

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, February 8, 2011
6:30 PM**

COMMISSIONERS PRESENT

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

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Ryan Marquardt, Associate Planner
Damien Hall, City Attorney

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Jeff Klein called the meeting to order at 6:34 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes – None.

3.0 Information Items

Katie Mangle, Planning Director, explained they had begun the process of upgrading the recording system at City Hall which would much more easily and seamlessly allow for the digital audio recording of the meetings. The next phase would be replacing the microphones.

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

- 5.1 Summary: Land Use and Development Review Tune-Up Code Amendments
continued from 1/25/11
Applicant: City of Milwaukie
File: ZA-10-02, CPA-10-03
Staff Person: Susan Shanks

Chair Klein called the hearing for ZA-10-02 and CPA-10-03 to order.

Susan Shanks, Senior Planner, presented the staff update on the continued hearing, reviewing the materials distributed to the Planning Commission as well as the attached exhibits as follows:

- The draft ordinance, which included attached Exhibits A, B, and C, was the clean version incorporating all the comments made by the Commission at the last hearing as well as staff's suggestions for changes. If the Commission decided to act on the package, this could be adopted without having to read any modifications into the record. Exhibit D, the clean, 300-page version of the Code, was not attached, but reflected all the changes already incorporated in Exhibit C. A hard copy of Exhibit D was available for review.

- The packet with the goldenrod paper was informational, providing a compare document showing all the changes made between the package presented on January 25 and tonight's package. The key changes incorporated changes from prior discussion regarding story poles, sign postings, and splitting the Type IV legislative process back into separate major quasi-judicial and legislative processes.
- Attachment 3, 5.1, Page 6 of the packet, noted additional language incorporated about sign posting and story poles based on the City Attorney's advice at the last hearing.
- She summarized the conversations she had after the hearing with Christopher Burkett and Jean Baker, two testifiers at the last hearing.
 - Mr. Burkett was concerned specifically with nonconforming uses. Generally, he felt the proposed amortization process was a slippery slope, not that the current language was written too broadly necessarily. Through discussion, she clarified that the amortization proposal only applied to nonconforming uses. He was aware of the delicate balance of the City's regulatory authority with private property rights, and the differing opinions often involved. He supported the Code being more flexible and giving decision makers more discretion where appropriate. He was very pleased with the proposed amendments regarding the variance process.
 - The signage proposal to have applicants post notice was further discussed with Ms. Baker, as well as the proposed Code with regard to public involvement policies. Attachment 1, 5.1 Page 4, was a chart that compared the City's current public involvement policies with policies in the Code amendment package.
 - The current practice of referring applications to the Neighborhood District Associations (NDAs) as well as other agencies soon after the application has been deemed complete was being codified. Another distinct change was getting away from doing only a required newspaper notice for many projects or applications, but to try to use other means to get the word out, such as better and more signage.
 - Ms. Baker was frustrated that she did not have more time for review given the significant number of pages to review for this project. A document was provided in the packet that laid out all the different ways staff tried to get people aware of this project early in the process and how different types of public involvement strategies were implemented, such as attending NDA meetings, emailing NDA people, posting on the website, and using community connections. The Measure 56 notice was also done, a direct mailing done at substantial cost to the City, which was not required based on the nature of the proposed changes. Very few calls were received from that mailing.
- She concluded that no new written comments had been received since the last hearing.

Chair Klein called for public testimony in favor of, opposed, and neutral to the application.

Jean Baker, 2607 SE Monroe, Milwaukie stated she wanted to amend and extend her remarks from the last meeting as she had several questions.

- She offered a document she believed was circulated everywhere as notice that stated "codifies existing NDA referral process" and asked where that Code language was found.

Ms. Shanks replied it could be found in the Review Procedure Chapter 19.1000. Each of the review types talked about a very specific referral process that was not currently in the Code. Now, stated under each review type was, "seven days after an application is deemed complete, refer it to ..." x, y and z, which recognizes official NDA Chairs and Land Use Committee (LUCs) members.

Ms. Baker responded that she had hoped they would have come up with something more substantive, instead of landing on NDA members that may or may not respond or understand.

- She had asked for her NDA's contact information and all she received was the one-sheet document.
- She said she was having trouble keeping up with the changes. She loved the chart (Attachment 1, 5.1 Page 4), but it would have been more helpful to extend out. There seemed to be a flip from Types I, II, III, IV and V to quasi-judicial and legislative, which did not come back and fit into Types I through V very well. It was not clear where certain things fit. She suggested having an extension of the chart that stipulated what was considered a Type I review, for example. When it got to legislative and quasi-judicial discussions, there was no further discussion about Types I through V.
- She understood which were legislative, but there were so many categories that it was hard to decipher which types were strictly legislative or major or minor quasi-judicial. It needed to be put in such a succinct manner that people could look and understand which type the review process fit into.

Ms. Shanks believed the changes could be made. Information could be extracted from Code language at the beginning of each review type that identifies the action category and put in another attachment as a different table.

Ms. Baker agreed that would be helpful. Providing such a visual aide would shorten the information access time and prevent much confusion.

- She apologized for assuming that the critical damage to the citizen participation program came from the Planning Department. She believed the Planning Department was in fact improving citizen participation; however, they could not force citizens to become involved.
- She was only disappointed in the Type V, which she understood to be legislative and for large zone changes. She had assumed public notice was required for all public meetings, as it always had been, and had not foreseen that would change. However, someone had changed the public notice requirements, but it was not the Planning Department. She knew the date of meeting, but not the time or location.
 - After the last meeting, she called the City Manager and asked for a do-over on a procedural error. One of the questions he asked was if she mentioned her objection in the hearing, and she responded 'yes.' He then asked if it was required in the ordinance, but it was not. After some research, she learned there was a quiet, subtle movement to eliminate public hearings and make citizen participation more challenging. This trend was being challenged and reversed.
 - She learned that she was not entitled to the notice she received on the Type V or any further information. All the information she had obtained was at the generosity of the City and at the Planning Director's discretion.

Chair Klein stated there were 22,000 citizens in the city and 9,000 structures such as residences which would be a large and expensive mailing. There were a number of avenues in which the information was made available.

Ms. Baker explained that her complaints were too much discretion, not enough required notice and how notice was given for legislative review.

