CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, March 22, 2011
6:30 PM

COMMISSIONERS PRESENT
Jeff Klein, Chair
Nick Harris, Vice Chair
Chris Wilson
Mark Gamba
Russ Stoll

STAFF PRESENT
Katie Mangle, Planning Director
Brett Kelver, Associate Planner
Li Alligood, Assistant Planner
Damien Hall, City Attorney

COMMISSIONERS ABSENT
Scott Churchill
Lisa Batey

1.0 Call to Order – Procedural Matters
Chair Klein called the meeting to order at 6:31 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, announced this was Chair Klein's last meeting and thanked him for all of his service and assistance to the City of Milwaukie.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There were no comments.

5.0 Public Hearings
5.1 Summary: Natural Resource Regulations Amendments
Applicant: City of Milwaukie
File: ZA-11-01, CPA-11-01
Staff Person: Brett Kelver

Vice Chair Harris moved to initiate the application for Natural Resource Regulations Amendments, File ZA-11-01 and CPA-11-01. Commissioner Wilson seconded the motion, which passed unanimously.

Chair Klein called the public hearing on the Natural Resource Regulations Amendments, File ZA-11-01, CPA-11-01, to order at 6:34 p.m. to order and read the legislative hearing format into the record.

Ms. Mangle announced that Commissioner Churchill was unable to attend tonight's meeting, but his intent was to abstain because he had a potential conflict of interest as his property was affected by the regulations. Commissioner Batey was absent.

Commissioner Gamba declared he had property that was affected by the regulations and had a potential conflict of interest. He believed he could objectively vote on the matter before the Commission.

Brett Kelver, Associate Planner, presented the staff report via PowerPoint, noting that the focus was on the City's regulations for protecting water quality areas and natural resources and this project was focused on updating the City's Zoning Code and related maps to keep the City compliant with relevant State and regional goals. The two most significant goals were Statewide Goal 5, which focuses on habitat and natural resources in general, and Goal 6, which addresses water quality specifically. These goals stemmed from Metro's Title 13 Nature in Neighborhoods that works to balance development and protection of those resources.

- The proposed amendments represented staff's best effort to clarify many of the existing rules for Water Quality Resources (WQRs), making them easier to administer, and making the approval criteria clearer for both applicants and staff.
- The amendments involved many complex issues. A lot of work had gone into the proposed Code and a lot of discussion had occurred with the Commission as well as community members. Staff encouraged the Commission to vote to recommend that City Council move forward and adopt the ordinance and exhibits.
- He noted the blue sheet with City letterhead had been distributed to the Commission that included four corrections staff made to the draft since the packet was distributed. He briefly reviewed the corrections and offered to answer any questions.

Ms. Mangle announced that Assistant Planner Li Alligood was available in the hallway to address questions about specific properties.

Chair Klein confirmed there were no clarifying questions from the Commission and called for public testimony in favor of, opposed, and neutral to the application.

Jim Labbe, Audubon Society of Portland, 6550 SE 122nd Ave, Portland, reviewed and distributed copies of a letter from the Audubon Society, which was entered into the record as Exhibit 1, with these additional key comments:

- Having good land use plans in place was important so that improvements made downstream were not being undone upstream when and where development occurs. He had worked with the Audubon Society for more than 10 years and knew poorly planned development could have a big impact on adjacent landowners, the general public's interest in water quality and wildlife downstream, and on future generations as well.
- A lot has been happening in the region in terms of natural resource protection and restoration, and it all comes together around investment in restoring, acquisition, and protection through land use programs, and a lot of education and outreach efforts in the community.

Jason Howard, Board and Land Use Chair, Johnson Creek Watershed Council, 1900 SE Milport Rd, Milwaukie, stated that as a stakeholder and member of the Natural Resource Project Advisory Group, he supported the proposed amendments and map before the Commission.

- The amendments were important because Johnson Creek was too warm and too turbid to support a robust population of its native trout and salmon species. This was especially critical during the summer months when up to 50% of Johnson Creek's base flow was from stormwater inputs from developed areas. The conservation and restoration of the highest

value areas set aside through the amendments and map were opportunities they would like to continue working on with the City.
- He noted the letter he distributed to the Commission dated March 22, 2011 that was entered into the record as Exhibit 2.

