

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, April 27, 2010
6:30 PM**

COMMISSIONERS PRESENT

Nick Harris, Vice Chair
Scott Churchill
Teresa Bresaw
Chris Wilson

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelper, Associate Planner
Ryan Marquardt, Associate Planner
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Jeff Klein, Chair
Lisa Batey

1.0 Call to Order – Procedural Matters

Vice Chair Harris called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 February 23, 2010

Ms. Mangle stated that Chair Klein submitted two corrections to the minutes via email. One was to add, “***Chair Klein opened the discussion about officer elections. Commissioner Bresaw nominated Chair Klein for another year.***” prior to Line 615 on Page 19 to put the paragraph into context. He also questioned whether he stated “12 to 24 months” in Line 617.

The Commission agreed Chair Klein had stated “12 to 24 months” so no further changes were needed.

Commissioner Bresaw moved to approve the February 23, 2010, Planning Commission meeting minutes as corrected. Commissioner Wilson seconded the motion, which passed unanimously.

2.2 March 9, 2010

Commissioner Bresaw moved to approve the March 9, 2010, Planning Commission meeting minutes as written. Commissioner Wilson seconded the motion, which passed unanimously.

Ms. Mangle noted the Design and Landmarks Committee (DLC) would review their portion of the March 9, 2010, minutes at their meeting on April 28, 2010.

3.0 Information Items—None.

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

5.0 Public Hearings

- 5.1 Summary: Parking Chapter amendments *cont'd from 3/23/10*
Applicant/Owner: City of Milwaukie
File: ZA-10-01
Staff Person: Ryan Marquardt

Vice Chair Harris called the hearing to order and read the conduct of legislative hearing format into the record. He asked if any Commissioners had any ex parte contacts to declare. There were none.

No Commissioners abstained and no Commissioner's participation was challenged by any member of the audience.

Ryan Marquardt, Associate Planner, presented the staff report via PowerPoint, providing responses to the issues the Commission asked staff to address at the March 23, 2010, hearing, which was continued. Those issues included:

- Doing more Neighborhood District Association (NDA) outreach about Metro's minimum parking space requirements for single-family residences and the impact those regulations have had on other jurisdictions.
- Considering alternatives to, and do NDA outreach about, limiting large parking areas in front yards.
 - He clarified that garages would not interfere with the proposed front yard parking limitations because garages are required to be placed behind the required front yard setback. The proposed amendment limited parking in the front yard, which is the area between the dwelling and the front property line.
 - **Ms. Mangle** explained one way to visualize it was as a funnel, with the pinch point as the 20-ft curb cut width. The driveway could be wider as it went farther into the property to access a 3-car garage, for example. It was most restrictive at the curb cut with the new restrictions being in the setback.
 - **Mr. Marquardt** added the advantage of the percentage/ratio-based regulation is that larger properties would have some flexibility in parking design; narrow lots with small front yard setbacks could have a reasonable amount of parking and the ability to pave the entire front yard for parking would be curbed.
 - Comments from NDAs indicated that 50% still allowed for too much paving. Staff noted, however, that the Code had to apply to a wide variety of lots, and no current regulations addressed how much front yard area could be utilized for parking.
- Consider suggestions provided by the Commission about how commercial, RV, and boat parking might be amended.
- Additional proposed amendments included housekeeping items such as correcting scribes' errors and references as well as a policy change regarding the prohibition of roosters within the city at the request of the Code Compliance Department.
 - **Ms. Mangle** explained staff was already changing this Code section regarding roosters as part of the housekeeping list because it contained provisions that are unenforceable. The Code Compliance Department had talked to the NDAs and did outreach. The rooster issue was raised for the Commission's consideration.
- He noted that the blue sheet distributed to the Commission would replace Subsection 19.507.1. The underlined section above the graphic was basically to incorporate comments from the Hector Campbell NDA, which were received right before the packet was due and were not included in the staff report.

- The actual proposed amendment was contained in Attachment 1, Exhibit B of the packet, which was a clean copy of the Parking Chapter. Exhibit D had the clean copy of all other associated amendments, housekeeping, and policy change that were not part of the Parking Chapter.
- The Code and commentary attachment included with the packet had a description of the changes between the March 23rd packet and the packet presented tonight. It was not a complete commentary on all of the Parking Chapter, but just explained what was different between the two packets.