- A large zoning change on a legislative change would be a discretionary notice. Public notice 30 days before each hearing was good, but the question was how citizens would be notified.
- As written, there was no requirement to include a time, date, and place. When notice was sent, usable, pertinent, and complete information about the hearing should be included.

Commissioner Batey stated that was a standard part of the notices. The information received from Ms. Baker's NDA must have only been part of what the NDA received.

Ms. Mangle stated the current Code did not contain that, but the proposed Code did. Page 66 of 82 of the white packet version of the proposed Code listed specifically what was required to be included in the 30-day notice, specifically date, time, location of the hearing, case file number, and map of the properties impacted.

Ms. Baker responded that was good and withdrew that objection.

Ms. Shanks explained the Measure 56 notice that was sent out lacked certain information, because the ORS requirement only specified that the day of the hearing, not the time and location, had to be included, so she had been following that statute and previous templates. She wished she had included the time and location, but the staff contact information was provided as well. The new Code actually required the additional information, beyond the State statute requirements. Signage was slightly different than an actual mailed notice. Signage did not have that specific language in the Code, but additional language was added that the Planning Director would adopt administrative standards for what should go on signage. The current signs were 11 x 17, but they were trying to improve the signage requirements to make them bigger.

Ms. Baker emphasized that the signs needed to state the place and time when an issue would be heard. Anything less than that from the City was just not fair.

- **Ms. Shanks** responded that was something for the Commission to consider based on the additional language added to the sign notification requirement that the applicants would have to do. This could be something included in the administrative standards, or potentially codified as part of the signage information. The current signs, because of the size, currently included the date and staff contact information. With the bigger sign requirement, more information could be included.
- **Ms. Mangle** stated the Commission could amend the proposal to require that additional information on the signs.

Chair Klein:

- Stated that when a person came into the Commission to be heard, they should be informed about the issue and receive a packet of information from staff. The date and time were important, but the most important information was the contact information for staff.
 - **Ms. Baker** agreed, but the where and when were critically important as well.
- Responded they now had bigger signs and would address that to include the date and the time.

Commissioner Batey stated that Table 5 on Attachment 1 seemed to show a lot of Planning Director discretion. Type V was probably difficult to draft because it encompassed the big zoning change, map changes, and the legislative amendment. She clarified that the words "at Planning Director's discretion" meant it was at their discretion to go beyond what was required by Measure 56 or by notice to the people within 400 ft.

- **Ms. Shanks** replied that it depended on the type of proposal. A map change with a geographic location had different rules than a legislative change and did not specifically apply to any one project or property, but could apply to the whole city in some way or another. Legislative projects were quite variable, ranging from map changes to Code changes to housekeeping changes.

- **Damien Hall, City Attorney**, confirmed that if the City tried to do something without the notice required by Measure 56, the citizens would have recourse to challenge. If there was a procedural error, it could be appealed. If it was demonstrated to the Land Use Board of Appeals (LUBA) that one was prejudiced by the City's procedural error, it would be remanded back to the City where the process would have to be restarted. He confirmed it would have to go to LUBA which could cost thousands of dollars, or if there was an appeal at the local level, something similar could happen.

Ms. Baker noted that on a Type V appeal to LUBA, the language did not state "or" but only that appeals were to LUBA.

- **Ms. Shanks** stated if there was a procedural error of which the City became aware, the City would want to rectify that as they had done in the past by delaying hearings or publishing additional notice.
- **Ms. Mangle** clarified that the Measure 56 notice was a separate category of notice than a newspaper notice or a mailed notice to property owners. It had very specific requirements about the language used and how it was done. Not all legislative amendments actually required a Measure 56. The City went above and beyond the noticing requirements.

Ms. Baker stated with so many rewrites and amendments, it was hard to tell what had survived; it seemed that there was additional information.

- **Ms. Shanks** confirmed that nothing had changed in Table 5 since she had provided the draft Code last Friday.

Ms. Baker said it was still unclear as to what was at the Planning Director's discretion.

Chair Klein explained the proposed requirements were in addition to the ORS requirements. There were already required notices, but the proposal stated that the Planning Director also had the ability to institute more than what was required.

Ms. Baker remembered that Commissioner Gamba stating at the last meeting that there may be different personnel involved down the road. A minimum should be stated as opposed to just "at the discretion of the Planning Director."

- **Ms. Mangle** explained that the Table 5 was about public information, but the actual Code did contain minimums. The general public notice for Type V applications on page 66 tried to set a clear expectation that the Planning Director shall provide opportunities for public review at early stage in the adoption [process, and then it listed some examples of how that could happen. While that was not a minimum, the second one stated, "at least 30 days ... at a minimum the notice shall be available on the City website and at City facilities." She invited Ms. Baker to offer any specific additions.

Ms. Baker hoped the Commission realized that very few people in the city had cable Channel 30. *The Pilot* was an underutilized resource for better information. She considered it more as a bulletin without much substance. Another piece of paper with more information could be sent with the large *Pilot* mailing once a month. She had tried to get *The Pilot* to include information about programs for the poor and land use announcements but they would not.

Chair Klein stated the question was how to send the packet of information out to the 9,000 homes and 22,000 people that lived in Milwaukie. He agreed *The Pilot* was underutilized and crammed for space. The City had been trying to get information to citizens and get them to become involved. The City had limited resources. The cost of the mailing recently sent out cost

\$4,000 and four people showed up. Only about 4% of the population read *The Pilot*. Planning Commission and City Council met on alternating weeks, so that was four mailings that could go out every month at \$4,000 per mailing.

Ms. Baker suggested enough lead time existed for the meetings to get one piece of paper with the information included in *The Pilot* mailing. Although, the Community Connection website sent out information once a week and could be used for neighborhood notices a month prior, many people did not use the Internet. There were some things that could change that would not cost anything or very little.

Chair Klein reiterated the challenge was figuring out how to reach a mass audience. They had sent information to every single household and only four people showed up, and he was glad to have four people.

Ms. Baker replied the information that went out did not reflect what was really going on and did not connect. She suggested enlisting the help of graphic artists or another committee to get some points across clearly to the citizens. She wanted to know what the City was doing to stimulate NDAs and other groups to go beyond what they were doing.

- **Ms. Shanks** stated the information Ms. Baker received from the NDA was not the complete package provided to the NDA. The one-sheet document was provided to her out of context.