Stephen W. Page, DMD, 11400 SE 37th Ave, Milwaukie, stated his office was on the corner of the Habitat Conservation Area (HCA) on 37th Ave between Railroad Ave and 37th Ave. He distributed a handout that included his written testimony, material regarding nutria and geese, and several pictures showing different views of and from his property to support his comments. He reviewed the handout, which was entered into the record as Exhibit 3, with these additional comments:
- This was his third office in Milwaukie and he has been here for 40 years. He did not want to see anything upset the potential for future sales or development of the property based on some kind of effective possible rezoning of the property by regulations like those proposed.
- He did not understand how the HCA was placed at such high value. This area was left over after the marketplace was developed and has been a haven for many homeless individuals.
- In the past 15 years, he had observed that certain bird species were no longer evident and believed that the some of the HCA development had actually caused a loss of bird species in the area, although he had just seen two redwing blackbirds, which he had not seen in a few years. The loss of birds seemed to coincide with the improvements in the wetland; it was cleared out and other plantings were done.
- Invasive cottonwoods were still along the dirt road that should be removed. They had huge root systems that spread out for 40 ft or more in all directions.
- The nutria were pests and not native to the area. They were brought in by fur trappers back in the 1930's. He had seen less nutria lately, but geese overran the office property quite a bit.
- A major development plan was required if only a 15 ft by 10 ft area was disturbed. From the information he received, he did not know how "disturb" was defined or measured, or how "impact" was defined. He noted that noisy trains went right by that wetland.
- He believed this was creating a solution that was looking for a problem. He asked what the problems were currently.
- He clarified that the farmer's dirt road kept fluid from flowing from his property because the road was at least 2 to 3 ft higher than his property

Commissioner Gamba:
- Noted Mr. Page stated it was an ancient lake bed and the water drained down into the groundwater, which was connected to the swamp. He assumed it drained into the swamp underground if the description of the soil condition was accurate.
  - **Mr. Page** believed the water went straight down.
- Asked what Mr. Page believed was causing the declining bird population.
  - **Mr. Page** responded he had been feeding them, and yet they were still declining. He believed they had been disturbed by developing the HCA area; the owners of that property had possibly contributed to the declining bird population or the increasing geese population.

Jean Baker, 2607 SW Monroe St, Milwaukie, stated that she tended to strongly favor this ordinance and recounted the birds that had been seen decades earlier.
- This plan went about as far as a city could without having more money, and she commended the effort. She wished there was more money in it to buy out more properties.

About 30 years ago, Lake Oswego passed a measure where they put aside a couple of mils out of every tax dollar for public lands. She hoped the new administration had their eyes on the things that Milwaukie needed a long time ago.

- She first confirmed with Ms. Mangle that the commentary was informational and had no legal status, about which she was disappointed.
- She reviewed the proposal from neighbor's perspective who wanted to build a glass encased extension of a few feet on the front of his house so he could see Spring Creek Pond. He had gone through quite a lot with the City over this and his eyes were spinning after reviewing the proposal.
- She stated she had two problems with the proposal, but not with its intent.
  - Regarding tree replacement, the chart on 5.1 Page 36 of the packet indicated that in a 500 sq ft area, if a tree more than 30 inches in diameter was removed then it must be replaced with ten trees and three shrubs. She noted that her dining room was 312 sq ft and would not fit 3 trees and 15 shrubs, especially as they matured.

Mr. Kelver clarified that two options existed for mitigation under those particular circumstances that were specific to disturbance in the HCA. On 5.1 Page 36, just above Mitigation Option 1, it stated, "Applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings unless the disturbance area is over an acre."

- Option 1 was if a tree more than 30 inches in diameter was cut down, the requirement was to replant 10 trees and 30 shrubs. He understood that the plantings were to be done somewhere on the property to mitigate for the removal of the tree.
- Option 2 was based on doing calculations according to how much square footage of area was disturbed. For instance, if someone was doing a project and clearing 1,000 sq ft of property where possibly no trees were being removed, then the idea was that trees needed to be replanted at a rate of 5 trees and 25 shrubs per 500 sq ft.

Ms. Baker responded that a property could be overwhelmed with this regulation. The commentary on 5.1 Page 94 was very comfortable and explanatory, stating, "The mitigation for disturbance in an HCA is required with two options that involve planting trees and shrubs, replace trees in proportion to the diameters of those that are removed, or plant trees in proportion to the total area of the disturbance." However, that formula was not provided and seemed unclear.

- She clarified that there needed to be some language that indicated "where practical". The intent was to have lovely trees and places for things to live but not to choke things out. Some clarification was needed as well as a bit of practical application.
- The second issue she had concerned her neighbor's 17 ft by 2 ft extension. The Planning Department advised it would require a Type III review, which would cost her neighbor 1/3 of his budget to get through a $1,700 hearing after the $200 required meeting with the Planning staff. He would also have to get engineers or a hydrologist. She found several things that would help her neighbor, but they were in the commentary.
  - There seemed to be a difference between adding onto something and new; if one had money for the hearings, one could build about anything they wanted. The proposed language was not prohibitive.
  - On 5.1 Page 94, item D.1 stated "For single-family residential projects, the allowed disturbance area is 50% of the HCA or 5,000 sq ft, whichever is less." This section gave permission to use a Type II review, but if it could not be solved with a Type II, it would be bumped up to a Type III for either a single-family home or a multifamily, the whole building. Her neighbor's 34 sq ft extension automatically went to a Type III, so what was the standard?