Mr. Marquardt responded to questions and comments from the Commission as follows:

- When redoing a driveway, a permit was required for anything done in the right-of-way, such as a curb cut or driveway approach. A permit was not required to widen a driveway on the site, but the owner would have to comply with the Parking Chapter standards, including the minimum vegetative requirements.
 - **Ms. Mangle** clarified that many of the new standards were most effective and enforceable at the time of a building permit for a whole site review; the standards would be in place for new development.
- A homeowner could pave their front yard for low maintenance as long as they met the vegetation requirement. Under the proposed regulations, some physical separation would be required so the area was not entirely used for parking. For example, a play area could be paved, but would have to have something physical to convince staff that it was not part of a parking area.

Commissioner Churchill stated that he had a huge problem with prohibiting roosters as a housekeeping amendment in this Parking Code update. It was fine to address the issue in the Municipal Code, but not by sliding it in under the Parking Code revisions. He would have severe problems participating in such a vote tonight.

Mr. Marquardt continued, responding to questions from the Commission:

- Thresholds of development were set up so when doubling the floor area or development on a site, the applicant/owner was expected to come into full compliance with the Parking Standards. This applied to commercial and residential properties. When a structure was increased by less than double the size, the standards required that the area be brought closer to compliance, with those improvements capped at 10% of the permit value. The list of standards indicated what elements of parking had to come closer to compliance. A remodel that did not result in increased floor area was exempt from the Parking Chapter requirements.
- The commercial vehicle parking rules were Code compliance rules that property owners were expected to comply with on an ongoing basis. Complaints were received about commercial vehicles parked in residential areas, which drew staff's attention to the problems with the standards.
- Developing property had to be done correctly within the guidelines. The Romanian Baptist Church graveling their property did not meet the surface requirements for parking under the existing or proposed Code. The City applied the existing Code and issued a citation that was not upheld.
- Gravel was allowed for excess parking areas, such as behind the house or on the side yard of a wide lot, but not within front or side yard setbacks. Staff receives requests for building a shop or additional garage in the back yard on large lots. The owners do not always want a paved driveway to the area, so gravel was generally acceptable, but it should present a nice appearance to the neighborhood and not adversely impact surrounding properties. The side

yard setback requirement was an effort to keep gravel out that could get kicked to surrounding properties.

Ms. Mangle read comments from Commissioner Batey who supported adoption of the proposed amendments with one exception. She strongly supported Option 1 as proposed, which required 1 parking space outside of the setback, rather than staff's recommendation to not specify a location (Option 2).

- She also read comments emailed from Chair Klein, who supported the proposal without further comment as his questions had been addressed.

Mr. Marquardt clarified that Portland, Lake Oswego, and Clackamas County had standards similar to Option 1 that were implemented when they brought their Codes into compliance with Metro's requirements about 10 years ago. Staff had not received feedback about how the requirement was working in those jurisdictions.

- He explained that Option 1 would require a minimum of 1 space located outside of the front or side yard setback. The required front yard setback for most lots in Milwaukie is 20 ft and street side yards of 15 ft to 20 ft.
- He confirmed Option 1 allowed for parking 2 cars tandem. It did not change the Code much but did put it in compliance with Metro.

Vice Chair Harris called for public testimony in favor of, opposed, and neutral to the proposed amendments. There was none.

Commissioner Bresaw inquired why the rooster ordinance was brought up at this time and requested details about any complaints received from the public.

Tim Salyers, Code Compliance Coordinator, explained that the City dealt with a noisy rooster case last summer on 34th Ave in the Lake Road neighborhood. The complainant went to the City Council, who asked Code Compliance to look into it. The complaint was addressed through the Prohibited Noises-Designation subsection of the Milwaukie Municipal Code(MMC) 8.08.070.D Animals, which was effective against animals that disturb any person. Since 2006, they had enforced 12 noisy rooster cases, all of which resulted in the roosters being removed from the location.