Chair Klein stated the hardest part was getting people to plug in. The City was working to get people better informed, but there came a time when the cost and time necessary had to be weighed and considered.

Ms. Baker stated they lost so much when Milwaukie lost the community newspaper, but people could still be inspired. They needed to find out what other cities like Portland were doing to get people involved.

- She summarized the areas that needed to be addressed were what information was conveyed, the vehicle used to convey the information and a better explanation of discretion.
- Also, she had not heard of plans, documents, bills, and ordinances being corrected after being adopted. She asked what kind of amending and correcting could be done legally after the amendments were adopted.

Commissioner Batey explained the Commission could only make a recommendation to Council. Once enacted by Council, it could not be changed.

- **Mr. Hall** added that up until being adopted by Council, changes by direction of the Commission or Council were permitted. As with all legislative action, the stopping place was adoption by Council. Once adopted and all the appeal periods had expired and the action was final, an ordinance would be required to amend it.
- **Ms. Shanks** stated that it would require this review process all over again.
- **Ms. Mangle** added that Council would hold a public hearing and take comment; this was all part of the public involvement process.

Ms. Shanks summarized that Ms. Baker wanted her to do another public information piece further describing the different types of applications, as well as what was administrative versus quasi-judicial versus legislative and also to amend the sign posting requirements to add date and time.

- **Ms. Mangle** added staff should also look at the Type V boxes in Table 5 to better clarify Planning Director discretion.

Chair Klein stated it was important to stress that people need to contact staff in order to be educated about what would be happening before coming to a hearing. He agreed it was important to add the place of the hearing, but it was very important that that was secondary to contacting staff.

- **Ms. Shanks** added one reason time could be a bit tricky was because the agenda had a number of items on it, and the item people came to provide input on could be called at a much later time than the start of the meeting.

Chair Klein pointed out the City had a website with the information. Those without Internet access could access computers at no charge at the library.

Ms. Mangle stated *The Pilot* had a City calendar with the meeting dates and times.

- **Ms. Baker** noted the tiny calendar was a problem for people with poor eyesight. She suggested the City have a recorded line with the information

Mr. Hall noted the important take away was that the proposed Code did not limit the methods the City could use to deliver notice. It was a discussion to be had on the most effective way to deliver notice, but that discussion was in no way curtailed by the proposed Code.

Ms. Baker said she wanted to get input from the NDAs about what notice they wanted.

- **Chair Klein** suggested talking to Ray Bryan of Ms. Baker's NDA Land Use Committee.
- **Mr. Hall** directed staff to ensure Ms. Baker got the contact information for the NDAs.

Ms. Baker suggested the Commission recommend a focus group work together to discuss notice, small print issues, computer use, cable access, etc. This was how citizen participation was achieved and she did not feel the City was using its resources to get the best results.

Chair Klein reiterated that at a recent meeting four people attended, the City sent letters to everyone, it was published in *The Pilot* and sent by e-mail, and only two people actually testified.

Ms. Mangle stated the new City Manager was very focused on communication. Information Officer Grady Wheeler was spending a lot of time on the issue and she agreed to put him in touch with Ms. Baker.

Chair Klein added that if a decision was made tonight, it would be forwarded to Council where Ms. Baker would have an opportunity to testify.

Ms. Mangle clarified that the next issue scheduled for public hearing would be the Natural Resource Overlay Project. The update of the Residential Development Standards would be a very broad public involvement process. She welcomed Ms. Baker's involvement on both issues.

There was no further public comment.

Ms. Shanks confirmed that staff would add the hearing location to the signage as well as the date and time. She requested that in creating the language for the new sign posting requirement, the language be put in one place and have each review type reference the language, rather than it being repeated throughout the Code. No content change was proposed.

Chair Klein stated he had taken a quick poll and confirmed that what was proposed in the goldenrod document looked good.

Chair Klein closed the public testimony on ZA-10-02 and CPA-10-03 at 7:35 p.m. and called for discussion.

Planning Commission Discussion

Commissioner Gamba stated he supported the proposal given the couple of small changes discussed.

Commissioner Batey understood Mr. Burkett's comments about the amortization being a slippery slope; however, it was very well written in her opinion. Council would have a very difficult time following that tenet, even if amortization were needed, so it was a good tool to have in the City's arsenal. She believed staff should be commended for their public outreach. She realized Ms. Baker only learned of the hearing late in the game, but acknowledged the City had done a lot to get the word out. She agreed *The Pilot* could be better used. The Police Chief's Corner was a good addition to *The Pilot*, and she suggested perhaps including a Planning Director's Corner when big issues came up, such as the Residential Design Standards. Otherwise, she was pleased with the package and would vote to recommend moving it forward.

Commissioner Wilson was also happy with the proposal. He thanked staff for their efforts and Ms. Baker for her opinions. He also thanked staff for meeting with Ms. Baker the past week and considering what she had to say.

Vice Chair Harris shared the concerns regarding the amortization; however, based on his research, it would be difficult to abuse it. He saw no reason not to move forward.

Chair Klein agreed. He understood Ms. Baker's concerns coming late into the game. The City may need to look at its filters and perhaps do better training with the NDAs so they have a better understanding of their responsibilities. The NDAs might need to do a better job of understanding the information being requested of them. He suggested the City may need to do more outreach to the NDAs. As far as outreach, this project probably had one of the biggest public outreach efforts conducted by the City. Without a doubt, this was ready to move forward to Council.

Commissioner Batey moved to recommend that City Council adopt the package in file number ZA-10-02 and CPA-10-03 proposing amendments to the Milwaukie Comprehensive Plan and Municipal Code, specifically Exhibits B, C, and D with the amendments discussed pertaining to the Code provisions dealing with signage. Commissioner Gamba seconded the motion, which passed unanimously.

Ms. Shanks stated the applications would go to Council on either March 1 or March 15, 2011. She said that she would let Ms. Baker know what date was determined.

The Commission took a brief recess and reconvened at 7:50 p.m.