    - She wanted to know what fit into these review types. After seeing the fees for each review type, she believed that the department certainly paid for itself.
- On 5.1 Page 28, the zoning ordinance stated the Type III review was needed if the edge of the building was moved or the footprint changed. She asked how this got to be so complicated and inconsistent. Why could a subdivision come in under a Type II review for new development, but her neighbor would have to have a Type III review for building a glass wall 2 ft out on his living room?
    - She wanted to know why something that appeared to fit a Type II would be put over to a Type III. It fit both categories. She wanted her neighbor to be able to utilize a Type II review.
    - She added her neighbor was really upset about having to pay to ask the Planning Department staff some basic questions so he would know how to get started.

Commissioner Stoll clarified that with regard to tree replacement, Ms. Baker was most concerned about having to replace a 30-in tree in a small yard with 10 trees because so many bushes would overwhelm the lot, and that the size of the property should be taken into consideration as it had no relationship to the diameter of the tree being removed.

David Green, 5431 SE Willow Ave, stated that he owned a 4-acre property in the northeast corner of Milwaukie off of Stanley and Willow Ave. There was a good-sized WQR on his property and now a little larger boundary with the HCA. With all the buffers together, most of the 4-acre property was impacted either by construction management plans or natural resource overlays. On the flip side, it was a great piece of property and he supported what the Planning Department was trying to do.

- While the region and the City had decided these natural resource areas were community assets and had value to the community, it was important to note that they were asking private property owners to bear the burden of that community asset. He chose to do it quite freely, but he also felt the pinch of having additional regulation placed on his property and the potential reduction in value of that property as a result.
    - He had sat on the advisory committee for the project, and believed it was a good process. There was a huge effort made to welcome people into the discussion and figure out how to write the Code amendments in a way that addressed people's concerns.
- One concern he had was that nothing in the regulations really encouraged property owners to improve, uplift, or restore their properties. A lot of time and effort was spent to preserve and protect these natural areas with little effort spent on how these areas would be maintained. As community assets, if these areas helped protect water quality and/or served as stormwater treatment facilities, then the City needed to focus on helping property owners maintain those natural areas so that function is maintained.
- The City collects stormwater fees, upstream system development charges (SDCs), conservation easements, and the outright purchase of these properties should be considered to be sure to protect, maintain, and continue to enhance those properties to perform their functions, providing habitat, water quality, etc.
- Hidden within the amendment was a lot of process including construction management plans, natural resource plans, and boundary verifications required of property owners. A lot of costs were wrapped up in Type II and Type III reviews if they were required to develop a piece of property.
    - He suggested they find ways to help property owners with those costs. Perhaps the City could find a way to help develop the natural resource or construction plans, for example.

- Regarding the boundary verification, if the money was not spent to have someone verify the boundaries for the HCA and WQR on a property, the property owner had to accept what was clearly a pretty blunt effort by Metro to define those boundaries' locations.
- Specific to his property, he wanted to go on record as disagreeing with the boundaries on the WQR and HCA set by Metro. The WQR was shown much larger than the actual size and the HCA area should be expanded well beyond where it was at on his property, even up onto the Lewelling Elementary property.
  - A lot of habitat along the ridge above his home and along the school property was not included simply because it did not abut the WQR.
- Language in the amendment essentially drove property owners toward placing their natural resource areas into unbuildable parcels, but then discouraged community ownership of those parcels. He sought clarification about that intent.
  - The Land Division and Property Line Adjustment, Subsection 19.402.13, discussed unbuildable parcels. He did not understand why community ownership was discouraged when the clustering section seemed to encourage setting aside community areas.
- Some of the language in the section relative to subdivisions, replats, and setbacks for backyards and public street frontage seemed to be in conflict with subdivision and partition requirements, separate from how the clustering section was written and the variances inherent in that concept.
- He asked if the adjustment and variance section applied in addition to the clustering section; both spoke to setbacks and 10% reduction in zoning requirements, etc.

Ms. Mangle believed the idea was if the clustering section was being used, the adjustments and variances were probably not necessary, because the application would be at the Commission in a very discretionary setting. She was not sure if it was possible to combine an adjustment or variance, but she would check on it.

Mr. Greene said some clarification was needed on that amendment; it was unclear whether both applied or if the clustering concept stood alone. He appreciated all the work that had been done and the efforts to include those affected by the proposal.

Chair Klein summarized that Mr. Greene wanted help for the property owners with the cost when these things came in. He noted that as a budgetary issue, that would have to be considered by those above the Planning Commission. Mr. Greene was also interested in expanding the boundary verification, which Metro did not know how to address. Other issues regarded language that drove a property to an unbuildable lot; how co-ownership with the City could occur so the public could take responsibility for the area; and clarification about the clustering portion was requested.

Mr. Greene emphasized that if these areas were important and provided some stormwater value, the City ought to find a way to help maintain and enhance them and make the areas function as a natural treatment facility, which was partly why the City valued these areas.

Chair Klein added if it was a priority for the region and the City, they could look for some sort of incentivization to the landowners.

Mr. Greene agreed, adding it could be as simple as a volunteer planting party or some effort along those lines.