- The City does not have jurisdiction to remove a noisy animal, so citations were issued in an attempt to quiet the rooster. Time-wise, this was a good opportunity to move the issue forward, which is why it was before the Commission tonight.
- The NDAs were contacted and the information presented at numerous meetings. Linwood NDA agreed roosters were not good in the city. Hector Campbell NDA mentioned that they like roosters; however, no rooster compliance cases had occurred in the Hector Campbell neighborhood. Ultimately, there did not seem to be opposition to updating the issue in the Code.

Ms. Mangle explained that 5.1 Page 85 of the packet contained the housekeeping part of changing 19.402.3,C Accessory Uses, General Provisions, deleting a 3-line section that staff already proposed for removal because they were not enforceable. That Code section had been on the Code fix list for some time. Mr. Salyers had requested adding the last sentence, "***The keeping of roosters is prohibited.***" She noted that as with all Code amendment projects, staff tries to do quick Code clean-ups when possible.

Commissioner Bresaw asked if there was a way to keep roosters from crowing.

- **Mr. Salyers** responded that since 2006, he had done research online and found some suggestions, which he provided to rooster owners. One option was to put the rooster in a small box at night so it could not raise its neck to crow, which seemed inhumane. He noted daytime crowing received as many complaints as early morning and nighttime crowing.

Vice Chair Harris stated that hearing a rooster crow at 4:00 a.m. in July was not fun.

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

Vice Chair Harris closed the public testimony portion of the hearing on File ZA-10-01.

Planning Commission Discussion

Vice Chair Harris suggested addressing the rooster issue first.

Commissioner Bresaw said many people complain when roosters are near them because they crow all the time. Hens cluck all day, but were not as loud as a rooster.

Commissioner Churchill explained his concern was that roosters were a very politically active subject in many communities, including Portland. He did not want it to appear that the Commission was sliding the issue in with a parking ordinance change. Though that may not be the intent, the appearance was there and he could not participate in that. It was healthy to debate and discuss the issue, but not associate it with what was primarily a parking ordinance change.

Commissioner Bresaw stated she knew people who liked chickens but could not think of anyone passionate about roosters. Why would anyone defend having a rooster in a city?

Commissioner Wilson said that it seemed the existing procedure of using citations was working, because eventually the roosters went away. Neighbors still talked with neighbors, and the NDAs were still involved without putting an actual law into effect.

Commissioner Churchill:

- Noted he was not just concerned about roosters because beekeeping was also mentioned in 19.402.3.D.
 - **Mr. Marquardt** clarified that there was actually no change in 19.402.3.D. The proposal would retain that as the current language read.
 - **Ms. Mangle** explained the strikeout showed the change from the last version that the Commissioners saw in March. That sentence was erroneously added in the March packet, but it did not actually exist in the current Code. Staff did not want to change that section at all, but it was deleted in this packet to show the change from the March version. The only proposed policy changes were in 19.402.3.C.
- Stated that the only way he could participate in the vote was to strike 19.402.3 Accessories, Uses, and General Provisions from the discussion and proposal tonight. He was not saying it should not be addressed, but it should not be tied in with parking. This hearing was noticed and the agenda did not address such a socially active issue as poultry and roosters, which needed to be a separate issue.

Commissioner Wilson asked if Commissioner Churchill would agree with the Parking Chapter if the rooster issue were stricken from it.

Commissioner Churchill stated that he was open to looking at and discussing Option 1. Commissioner Batey's direction seemed reasonable. He was interested in her thoughts about it and was open to discussion about other options as well.

Commissioner Bresaw said that the Lake Road NDA was not aware of the proposed parking changes; they had not gotten those details in their meetings, but they did agree to the rooster issue. She understood it was not on the agenda as a noted item, so the general public might have missed it.

- The Lake Road NDA was not supportive of more restrictions. Option 1 was more of a compromise and less restrictive, though it was more restrictive for new construction.

Ms. Mangle clarified that Option 1 had two requirements: 1 parking space and where it was located. In Option 2, the only requirement was 1 parking space.

Vice Chair Harris clarified that Option 1 would require new construction to provide a minimum of 1 parking space in front of the house, but outside of the setback. He believed he could support Option 1.

Commissioner Churchill added that it essentially created a tandem parking space for 2 cars.

Commissioner Wilson asked if the issue would need to be addressed again in a couple of years to comply with Metro.

- **Ms. Mangle** clarified that if it was not done now, it would eventually have to be done to comply with Metro. This amendment did comply with Metro.