6.0 Worksession Items

- 6.1 Summary: Sign Code Amendments discussion (Review of amendments drafted by Jim Crawford)
Staff Person: Ryan Marquardt

Ryan Marquardt, Associate Planner, stated that since the meeting packet was distributed to the Commission, there had been further occurrences with regard to sign illumination and standards so tonight's discussion would be broadened. Issues to be discussed in the worksession would include:

- Readerboard signage downtown, specifically with regard to a continuation of the appeal last October about the signage at the '76 Station. The Commission had requested that the applicant/property owner return with some Sign Code amendments, which were in the packet.
 - He noted 6.1 Page 8 of the packet had a picture of the '76 sign, stating it was actually about 20%. It was 12.5 sq ft of reader area, and the overall size was about 63.5 sq ft.
- The City's overall sign illumination standards, which were outdated, and the types of technologies that could be used.
- Illuminated billboards with regard to appropriate locations and restrictions on the display, including moving or changing aspects as well as overall brightness.
- Appropriateness of content regarding off premise advertising; should the City regulate whether or not something was a billboard advertisement or just a large sign for a particular property?
- He first requested feedback from the Commission regarding Mr. Crawford's proposed Code amendments regarding downtown readerboard signage.

Commissioner Gamba was concerned about one part that stated that either conventional or LED bulbs could be used and be visible. One reason he was willing to support a proposal like this was because of the electric savings, and those wanting to move in this direction should use the latest technology and not be permitted to use conventional bulbs. Other than that, he was happy with the proposal.

Commissioner Batey asked if all the existing signs downtown fit within the 20 sq ft and 25%t display requirements.

Staff was not certain and deferred to Mr. Crawford.

Jim Crawford, representing Mr. Kansa, stated the '76 sign portion that was LED and 12.5 sq ft, which was about 23% of the total sign. Overall, the sign was about 55 sq ft. Based on frontage, the current Code allowed a much bigger sign. The proposal recommended a square footage and a percentage to provide a cap on total signage either way. He had heard interest in a reasonable amount of LED illumination for display.

Chair Klein said he liked the '76 sign because of its ease of use. He had seen someone changing the sign at the other '76 station while traffic was speeding by. The '76 sign would be static and would only change when gas prices changed. Items on pages 9 and 10, which discussed sign content being mobile, changing, or flashing, became a big deterrent for his support. Content that changed every 10 seconds was fine, but not when it scrolled through. The proposed '76 sign was exactly what he wanted.

Commissioner Batey noted that everyone violated the 10-second change rule when they started until the rule was enforced.

Commissioner Wilson asked if the same 20% tolerance would work in the future when the City wanted to encourage businesses, like fuel stations, to use the small pedestal signs.

Mr. Crawford responded the sign could be done in a slightly different configuration as a monument sign with the same sign area with the '76 emblem and the pricing adjacent to it, turned sideways and built into a ground mounted sign. One downside of a monument sign on the south side of a property on a northbound street was vision clearance issues. Currently, with the legs and the sign being 7.5 ft up in the air, people could see through the airspace in between the poles without having to roll out into the sidewalk in order to see up McLoughlin Blvd. A monument sign at that location would have to be moved to the north side of the property because of visibility, but then the driveway coming out on the next property would have the same problem. Driveways have been eliminated on the state highways as ODOT has tried to limit the number of accesses. The sight lines change slightly with accesses onto side streets that then connect to the state highway due to setbacks from the right-of-way.

Commissioner Batey stated the Code called for that pole sign to become a monument sign by the grandfathering date of 2013 or so.

- **Mr. Marquardt** clarified that properties along McLoughlin Blvd were allowed a pole sign although they were not allowed in most other areas in the downtown sign district. The pole portion of the '76 station sign was not nonconforming, although the height might be.

Vice Chair Harris suggested removing references to exposed bulbs or prohibiting exposed incandescent bulbs to move toward LED use Section 6 (6.1 Page 4).

- **Commissioner Wilson** noted the point could be moot when incandescent bulbs are no longer available.
- **Ms. Mangle** agreed the City's entire approach to regulating illumination was immature and needed to be addressed.

Commissioner Gamba:

- Posited that the Thai restaurant could have a little readerboard with the daily lunch specials that was 100% of the sign. Setting a percentage could cause the sign to be bigger to accommodate the size of the readerboard message. He suggested allowing a readerboard sign up to a certain size, and then require readerboards greater than that size to be regulated by the percentage.
 - **Ms. Mangle** noted if the goal was to control the illuminated aspect of the sign, why make it relative to the size of the sign. She suggested focusing on just limiting the illuminated portion as an actual measurement in MMC Section 14.16. Did it matter if the rest of the sign was still pretty big?
- Believed limiting the illuminated portion would work. The concern was that if this proposal was approved, the gas stations would be happy, but the law would also require a really big sign for a restaurant wanting a little readerboard to advertise their lunch special. Why require a really big sign just to put up a small readerboard?

Commissioner Batey believed a stand alone readerboard looked real bad. The provided examples were good, but she noted that as the percentage of the sign that was readerboard got bigger, the signs looked worse.

- **Ms. Mangle** commented it might encourage a bigger sign in total just to get a readerboard.

Chair Klein suggested that up to 6 sq ft of readerboard sign be allowed and after that going into the percentage, such as the cap of 20%.

Mr. Crawford noted that no photograph was provided for a restaurant with a readerboard in the window as a plug-in, unregulated sign. Staff clarified that window signs were exempt, and he inquired whether such issues needed to be addressed. The language proposed to solve issues for the '76 Station could affect other businesses. Language regarding the incandescent light bulb was trying to get the credit union to be a conforming versus nonconforming sign if they had a static display. Once the bulbs burnt out, they would need to replace the sign with LED or some different technology for illumination.

Commissioner Batey stated that she did not like the idea of addressing these issues outside of a bigger look at the Sign Code. There were too many problems.

Commissioner Gamba believed a lot of what was in the proposal was good language for the entire city and not just McLoughlin Blvd downtown.

Ms. Mangle requested guidance from the Commission about some questions posed in the staff report about the draft proposal 6.1 Page 2 Item C. C.6 was pretty critical because the Commission was identified as the decision maker, yet no criteria had been specified. Depending on the criteria or sensitivity, staff could craft something that was still just a regular sign permit if it was all just about size and objective brightness. The Commission should decide generally, if it needed to be a discretionary decision, why it would need to come to the Commission and if so, what criteria should be included. She assumed Commission review had been included because signage could be a sensitive issue, but was a public hearing necessary?