Chair Klein thanked Mr. Greene for all of his work and for his good stewardship of his property.

Elaine Albridge, Attorney, Stoel Rives, LLP, 900 SW 5th Ave, Suite 2600, Portland, OR 97204, understood a lot of work had gone into the current amendment process. She requested a continuation of the hearing to a date certain in the future to allow for additional oral and written testimony to be provided to the Commission. Allowing for some additional time for some very specific comments on the proposed Code language would be helpful in developing the Commission's recommendation to Council and also allow the Commission time to address and respond to the issues heard tonight. This would make for a better process and provide a cleaner proposal to Council.

Chair Klein read Item 11 Meeting Continuance of the Public Hearing Procedures listed on the back of the agenda.

Ms. Albridge asked if the Commission would wait until the end of the meeting to decide which path they would follow.

Chair Klein confirmed that the Commission would continue the hearing to a regular Commission meeting date certain.

Christopher Burkett, 4512 SE Ryan Ct, Milwaukie, stated his home address with almost 2 acres that had been landscaped for about 80 years. His business at 2566 SE Harrison St had about an acre of land. Both properties were completely covered between the WQR and the HCA. He distributed and read his comments into the record, and circulated pictures of his residential and business properties. His comments and pictures were entered into the record as Exhibit 4.

Chair Klein agreed Mr. Burkett's property shown was beautiful but, understanding the quality and value Mr. Burkett placed on his property, he asked what should be done if someone upstream of him did not maintain their property as such.

Mr. Burkett responded there was a huge difference between dumping 55-gallon barrels of oil in the stream and the regulations being discussed. It was a continual scale between what one believed their neighbors should be doing and how it impacted one's property. Someone running bulldozers up and down the stream required action, but planting nonnative trees near the stream was not his business.

Chair Klein stated there was a very tight rope one needed to balance on. One homeowner or industry could be doing the right thing and another doing the wrong thing. When setting regulations, he believed the bar should be set as low as possible, and even if one could weasel under it, the Commission did their job and did the best they could.

- He understood where Mr. Burkett was coming from, but if surrounding properties had septic tanks that would be an issue as well. Rules and regulations have been placed on property owners prohibiting them from just dumping their waste on their property because the collective has placed value on those things.

Mr. Burkett understood, adding that he was quite familiar with the regulations and their implications for his property. The practical application of where the rubber meets the road was really significant. He saw this as a huge amount of overregulation and a huge amount of oppressive interference in simply living life and minding one's own business. It was a sticky wicket in terms of where the line was drawn. For him, this was way overboard, but there was

very little he could do about it other than squawk a bit and be as unobtrusive as possible when caring for his property.

- He did not believe this was the best solution. He was very appreciative of the fact that the Planning Department had toned down a lot of the ways Metro had written the original regulations, which were even worse.
- His idea of a heritage landscape easement would involve the City coming to see that a property is being taken care of and granting an easement stating that it could be kept as an ornamental garden. He expected to be at the Commission again in 10 or 20 years, because he was being forced to remove his nonnative rhododendrons so he could plant the one or two types of native species rhododendrons in the riparian zone.
- In some ways when he read the regulations and heard all the discussions, he felt like he was in a foreign country. He actually planned his landscaping 50 years in advance, and his property would be impacted by pages and pages of regulations that had nothing whatsoever to do with the practical applications on his property.

Commissioner Stoll asked for some examples of things Mr. Burkett would like to do that the regulations would prevent.

Mr. Burkett stated he had almost 2 acres with a 60-ft wide lawn. Rearranging something in his south planting bed in the summer could easily disturb the soil more than 150 sq ft. Even if he did this in the middle of winter with the rain pouring down, there was no way that any silt or anything would ever go toward a stream or have any impact whatsoever. In fact, Kellogg Creek had a huge amount of soil washing down the creek when the water got high, but it was never from his property. Even when the water rose high enough to flow over his property, they had taken care of everything so there was no erosion on the property. With the regulation regarding 150 sq ft soil disturbance, he would have to go through various types of reviews. In the winter, the lower part of his property was saturated with water. If he put in a patio that exceeded whatever the regulations were, he would have to do some kind of mitigation; however, the patio would not affect the groundwater underneath it whether it was pervious or impervious, because the ground was saturated and would not accept any more water. There was no exception for a case like this.

- Another example was an overly mature cottonwood tree with three trunks that was dying, and it would either fall down or have to be cut down at some point. If it fell down, it could hit something. If he cut it down, the tree planting ordinance required replacement. He had already planted trees in advance anticipating that the tree was overly mature. While staff had added some wiggle room in the regulations if one could show the anticipated demise of a tree, it was a big tree. Having to plant 10 trees and 30 shrubs after cutting down an overly mature tree would totally destroy the cohesiveness of the garden because the landscape had already been designed for the next 50 years.
- He stated that he had many other specific examples.