Vice Chair Harris confirmed that the agendas were published a week in advance. He was torn because he understood where the rooster fix fit in the Parking amendment as housekeeping, but he agreed with the other Commissioners that it was not listed on the agenda, which made it look like it was out of public view. He would like to vote for it, but could not support it now. He read about the issue on the Internet and learned excluding roosters and limiting the number of chickens was a common change in cities across the country. He offered that Victoria charged a per-chicken fee to offset the enforcement of violators.

Commissioner Wilson asked if a motion could be made to approve Option 1 without the rooster clause.

Mr. Monahan confirmed that the Commission could move to approve the staff recommendations, specifically adding Option 1 and deleting the proposed change to 19.402.3.C.

Commissioner Churchill:

- Appreciated staff's clarification that there were no changes regarding colonies of bees, but proposed that 19.402.3.C. and D be addressed together.
- Asked if any changes would be made if the Commission adopted 19.402.3.D.
 - **Mr. Marquardt** answered there would not be any amendment to 19.402.3.D, it would stay as is.
 - **Ms. Mangle** clarified that the version that went to City Council would not include D at all because there was no change.
- Asked if 19.402.3.C and D should be dropped from the approval.

- **Mr. Monahan** suggested leaving the changes as staff proposed on 19.402.3.C that were vetted through the process, except for deleting the language that prohibited the keeping of roosters.
- **Ms. Mangle** explained that the language that staff was proposing to delete was unenforceable, and something the City could not require. It was not a policy change and had probably never been enforced, which was why the amendment was truly a housekeeping item.

Commission Bresaw requested clarification because the bee part said the same thing.

- **Ms. Mangle** clarified that the bee section was also on the Code fix list. One rule staff had for the easy Code fixes was that if more than two conversations about it were required, then it was not “easy” and could not be fixed when other Code changes were made. Only obvious solutions that were not policy changes could be included as Code fixes. After several discussions about how to change the bee colony wording without making policy changes, staff determined it was too complex, and it would remain on staff's fix list as a problem.

Commissioner Churchill confirmed that he did not want to include 19.402.3.C or D with the parking changes tonight. The whole subject justified its own stand-alone decision.

Vice Chair Harris asked if Commissioner Churchill would have felt differently if the rooster issue had been on the agenda.

Commissioner Churchill replied possibly, but it would have had to be noticed that way. He was not averse to waiting 2 weeks to vote on the proposal after public notice was given.

Ms. Mangle stated that if the rooster was the only issue, she preferred adoption of the rest of the package tonight. The rooster issue could be pursued in a different project. She thanked the Commission for their consideration.

Mr. Marquardt noted the definition of agriculture in Chapter 19.103 also had a proposed amendment about the rooster prohibition. He recommended striking it also.

Commissioner Churchill moved to adopt Option 1 of Issue #1 of ZA-10-01, Zoning Ordinance Amendment, striking Subsection 19.402.3.C and D completely and striking the proposed change to Chapter 19.103 Definition of agriculture regarding the rooster prohibition. Commissioner Wilson seconded the motion, which passed unanimously.

Ms. Mangle confirmed that the Commission recommended to City Council to change 19.507.1 Residential Driveways and Vehicle Parking Areas, as described on the blue supplemental sheet distributed to the Commission with the Option 1 requirement. Staff would modify the Code language of this section to reflect the policy in Option 1 and she would share it with the Commission as staff prepared it for the City Council.

Vice Chair Harris restated that the Commission recommended to City Council approval of the ZA-10-01 provisions of the blue sheet provided this evening, Option 1, and removing the previously mentioned sections.

6.0 Worksession Items

- 6.1 Summary: Natural Resources Overlay project briefing
Staff Person: Brett Kelter

Ms. Mangle introduced the Natural Resources Overlay project, stating that the Commissioners had received copies of emails to the Natural Resources Overlay Advisory Group, but had not discussed it since October. Staff has done a lot of work on this challenging project, which has many constraints and choices to make. It would soon become a Planning Commission project, so this update was the start of that transition.

