amendments   |
|                  | 2. Extension Request: Extension request for MLP-08-02 (Howe St partition)    |
|                  | 3. Worksession: Annual work plan preparation and review of bylaws            |
| February 8, 2011 | 1. Worksession: North Clackamas Park North Side Master Plan <i>tentative</i> |
|                  | 2. Worksession: Residential Development Standards project                    |

**Ms. Mangle** reviewed the meetings' forecast with these additional comments:

- Public notice had been sent to every City property owner for the January 25 hearing. She encouraged the Commissioners to contact Ms. Shanks with any questions.
- The extension request for the Howe St partition would not likely take place; making the partition null and void, the development would not occur as the developers were running out of time.
- The work plan and Bylaws could be discussed if time allowed after the hearing.

Meeting adjourned at approximately 8:33 p.m.

Respectfully submitted,

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

  
Jeff Klein, Chair