Chair Klein sympathized with Mr. Burkett in the issue of the rhododendron. Milwaukie was the dogwood city of the west, and the dogwood tree they had was a nonnative species.

The Commission took a brief recess and reconvened at 8:22 p.m.

Chair Klein called for any additional comments from staff.

Ms. Mangle clarified that the WQR areas, which were generally 50 ft around every wetland, creek and river were already subject to standards and regulations that were similar to the

proposal and were already mapped. The WQR regulations were adopted in 2003, so the map and standards affecting the Minthorn Complex referenced by Dr. Page were not likely to change much. The HCA regulations were new. Some properties were both, but if so, the WQR label took precedence.

Mr. Kelver responded to questions and comments from public testimony as follows:

- Regarding Ms. Baker's concerns and some inconsistencies she noted, it was important to keep in mind that there was an actual difference in how the rules addressed WQRs versus HCAs. The WQRs continue to be the more protected areas. There were things that could be done in HCA areas that could not be done in WQR areas. The tree mitigation table, for example, regarded disturbance in the HCA, not the WQR. The property on Monroe St, [her neighbor] was essentially entirely covered by WQR designation, which was why any new disturbance on the property was significant.
- Regarding the boundary verification process and map accuracy, the WQRs were where they were. If something was on a site, whether it was on the administrative map or not, and met the definition of a protected water feature, such as a Title 3 wetland, a spring or stream, it was a protected feature. With the proposed administration of the map, the rules would apply to that feature whether it was accurately shown on the map or not. Staff should be able to help people find where some of these boundaries existed on their specific property. The HCAs were a bit trickier to verify.
  - **Chair Klein** asked if an evaluation process existed for staff to verify whether something was deemed a WQR or HCA when a property owner wanted to do some development. He also asked how noncompliant activities were caught, and if a Building Code process was in place so inspectors could recognize WQR or HCA features.
  - **Mr. Kelver** responded the current map was pretty good; staff knew where most of the protected water features were in the community. However, Commissioner Gamba had noted a spring feeding a WQR area on his property that did not show up on the map. He was not sure what formal steps would be taken, but it would need to be investigated at some point. Sometimes these things would be stumbled upon when a property owner was doing some other kind of development project, and sometimes a property owner would question the legitimacy of a water feature and request verification.
- Regarding the comment from Dave Greene about community ownership, one discussion with the advisory group regarded concern based on experiences with some separate wetland tracts that were in ownership or controlled by a homeowners association, but had no clear leadership. The advisory group believed it was better if an organization like the Wetland Conservancy or a private individual owned such lands and that a communal ownership structure should be discouraged.
  - **Ms. Mangle** added that since the proposed language was crafted, one homeowners association that was responsible for a WQR had called to ask how they could sell it because they could not take care of it.
- As far as the concern about conflict with some of the clustering language, he noted that Milwaukie Municipal Code (MMC) Subsection 19.402.14.C.2.c(3) on 5.1 Page 48 stated, "A minimum yard or common open space shall be provided." He understood this to be referring to the relationship of some of the buildings to each other considering the overall site. He did not know that it was necessarily talking about a separate resource tract specifically as much as a more general open space.
  - **Mr. Greene** noted the language went on to discuss a certain percentage of the natural resource shall be included in the common open space. It implied that the natural resource could be part of that community space.

- **Ms. Mangle** stated that the cluster development standards under Subsections 19.402.14.C.2c(3) and c(7) seemed to be in conflict.
- **Mr. Kelver** believed that needed to be looked at a little bit more.

Chair Klein

- Asked if there was a provision for a property owner to donate land if they had a piece of property they could no longer maintain. The property owner would be paying property tax on a WQR area they could not develop, but because the land had value the land could be donated which would ensure the land would not be developed. This would retain the value of the property to the property owner, and the property owner would no longer have to worry about the maintenance. He knew of organizations that purchase wetlands from property owners and compensate them.
    - **Ms. Mangle** replied that those options were listed in the Code, like conservation easements or donating the land to an organization. The City has purchased wetlands from property owners on occasion and might purchase a property if it was located where it was a pretty clear benefit for the stormwater system like Roswell Pond. The City was one of many entities property owners could talk to.
- Suggested a swapping of fees, where instead of fees being put onto the ownership, it could be a donation of the land or something along those lines.
    - **Ms. Mangle** responded that would be a separate project.

Mr. Kelver continued addressing questions and stated that one idea behind the replacement tree and shrub table was to maintain some sense of proportion to the canopy. A larger diameter tree covered a larger area in terms of canopy than a smaller diameter tree. The replacement ratios came from the Metro model code, which was probably based on some scientific basis in that there would be room to plant the required number of trees in that generalized canopy area. The table was included in the section set up for the Type I review process for HCA disturbance alone.

- In a situation where the replanting table could be used, the Type I process could be used. If not, a provision existed for going to a higher level review and making the case for why a particular situation would not allow the prescribed replacement planting or why it would not work. The language was not requiring a particular number of replantings for mitigation, but provided an option for a simplified review type.