Brett Kelper, Associate Planner, presented the update on the Natural Resources Overlay project via PowerPoint with these additional comments:

- MMC Chapter 19.322 currently addresses Water Quality Resource Regulations and those rules that are directed by the Statewide Planning Goals & Guidelines. Goal 6 regards certain protected streams and delineated wetlands. Metro helped local jurisdictions adopt rules to put cities in compliance with Goal 6 by establishing Title 3. Code language was adopted in 2002 that brought the City into compliance with Metro's Title 3. Title 3 rules apply to Water Quality Resources (WQR), which are protected features with a buffer area around them that include Kellogg Creek, Johnson Creek, properties along the Willamette, and several specific wetland areas.
- The Natural Resources Overlay project was motivated by Habitat Conservation Areas (HCAs), in response to a statewide goal regarding natural resources, not just WQRs. Statewide Goal 5 prompted Metro to adopt the Title 13 Nature in the Neighborhoods program. When Milwaukie comes into compliance with Metro's Title 13, it would also be in compliance with Statewide Goal 5.
- He explained the differences between high, moderate, and low-value HCAs, and indicated a disturbed area of graveled parking and another area with more vegetation and trees. He noted that the HCAs were related to streams. When completing the inventory, Metro was concerned about habitat areas close to streams. The consideration of habitat was less in areas farther away from streams. Vegetative cover and shrubbery were also considered with regard to habitat.
- He noted that residential lots in the area near the railroad, Pendleton Woolen Mills, and the Springwater Corridor McLoughlin Blvd crossing also abutted the WQR area. The proposed boundary between the residential properties and resource areas was 100 ft, but perhaps a tighter trigger was needed.

Commissioner Wilson:

- Asked if the resource area where sheds or other minor disturbances were allowed was in the 50-ft buffer zone next to the WQR.
 - **Mr. Kelper** responded that the 50-ft buffer zone tied to the WQR was a restricted area. Any building or disturbance in that area had to be approved by the Planning Commission. The darker yellow area on the Water Quality and Natural Resource Area map was designated as HCA, which was a less restrictive area. A homeowner could build a small shed in an HCA without coming to the Planning Commission.
- Noted sheds typically were used to store lawnmowers, gas, paints, thinners, solvents, et cetera. There was most likely a slope from the yellow area indicated on the map down to stream.
 - **Mr. Kelper** replied that sheds could not be built in the areas within 50 ft of the stream, but a small shed could be built farther from the stream into other habitat areas. The Code could allow the building of a shed, but could not designate what went in the shed, which was probably more of a hazardous material and public safety concern.
 - **Ms. Mangle** clarified that the Prohibition section of the draft code applied to all of the habitat areas and included more egregious things. She agreed with Commissioner

Wilson's concerns, but at present, the Prohibition section included no uncontained areas of hazardous materials, no invasive or noxious vegetation, and no outside storage of materials.

- **Mr. Kelper** added that if a lawnmower in a shed in a resource area was dripping gas, it would take a complaint to the City for it to be corrected because the Code would not catch that. It allowed for construction of a shed to store the lawnmower. If it became an uncontained hazardous material, then the City could act.
- Stated that he did not want more rules than necessary, but wanted to raise the concern.

Commissioner Churchill stated that the City was careful about invasive vegetation, but did not have rules and regulations to monitor egregious conditions. It was a good footnote to indicate that maybe it should tie back into some sort of enforcement or ordinances that did address the issue. The language was pretty loose about storage of uncontained hazardous materials.

Mr. Kelper agreed it could be tricky, especially when trying to keep the balance of not making the Code so prescriptive concerning specific details. At present, if one were storing uncontained hazardous materials, it could be enforced. The Code was not set up to manage at the micro level what was stored in a shed. However, other agencies and rules already existed that regulated hazardous materials.