Discussion continued amongst the Commission and staff as follows:

- Having signage reviewed by some one (body) was a good idea. If the law required that someone had to actually look at the sign and either approve or deny it, the City could avoid issues not thought of yet. No one could have imagined 10, 15, or 20 years ago the sign now installed in the North Industrial area.
 - Criteria would be needed. It went back to the lowest common denominator and where the bar was set.
- **Mr. Hall** suggested the approval criteria could state that the signage must be consistent with the surrounding area or with the aesthetic purpose of the underlying zone. For discretionary criteria to apply, an objective criterion was needed as an option. If a more contentious element like LEDs were wanted, then the discretionary criteria would apply.
- If the signage came before the Commission for a discretionary decision, it would have to go before the DLC prior to that. It would be better to tie the DLC in before the process so they would at least have a review of the downtown area.
 - Some kinds of signs already required going through DLC before coming to Commission, and that could be used as a model.
 - The DLC does get the referral for all applications in downtown, so they could discuss it and provide comment without a formal additional step or meeting.
 - Inevitably, the decision would come to Commission to decide whether or not it met the qualifications outlined by Mr. Hall.
- Mr. Hall's suggestion was a good idea. It gave discretion, and provided for a lot of leeway to accommodate the temperature on what the sign would inevitably be. Similar signs in the past had brought out a lot of public comment, and while this particular '76 Station sign had pros and cons, it was moving in a positive direction.
- Language-stating signs had to be consistent with the underlying zoning was great for downtown, but did not help outside of downtown. There was discussion about having some sign review beyond downtown.

- Back in the early days of the Commission, Commissioner Carter stated they needed to remove the “downtown” from the downtown guidelines and have it just be the City of Milwaukie guidelines.
- Regarding Question 4, the addition of an electronic readerboard sign should absolutely not be allowed to go into nonconforming signs.
- The Sign Code needed to be looked at more generally and not addressed in isolation. There should be a limit to the number of roof signs allowed on a building. The issue that could arise with the small readerboard signs in windows was there could be 2 signs, and people would not need to integrate anything. The City should be working away from a proliferation of signs.
- The total square footage of signage per establishment should be limited.
- Under the current Code, roof signs, wall signs, and freestanding signs all had their own allocation.
- Should businesses located along the Harrison St frontage get the same square footage of signage as Dark Horse Comics, for instance, because they were an establishment?
- The 6 criteria proposed by staff provided a good starting place.
- At some point, it would be a good idea to incorporate the DLC as they had a really good critical eye about what was going on.
- Last time staff had presented two different views for the Commission to consider, which was appreciated.
 - Staff clarified that Mr. Crawford had prepared all the findings.

Ms. Mangle explained that a sign had been installed last week on Main St in the North Industrial Area. It was not through permitting yet, and would be approved by the City. When they started testing the sign last week, staff began getting a lot of complaints and questions.

- The sign was actually illegal from ODOT’s point of view and the applicant would not be able to get the required permits from the State. The sign was different than the ’76 sign. It qualified as outdoor advertising, a very specific ORS definition, and required ODOT approval which they did not meet, and ODOT cited them today.
 - The City’s standards were nonexistent for those types of signs. ODOT had those standards, but the City did not implement ODOT rules, resulting in a pretty awkward permitting situation.
- If the Commission chose to go forward with the downtown signage amendments, many of the same Code sections that could address that type of sign would be changed. ODOT suggested sign code models to consider. In doing some changes to the Sign Code to address the ’76 Station and Main St signs, specifically on changing illuminated signs, they might be able to couple that with Mr. Crawford’s amendments and other Codes to make targeted and specific changes without a ton of work; something could be done quickly, knowing that broader changes were wanted.
- One reason whole-chapter Code amendments were done was because targeted little changes usually end up not connecting the dots somewhere and things get lost.
 - However, the risk was pretty high for more of the large illuminated billboard signs, so she would be more comfortable than normal with doing something targeted if it could be done with low effort, both on the Code writing and the outreach portion, which was always tricky with signage because it affected a lot of property rights.
- Another aspect with illumination, which was almost the technology side, would be pretty easy to add into the Code because it involved measurements. This was addressed in the City of Salem’s code language.

- She displayed a picture taken during the day of the illuminated, moving LED sign installed in the North Industrial area that was set on 5% brightness.

Commissioner Batey stated the sign would be inappropriate even if it were just a solid sign because it was out of scale for that building. It was allowed by Code because the Code had a ridiculous measurement based on the frontage of the property as opposed to the size of the building.

Chair Klein agreed the Sign Code needed to be addressed, but the real surgical issue that needed to be address regarded the '76 Station. Then, the Commission should talk to Council. The Commission could come up with good ideas for great signage, but until Council decided which the direction they wanted to go, the Commission would have a very hard time getting the Sign Code through. The last time they had sign issues, the Council did not want to take as restrictive an approach as the Commission, which undermined the Commission's goals. He hoped this could be discussed at the meeting with Council on March 1.

Ms. Mangle stated staff hoped to get some broad guidance on illumination in general, like the technology side of illuminated billboards and outdoor advertising. If the Commission could define what the project was specifically, staff could work to craft some Code, using code from other cities and Mr. Crawford's proposal.

Mr. Crawford noted that red LED diodes were proposed for the '76 Station and they would be visible from the front on a black background and monochrome. This was, in fact, prohibited in their draft language because of the black background. It did not necessarily have to be red. Citing various examples in the packet, he explained they were trying to limit using a great deal of white. Considerations should also be given for possible future uses of downtown facilities or along the waterfront.

Chair Klein stated questions were then raised about what constituted background and what percentage had to be black.

Commissioner Gamba did not believe that the color should necessarily be limited. The Code should simply address plain letters or words on a plain background. Black might not be a bad thing.

Chair Klein believed a static image had to be maintained and that no television screen type signage should be allowed. DVD players were not allowed on dashboards.

- **Mr. Crawford** added Portland had wrestled with the moving, television type of advertising on Sixth Ave by I-405 and on the Morrison Bridge and finally figured out how to address the issue.