Chair Klein noted he had almost 20 trees on his property, which was a 10,000 sq ft lot. One tree was probably 40 to 60 inches in diameter and 15 cedar trees lined his backyard. It would be hard to place trees as prescribed in the proposal. He suggested the Planning Director could make the decision in such situations, because each site would be different.

- **Ms. Mangle** responded the point of the clear and objective review was to minimize the discretion. She did not know if offsite mitigation was permitted for HCAs if the trees would not fit on the subject site. Offsite mitigation was not permitted for the WQRs.

Mr. Kelver stated one point of confusion throughout the process was that people were looking at the table specifically set up for the tree replacement in HCA areas and thinking that same table and those proportions applied even when someone went through the Type I review process to remove a tree that met the criteria established for tree removal.

- If a property owner wanted to cut down a hopelessly diseased or dying tree, the table on 5.1 Page 36 would not be used. The Code specifically required that a Type I tree removal be replaced with a tree at least 1½ -inches in diameter. He suggested making a clarification in the next version of commentary.

- Stemming from advisory group conversations, as well as those with Commissioner Gamba, the current proposal now included language that did not require planting a native species in the Type I tree removal process, but rather stated a nuisance species could not be planted. The proposal originally stated that a native species tree had to be planted.

Ms. Mangle confirmed for Dr. Page that the WQR regulations instituted the 50-ft boundary in 2003. She offered to provide any additional information to Dr. Page.

Mr. Greene commented the Commission should be careful about taking steps where things were kicked from Type I to Type II to Type III review levels. The bureaucratic administrative headaches and costs would be a lot higher for the property owner. The City should try to handle as much as possible at the Type I level.

Chair Klein called for questions from the Commission that would provide direction to staff.

Commissioner Gamba:
- Noted the chart on 5.1 Page 34 listed the existing condition in WQR areas as “good”, “marginal”, or “degraded”. When existing conditions were "good", the requirement was to submit an inventory of vegetation in the areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development included sediments and temperatures. It seemed odd that the two other categories, "marginal" and "degraded", had no requirement for an inventory.
    - This might be addressed on 5.1 Page 39 which stated, "an inventory of vegetation including the percentage of ground and canopy coverage materials within the WQR sufficient to categorize the existing conditions of the WQRs outlined in Table 19.402.11.C." It was a general discretionary review, but wouldn’t it cover all three categories of existing WQR condition?
  - **Mr. Kelver** replied that it addressed establishing the baseline. As a starting point, that level of inventory would first determine whether the WQR was good, marginal, or degraded. In terms of intent, the bullet point listed under the "good" category for requiring submission of an inventory was intended to be a little different than that.
- Clarified his question was whether the inventory pertained to any property in a WQR area and not just to those properties rated "good."
  - **Chair Klein** suggested having three sections with Section 2 including Section 1 requirements plus additional requirements, and Section 3 requiring all of Section 1 and 2 and additional requirements.
  - **Mr. Kelver** did not believe it was set up to have that assumption. The current table in the existing Code regarding WQR regulations lacked clarity, but the same categories of “degraded”, “marginal” and “good” were used. The “good” category in the current table included language about a required vegetation inventory and mitigation plan; that language did not appear again for the other two categories in the table. In trying to clarify the existing table, he carried this concept over to the new proposal.
  - If the Commission wanted this inventory requirement reiterated for each type of area, it could be included. The idea was that doing that detailed of an inventory was not as worthwhile on areas that had not been brought up to the “good” standard yet.
  - The language on 5.1 Page 39 stated that at the start of any process that involved some disturbance, at least enough of an inventory had to be done to determine if the area was degraded, marginal or good. The intent was not to have that higher level of inventory, unless the property was indeed “good.”

- **Ms. Mangle** added that preparing the more detailed inventory required more resources and expense. They did not want to just copy and paste the requirement blithely down the table unless it was purposeful.
- Explained his point was that it was a discrepancy. Either the City wanted to know what was there or not. It really did not matter what condition the property was in at the time.
  - **Ms. Mangle** stated that MMC 19.402.12 General Discretionary Review would require that level of inventory on all of them and was part of the baseline information needed to assign a category.
- Asked why a more intense inventory was needed on a property in good condition.

Chair Klein asked if once the inventory had been done, had some sort of categorization already taken place where staff knew a bit about what was going on with the property.
  - **Ms. Mangle** responded that some inventory had to be done to be able to tell which category applied. The additional inventory was to help staff understand what the mitigation requirements should be and what was being destroyed. With respect to marginal and degraded properties, how many weeds being torn out was not as important as how many mature trees, native plants, or existing intact canopy was being disturbed.

Commissioner Gamba:
- Responded that was quite gray. If "marginal" meant that 10% of the property was a beautiful big leaf maple forest and the rest was weeds, for example, and an inventory was not done and all the big leaf maples were cut down, would a planner looking at the property 5 years later actually know that big leaf maples were there previously?
  - **Ms. Mangle** displayed a table from Metro's Title 3 model Code that had pretty much been adopted in some form by most cities. Staff could research to figure out the intent and better understand why there were differences.
- Explained that the requirement needed to be applied consistently to all property owners unless there was a good reason to have a difference. The property owner taking good care of their property was being punished by making them pay $3,000. If the City was going to pay for the inventory, that was fine.
- Noted if the calculation on 5.1 Page 35 was applied to 50,000 sq ft of HCA, that property could be subdivided 5 ways, and 50% of each of those 5 new properties could be disturbed. This would result in 50,000 sq ft of habitat being turned into 25,000 sq ft of broken up habitat. The way the calculations were done needed to be changed or some kind of limitation on breaking up larger properties imposed. The intent of the entire packet was to protect some habitat space. According to island biodiversity; the smaller the habitat area, the less rich the habitat. The solution was to look at what was allowed to be subdivided.
  - **Ms. Mangle** stated that 5.1 Pages 44 through 46 addressed land division. For large sites, it was probably MMC 19.402.13.G Low Impact Partitions on 5.1 Page 45 and MMC 19.402.13.H All Other Partitions, and I Subdivisions.
- Had discussed a couple ideas with Mr. Kelver like having some kind of a threshold such as 90% of the property being HCA. He understood that would not be doable if the property was a WQR.
  - **Mr. Kelver** replied yes, noting that Figure 19.402.11.D.1.a on 5.1 Page 35 was specifically addressing disturbance of HCAs. Although it mentioned WQRs as well, part of the calculation involved looking at the remaining area on the lot that was not HCA or WQR area.

- Suggested creating some thresholds. Property that was 90% or more HCA could possibly be given a slightly bigger developable maximum than 5,000 sq ft, but disallow subdivision. The concern was that a decent habitat could be turned into nothing but backyards.
- Allowing a bit more creativity in the clustering concept would solve the problem, too.

Chair Klein:
- Asked if that would be considered taking from a property; if a property owner had such a piece of property and was considering subdividing it out.
  - **Damien Hall, City Attorney,** replied that it depended on what was on the property and what else could be done with the property besides subdividing it. He understood the issue, but was not sure the calculation could be used to turn an entire habitat into backyards. There could be some way to point the Code toward requiring a clustering option as opposed to prohibiting any subdivision. That way a property owner could get the density anticipated in the zone, but it would be located as much as possible away from the habitat and water quality areas. This option would not implicate any taking type situation.
- Asked if the clustering concept could be considered and if it could be written in a manner that still had options to it but pointed toward cluster development.
  - **Ms. Mangle** wanted to be clear about the Commission's direction as a whole. She heard Commission Gamba say he wanted to put more limits on how properties could subdivide. Given all the public outreach done with the proposal, she did not want to take a dramatic turn toward reducing property rights in that sense.
- Noted only a handful of properties in the city could be divided into more than 3 parcels.
  - **Commissioner Gamba** stated he had calculated about 30 properties with HCA could be divided.
  - **Ms. Mangle** added there were several areas where properties could be joined together and then subdivided. Along Kellogg Creek, there were a lot of very large lots, so it should not be underestimated. She asked what the intent was with regard to this issue.

Commissioner Gamba stated the City was trying to protect habitat. A significant habitat, 50,000 sq ft for example, would support biodiversity. He had seen otters, foxes, and coyotes on a property that size, but that would not be seen on a 2,500 sq ft yard. Allowing such subdivision would eliminate habitat. The perfect solution would be for the City to buy all these properties, pay the property owners handsomely, and turn them into parks. Since that was not an option, they needed to look into other options for protecting these habitats. He understood that if the property was 100% HCA, 5,000 sq ft of disturbance was allowed; breaking it into 10,000 sq ft parcels would disturb half of a 50,000 sq ft habitat. If the habitat was destroyed, nothing was balanced.

Ms. Mangle believed provisions in the land division section would prevent the table from being used in that way. She asked if the Commission just wanted to understand the issue better by running it through a scenario, or did they want to actually include more measures to ensure that people did not break up and develop large parcels. The purpose was habitat, but they were also trying to balance private property rights with habitat protection.

Chair Klein said he liked the current language. However, if there was time, they should see whether other agencies tried to keep an HCA intact as much as possible, and what language they used. He would prefer to retain larger HCA pieces.

Ms. Mangle stated the question was what was being done to preclude large lot subdivisions that then would allow clear and objective development through the HCA provision. She believed that a lot was actually being done in the land division section, which staff would explain. Another question was whether more should be done, and staff could look at options.

Mr. Hall noted MMC 19.402.13.I.2.a, on 5.1 Page 46, required that at the time of the subdivision, the lots would have to have buildable land outside of the WQR and HCA.

Commissioner Gamba replied that did not take into account properties that were entirely HCA.

Chair Klein agreed that that raised the question of what was buildable at that point, and at that point did it fall underneath the clustering.