Mr. Hall suggested if the Commission was moving toward a more targeted amendment, the purpose of such an amendment might be twofold: first, to solve Mr. Kanso's problem, and second, to provide regulations to bridge until a more thorough adoption could occur. If this was done at the same time as the Commission providing the impetus for a more thorough adoption, he did not know how much more specific amendments, such as colors of signs, background versus not background, etc., had to go into the details. It sounded like the Commission wanted to allow the '76 Station sign but stop giant LED signs until they could clean house and get the Sign Code they wanted.

Commissioner Gamba replied that short of a lot of description, the baby was thrown out with the bathwater when they state no LED signs. Some amount of description was needed as to what was prohibited: no movement, no multicolored backgrounds, etc. The proposed amendments pretty much covered it.

Ms. Mangle summarized that the Commission generally agreed with the downtown draft proposal as written to incorporate the DLC and doing a strategic Code amendment knowing that a broader discussion was needed. For other parts of the city, they would address the illuminated billboard signs; specifically their movement, brightness, and TV screen quality, but not necessarily precluding the small static readerboards in the same way. Maybe some of the things crafted for downtown could apply to other areas. Staff would use as much language as possible from Salem and Portland codes, and she welcomed further input from the Commissioners.

The Commission and staff discussed the new sign in the North Industrial area with these comments:

- ODOT had a list of many standards, including specific illumination standards. What keyed the sign into ODOT's regulations was it was viewable and readable from a State highway. While many outdoor advertising signs on State highways did not conform to ODOT regulations, ODOT had limited resources for enforcement. After a sign was cited, the citation went into a file and many times that was the end of it.
 - With the current state of the Milwaukie Code, it would be difficult for the City to pick up those violations. The City also did not want the burden of enforcing regulations. If hefty fines were built in payable to the City, it might be worth enforcing the violations.
- A condition of approval could be added that before a sign was turned on, proof of an ODOT permit was required.
- Under ODOT regulations, illumination and movement were not permitted primarily because of the traffic safety issue. A sign on Hwy 99E seemed to violate those criteria.
- One difficulty was that the signs often are not actually owned by the property owner, but by the sign company, who leases the space from the property owner.
- ORS 377.720, which was limited to outdoor advertising signs as defined by ORS 377.715, stated, "A sign may not be erected or maintained if ..." and then there was 9 different "ifs". The one that applied to this sign most directly was number 4, "has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a State highway or of such low intensity or brilliance as not to cause glare or to impair vision of the driver or a motor vehicle or otherwise to interfere with the operation thereof." The State did not want the light going out from the sign but shot back at the sign.
 - In terms of ODOT enforcement, a letter writing campaign by the citizens of Milwaukie may or may not make ODOT more likely to enforce their code.
- The sign in the North Industrial area would be in conformance with the Sign Code; however, they had not yet fully demonstrated compliance with the current standards, but they would. Once the Commission addressed and amended the Sign Code, those signs would be legally nonconforming.
- Again, these issues had been raised in the past. The Commission discussed putting a sunset clause on nonconforming signs in the city, but Council disagreed. With the new Council, the question deserved being raised again.
- With the Sign Code, the Commission needed to have a stance that would help companies generate business, while still creating a positive, livability environment in the city.

Mr. Crawford understood that the '76 Station sign was a nonconforming sign because as a 20-ft sign, it exceeded the 15-ft height restriction. They had added the language that one could modify as part of the changing of copy, in this case the changing of brand from Arco to '76. At that point, when the new sign was going in, the LED came in as part of the rebranding, because the current Code prohibited changing out the electronic portion of the sign. Changing the wiring internally from florescent to an LED light was what tripped the Code criteria; otherwise, it would have just been a cabinet sign with a refacing. If the Commission did not allow a nonconforming sign due to height to be changed out to incorporate LED technology, then their problem was still unsolved.

- The tripping point was modifying the language to incorporate the LED. The current language stated the internal wiring of the cabinet sign could not be changed. An electrician was required to change it from fluorescent to LED, and it came from the sign company prewired to allow that.

Chair Klein understood the question, adding it was part of a discussion the Commission would have at a later date. What they currently wanted to do was to put the existing sign into a nonconforming use that was accepted at this point in time. Later on, as the discussion went to Council, nonconforming signs could be addressed throughout the city.

Mr. Marquardt noted Mr. Crawford's point still stood. According to the discussion, the Commission did not want to incorporate LED or readerboard signage into nonconforming signs, though that discussion was still open. If something like that were adopted, it would not address the '76 sign because it was nonconforming, and no permit could be issued based off the new Code.

Commissioner Wilson left the meeting at this time.

Mr. Hall did not believe the proposed Code amendment changed the height limitation, so the '76 sign would still be a nonconforming use. Theoretically, it was a timing issue as far as if the Commission wanted to go with what Commissioner Batey suggested that an amended Code would prohibit switching out normal lights for LED lights in nonconforming signs. That could be something that applied forward from adoption of said amendment, and because they had already done it, theoretically, then the '76 sign would only be nonconforming for the height.

Discussion continued regarding the '76 Station sign issue with the following comments:

- The Commission should not prohibit replacing incandescent bulbs with LEDs. If the gas station across the street wanted to make their nonconforming sign smaller and switch to LEDs, the Commission should not stop that just because it was still a nonconforming sign. The idea was to move toward conformity and reduce electrical use, so the Commission should not want to stop that replacement. Installation of a new nonconforming sign would be a different story.
 - A scenario like that could result in no one putting a new sign up but just refinishing and refacing existing signs, which was currently being done.
- **Mr. Crawford** explained the issue with regard to the municipal court was a Code compliance issue. They needed to know what steps to take to address the compliance issue, so they could tell the judge that they were no longer in violation of the law, because the law had changed.
 - **Ms. Mangle** clarified the issue was with illumination, not the height.
- **Mr. Crawford** wanted to know to what extent the existing sign could be modified. As he understood the Sign Code, he was prohibited from changing the fluorescent light fixtures in

his internally illuminated cabinet sign to LEDs because rewiring was required, even though it would use 5% of the energy of the fluorescents to illuminate the sign.