- **Ms. Mangle** responded that was why the clustering provision was needed. Properties covered entirely by a natural resource were allowed to go for a variance based on the fact that it was a hardship; it would be essentially regulated beyond the use of their property to do reasonable development. Clustering could be used to cluster development into one corner of the lot without developing the rest of the property.

Commissioner Gamba:

- Stated they would have to look at creative ways to address the issue. While he supported the clustering regulations, they did not help because of what was required to do a cluster. For example, 5.1 Page 48 stated that at least 12 ft of frontage was required on a public street. If a property was inaccessible except for a very small portion on one side of the property, such as at the end of a dead-end street with only 20 ft of frontage on the entire property, how would it be clustered with 5 houses that each must have 12 ft of frontage if the entire property was HCA?
  - **Mr. Hall** responded a public street would be constructed to provide the houses access on each of the lots to give them the needed frontage.
  - **Ms. Mangle** stated that was why it was not limited to single-family residential development. MMC 19.402.14.C.1.a stated that on lots that would allow only a single-family home, a duplex, multifamily dwelling, or townhouse could be built to get the same allowed density. More units were being fit on a smaller area, partly because the street access was still needed and to avoid the natural resources. Options were available with regard to housing type.
- Noted the word "practicable" was used a lot on 5.1 Page 41 and throughout that portion of the document.
  - **Mr. Kelver** responded staff would be making corrections by determining where "practicable" should mean "practical" and where it should mean "feasible."
- Clarified "practicable" was a perfectly good word, but it was subjective. In some cases there could actually be objective standards.
  - **Mr. Hall** responded the issue was that "practicable" was not a synonym for "practical" but rather a synonym for whether something was feasible. “Practicable” would be changed to either “practical” or “feasible.”
  - **Mr. Kelver** explained when used on 5.1 Page 41, “practicable” was being used in the heart of the discretionary review criteria which was allowed to be gray and a bit subjective. The applicant would have to demonstrate why it was not feasible. Such an application would not be going through a black and white, clear and objective Type I review, because it was not a clear standard.

        - If "practicable" was used in places where it needed to be clear and objective, staff would need to address that; however, where it was allowed to be discretionary, its use was appropriate.
- Asked if Policies 7 and 9 on 5.1 Page 60 were really being done by the City.
    - **Ms. Mangle** clarified that those were existing, and not proposed, policies. Everything in the Comprehensive Plan was existing policy; the proposed changes were indicated by underline and strikeout.
- Asked if the City was or was not doing that which was referenced.
    - **Mr. Hall** stated that this was the Comprehensive Plan and was policy. The City had a lot of leeway as to how it weighed what policies to implement at what given times. Somewhere along the line, this was put in the Comprehensive Plan as something the City would like to do at some time. At this point, there was nothing in the Code implementing Policies 7 and 9.
    - **Ms. Mangle** did not believe the City had an active project to implement Policy 7, and the City did not have a Parks and Recreation Master Plan, unless it referred to the North Clackamas Park Master Plan. As with the last Code amendment project, staff was trying to be somewhat surgical and not rewrite the chapter, so other things could be fodder for a broader discussion. The main purpose was to coordinate the amendments with the Code.
        - **Chair Klein** believed both policies were separate goals of the City.
- Wanted to see the City actually pursuing both policies.

Commissioner Gamba moved to continue File ZA-11-01 and CPA-11-01 to April 12, 2011, keeping the record open during that period. Commissioner Wilson seconded the motion, which passed unanimously.

6.0 Worksession Items – None

7.0 Planning Department Other Business/Updates – None

8.0 Planning Commission Discussion Items – None

9.0 Forecast for Future Meetings:

April 12, 2011 1. Worksession: Wastewater Master Plan

April 26, 2011 1. TBD

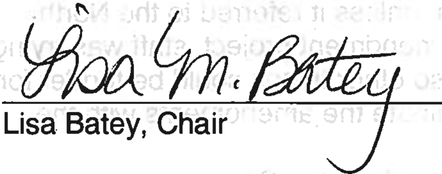
Ms. Mangle reviewed the meetings forecast with these additional comments:
- The first item on April 12 would be the continued hearing. Commissioners should contact Mr. Kelver with any other questions so staff could be as prepared as possible for that meeting.
- The Engineering Department had been working on the Wastewater Master Plan, which would probably come before the Commission on April 26 and then return for a hearing later in the spring or summer.
- Another worksession would probably be held on the light rail project that focused more on the Trolley Trail section.
- Staff would also be coming back to the Commission sometime in April or early May about the progress made on the Sign Code regarding electronic signs. Clear Channel Communications had contacted her asking what it would take to convert the billboard by Mike's Drive-in at Harrison St and Hwy 224 to an LED sign like the one on Main St. Mr. Kelver was working on this issue.

Commissioner Wilson thanked Chair Klein for his years of service and patiently schooling the rest of the Commission.

Meeting adjourned at 9:20 p.m.

Respectfully submitted,

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



Lisa Batey, Chair