- **Ms. Mangle** stated the specific standard to address was that at what point was a modified sign determined to be a new sign. That threshold might need to be adjusted a bit or the Commission could decide if such an extensive amount of change was done, the sign should be brought into full compliance. Sign refacing is allowed, but not a lot of mechanical or infrastructure changes because then essentially a new sign was being built and full compliance with the Sign Code was required. On the other hand, such modifications enabled the City to push for full compliance.
- **Commissioner Batey** preferred monument signs and to move away from pole signs. She acknowledged visibility around that corner was a challenging aspect of where the '76 sign was located. The sign could impact visibility if lowered to comply with the 15-ft height limitation.
- Moving into a sign variance at this point in time would only address the height, size, etc. A pole sign was not nonconforming, so a variance would be needed. Again, the issue was at what point was a sign no longer begin modified, but being changed so much that it was a new sign.
- It seemed backward that changing from an old to a new technology was the trigger that made it a new sign whereas changing the face and the message did not. Technological upgrades should be allowed, but the changing of the message or face should constitute a new sign.
 - **Ms. Mangle** explained that all commercial property owners assumed they could change the face of the sign, and that the structure of the sign was permitted. She would not feel comfortable trying to change this assumption in the surgical type of Code amendment being considered.
- The technology used within the sign seemed to be the issue. The Code update could address how the City deals with illumination as a technology, to better define the thresholds. The nonconforming sign could still be a bit of an issue.

Terry Whistler, 11519 SE 30th Ave, Milwaukie, observed that the question of when a change occurred was different for the City and for a business. The City wanted the maximum opportunity to make ugly signs go away. Whether it involved a new light or a new facing, it was the City's one and only chance to do anything about an eyesore for the next 10 years. A business would say, "Stay away from my property rights and my freedom of expression; how a sign was lit was irrelevant, and freedom of speech could not be regulated."

- He noted there was something inherent to rapidity of motion. Biologically, people are wired to look at things that change. It was the objective of those signs to override the consciousness that made them so objectionable. Some research must exist about physiological responses to visual stimulus so that one could prove that their biology was overridden.

Commissioner Batey wanted to know what underpinned the ODOT regulation read by Mr. Hall. A whole discussion about that distraction took place with the high school sign. At that time, she researched the issue online and found one good item on the US Department of Transportation website, but it took a lot of digging.

Chair Klein noted the City Attorney at the time stated he had worked on some cases where they were not able to bring any proof that a scrolling or moving sign was in any way a distraction. Because it was not a distraction while driving did not mean it was not an eyesore in the city, which really needed to be addressed.

Commissioner Batey noted that the inability to prove the issue in a court case did not mean there was no research supporting that this type of signage was a distraction.

Mr. Hall commented that in establishing a standard about the scientific response to a sign, the experts on that issue would seem to be the sign companies who had done all the studies and would show up with experts to discuss the information that actually served them. He agreed it was the business of sign companies to figure out how to get people to look at the sign, and they knew that information.

Commissioner Gamba suggested having a standard that disallowed change more frequently than a specifically determined time, like every 24 hours or 12 hours. It was measurable and would solve a lot of the problems.

Ms. Mangle reviewed the general goals suggested for this specific Code project as follows:

- Allow small readerboard LED signs on monument or freestanding signs on lots fronting McLoughlin Blvd and downtown, which Mr. Crawford's proposal discussed.
- Clarify and modernize the City's illumination standards overall.
- Limit TV-style illuminated moving signs everywhere.
- Coordinate with ODOT's outdoor advertising standards.
- Allow change to LED technology without crossing the threshold of calling it a replacement sign.

Additional comments from the Commission included:

- Size should be addressed in conjunction with the building as well as the idea that the sign was measured by the property frontage as opposed to the building it was placed on.
- A reduced maximum signage size was suggested regardless of the building or property; the current maximum size was obviously too big.
 - **Ms. Mangle** explained that imposing a maximum signage size everywhere would change the scope of the project, requiring notification to all affected property owners. Portland had standards regarding signage within 100 ft of every State highway; something similar could be included.
- The current '76 Station sign issue should be addressed and then the Commission could readdress the issues on the grander scale.
- Mr. Crawford's language could be used with some minor tweaking, which would address the immediate issue.
 - **Mr. Crawford** agreed, adding what they really needed was the ability to modify a nonconforming sign so they did not trip up again on a technicality that the sign was rewired.
 - **Ms. Mangle** reminded that the Code was being written for every property and every situation and Mr. Crawford had done a good job of addressing that. The Code was not written to specifically address one situation.
- Adding a size limitation for signs by highways was a possibility. Those property owners would still need to be contacted, but there were a limited amount, and some precedent had been set for that.

Chair Klein stated this was a good opportunity for the Commission to have that discussion with Council, because regardless of what a property owner may or may not necessarily want, the

Council would inevitably have the final decision. He appreciated Mr. Crawford's efforts in helping to make changes to the Sign Code.

6.2 Summary: Discussion of work plan for FY 2010-11; revisions to Bylaws
Staff Person: Katie Mangle

Ms. Mangle noted the Commission's annual joint meeting with Council would be March 1 at Council's worksession. Her draft staff report to Council was provided in the packet and gave an overview of some of the Commission's accomplishments over the past year. The Planning Commission 2010-11 Priorities were split into A and B categories.

- The A list identified the fundamental job of the Planning Commission, which regarded Metro compliance and holding public hearings, as well as the Residential Development Standards Project, which was already in process.
- The B list contained a long list of items that were in development or that the Commission wanted to develop or that needed discussion with Council to develop strategies. Feedback was requested about items in the B category.
- She clarified that the items in A.3 on 6.2 Page 2 that were enacted in December 2010 might begin over the next year. The City usually had 2 years to comply with the new Metro requirements. Within the next year, they would need to determine the scope of the TSP update. Industrial zone amendments were also pretty small and limited. Title 6 was more of an opportunity, so even explaining that would take a while. While no set requirement existed, the Commission would need to discuss strategies for complying with all these different items. Some decisions would need to be made, and the approach would be implemented over the following year.

Chair Klein:

- Noted the second bullet on 6.2 Page 3, "planning for development on rezoning of Murphy and McFarland sites projects." He believed it was bad policy to be planning on a site and working toward something that would add to infrastructure where it was currently not present to support the surrounding areas. The Commission was doing the work of the owners by rezoning the property to try to sell it or bring it into something other than what it was presently, which was just basically open space. He suggested contacting the development community to say the City was willing to rezone the properties and would take all offers and consider good plans. It was throwing money away for the Commission to draw out a project without having ownership of the property or a buyer on one end and a seller on the other.
 - **Ms. Mangle** responded that the City was simply being reactive. The current zoning on those properties precluded any good development from happening.
- Asked if rezoning it would preclude development from happening otherwise. Would it be rezoned for just anything, or into specific zoning for what the City was planning for that property?
 - **Ms. Mangle** explained that the property owners would be involved in the rezoning and they were asking the same questions. The property owners have come to staff in the past when someone wanted to buy the property and asked what would be involved in rezoning to allow a certain use to happen. Going through a rezoning process was a huge, steep hill to climb without the City or the community being part of that conversation.
- Believed the City would want to either sign off or not sign off on any type of development of that magnitude for either one of those sites. Discussion would occur about the particular type of development once someone submitted a plan.

- **Ms. Mangle** noted that once an application was submitted, it was subject to the 120-day clock. There was no time for good community discussion and conversations about the design, aspirations, amenities, requirements, etc.
- She clarified that staff was already getting questions about what reasonable plans would work on the Murphy and McFarland sites, which was why the planning work needed to be done.
- Staff did not believe any existing zones were acceptable for the site, which is why the conversation would include broader commercial areas.
 - The site was presently a mixed use zone with a transoriented development overlay, and these canceled each other out unless it was an industrial use. There were many strange issues. The General Commercial Zone was a strip mall zone; the Neighborhood Commercial Zone did not even allow coffee shops.
- The City did not have very good commercial zones, so the conversation was not just about the Murphy and McFarland sites, but also about 32nd Ave, 42nd Ave, and some other areas. They needed to know what the community wanted and the vision for these different areas to ensure the regulations would at least allow that vision to happen; the proposed work would not make it happen.
- Responded that would be great if the City had an unlimited amount of money, but it did not. The item above, "vision and revised Code for neighborhood-oriented commercial areas (particularly 32nd and 42nd Ave)" would give a far greater bang for the buck than anything that could possibly be done for Murphy and McFarland for the next 10 years. If development occurred on the McFarland site, no current infrastructure existed, like streets, sidewalks, accessibility, bike lanes, etc., to service that area in any manner. The City would be continually adding to an already bottlenecked and reduced pedestrian- and bicycle-friendly atmosphere in that area. No development should be done on the rezoning of the properties. He did not understand why the City would consider trying to increase density and infill when infrastructural issues needed to be addressed. There were bigger fish to fry than trying to figure out who could buy the Murphy and McFarland sites and how to make it desirable without addressing bike and pedestrian issues on 42nd Ave.

Commissioner Batey:

- Noted that all of B.1 was a big project that had many pieces. If the Commission was going to do the surgical strike on the Sign Code, the bigger Sign Code revision ought to come before B.1. Although there was some outreach involved, the Sign Code was not that big of a project. In terms of staff hours, the Sign Code was not anywhere near as big a project as B.1.
- **Ms. Mangle** agreed and stated the Sign Code should be listed separately. The Sign Code was intimidating because it was not only about finding the standards, but about setting community expectations. It was a public relations job as well as getting the Council and Commission on the same page in terms of expectations. The Sign Code was about changing the expectations about how signs would be regulated in a pretty big way. And it involved sign companies who were different than even the people the Residential Development Standards Project would affect, because they had deep pockets and lawyers.
 - A sign company already submitted a Freedom of Information Act request on the sign permit for the sign on Main St. When the Sign Code project was started, staff wanted to make sure the appropriate resources were being put into it.
- Staff would have more capacity to start work on the Sign Code once the Code Tune-Up and Natural Resource Overlay projects were done; they were just starting work on the Residential Development Standards and starting the commercial areas discussion. She

hoped the Sign Code project would be a partnership between staff and the Commission. Having the Commissioners talking with businesses and Councilors would help immensely.

- **Commissioner Gamba** suggested having at least two or three short, joint worksessions with Council to hammer it out.
- Believed the Commission should capitalize on the current reaction to the Main St sign.

Chair Klein wanted to add the eco-training that Mart Hughes did to B.4 Trainings for Commissioners. The tour was also something the new planning staff should take. Taking the tour gave him different outlooks on how environmental issues were handled.

Commissioner Gamba suggested participation in The Natural Step Program of at least half the Council and half the Commission. The training provided participants a different, more holistic perspective about how they viewed things. Things were viewed from the perspective of how they would affect everything, such as carbon footprint and all aspects of the planet.

- **Ms. Mangle** stated it was a budget consideration; the cost was about \$1,000 for 8 people. This training was something to be considered for the next fiscal year. Lake Oswego used The Natural Step as the approach to their comprehensive plan.

Ms. Mangle noted she had not received any email about revisions to the bylaws.

Commissioner Batey stated that they still had not finalized the timing of elections, though the matter was resolved for this year.

Commissioner Gamba liked the idea of a prospective Chair having time to observe the current Chair before taking the position.

Chair Klein agreed. The only thing they would have to worry about was if the Chair decided to step down in the middle of their term, which would create a whole different set of circumstances. He did not believe it was necessary to have something in the bylaws that provided for a Chair elect.

Ms. Mangle clarified that Commissioners were allowed two, full 4-year terms in addition to filling a previous person's term. She agreed to check whether that was in conflict with the City Charter; which stated that it was a maximum of two, 2-year terms.

7.0 Planning Department Other Business/Updates

Ms. Mangle stated the Trolley Trail would begin construction tomorrow. When the portion of the Trolley Trail that was in the city came in to get a CSU permit a year and a half ago, conditions were written and things set up for that section to be coordinated with light rail so that if it changed a set amount in certain ways, it would have to return to the Commission. That portion of the trail was still in design, and staff was watching the process and tracking the issue.

8.0 Planning Commission Discussion Items

Commissioner Batey stated that when they discussed North Clackamas Park, she would like an update on Riverfront Park and what was happening with the permitting agencies and the nonmotorized boat access issue.

- **Ms. Mangle** replied the focus of that project had been on the signalization and coordinating with sewer treatment plant access.

9.0 Forecast for Future Meetings:

February 22, 2011

1. Worksession: North Clackamas Park North Side Master Plan

March 8, 2011

1. Public Hearing: Natural Resource & Water Quality Code Amendment

Meeting adjourned at 8:53 p.m.

Respectfully submitted,

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



Lisa Batey, Chair