Commissioner Wilson:

- Asked if the Code required the implementation or creation of a Spill Prevention Countermeasure and Containment plan (SPCC) in commercial areas. If a certain amount of liquids was stored on a property, an SPCC plan needed to be in place.
 - **Ms. Mangle** responded that staff would get back to him about SPCC.
 - **Mr. Kelper** believed areas of overlapping protections existed; however, the proposed Code had not made a connection with spilled liquids because other agencies and rules were in place to address that issue.
 - **Commissioner Bresaw** said that Portland had a spill hotline to report any hazardous spill issues 24 hours a day. Many people did not know that discharging into the stormwater system was prohibited.
 - **Ms. Mangle** added that next week the Council agenda included a different part of the Code that addressed illegal discharge into the stormwater system.
- Asked if the City had taken an inventory of any Underground Injection Control devices (UIC) within the zones.
 - **Ms. Mangle** believed there was a partial inventory, but she would check on it.
- Explained that the City was going to great extent to protect resources, but a direct conduit to subsurface groundwater was in one of the protected zones.
 - **Mr. Kelper** understood that the first step was knowing where the UICs were within the zone and then to know more about how they functioned.
- Stated that based on the 1996 Clean Water Act, the Department of Environmental Quality (DEQ) began implementing rules in 2008. All UICs needed to be registered, removed, or have filtration systems installed in accordance with DEQ rules. Bottom line, it seemed the City would want UICs removed within the protected zones.
- Clarified that in large cities, surface flow drainage from roofs and parking lots was captured and drained into the big sewer, then to a treatment plant or a river. In smaller, more rural areas, and commonly throughout Oregon, UICs were just holes in the ground. They worked when originally designed, but today even parking lot surface flow contaminated the ground water, so they needed to be removed or have filtration systems installed.
 - **Mr. Kelper** agreed that even if the City was not adopting HCA rules, which regarded

habitat and more surface-focused water quality, it would be good to understand more about how it interacted with water quality. This project might be an opportunity to require that UICs meet certain standards or be removed.

- **Ms. Mangle** added that staff would talk with other departments about reporting water quality compliance. The issue might be addressed by pointing to other sections of the Code.

Commissioner Churchill asked if the City was monitoring water quality in the streams. Efforts were made to prevent issues, but was there a baseline to indicate progress in improving the quality of surface water?

- **Ms. Mangle** responded that the drinking water wells were tightly monitored. The City had the total maximum daily load (TMDL) that monitored the stream water temperature and was reported to either the State or federal agencies.

Commissioner Wilson asked if grants were available to encourage graduate students to adopt a stream and monitor surface water.

- **Mr. Kveler** said that the Johnson Creek Watershed Council and newly forming North Clackamas Urban Watershed Council would be very interested in grants for graduate students.
- **Ms. Mangle** added that part of Metro's Nature in Neighborhoods program was regulatory, but in addition to the two watershed councils, it also had a grant program to encourage restoration, monitoring, and education outreach. Metro might have grants for monitoring surface water or education.
- Regulation was not the City's only tool, but it was the one thing that had not been figured out. Staff would do additional research about what else was being done and to tie the pieces together.

Commissioner Churchill noted that the major tributaries, such as Johnson Creek and Kellogg Creek, had good coverage now, but other tributaries like Spring Creek were not monitored. Perhaps the NDAs and schools could be educated about how the streams could be monitored.

- **Ms. Mangle** added that Spring Creek was an amazing resource and an interesting test case to consider in terms of the review process necessary to remove concrete and restore Spring Creek, how its underground segments should be shown on the WQR map, et cetera. The City wanted to encourage restoration, but a project like that would affect a lot of property. Spring Creek might be an excellent test case.
- **Mr. Kveler** pointed out the Code process invoked many issues and questions that really were not Code issues. Staff hoped that some conversations and connections would be made that would result in grant money or schools involved in monitoring Spring Creek, for example.
- Milwaukie Presbyterian Church had received Metro funding for restoration of WQRs and HCAs on their property at Kellogg Lake and Lake Rd, close to Milwaukie High School.
- As an educational component, Metro has competitions through the Title 13 program to encourage people in industry to develop designs that promote habitat-friendly development.

Mr. Kveler noted Attachment 1 Ongoing Issues, shown on 6.1S Page 2 of the supplemental packet, tracked the issues raised in the Advisory Group and listed key issues needing the Planning Commission's feedback.

- The variance process even in the existing WQR Code was a specific area that needed to be made clearer, both for staff as well as for property owners and applicants. He explained how stair-step review levels of the current Code could ultimately bring a project before the

Planning Commission, but allowed for too much discretion.

- By the time the application came before the Planning Commission, the applicant would have tried to meet certain clear and objective standards and proposed a particular mitigation plan that fit their needs, so it would look like a variance already.
- One section of the revised Code addresses adjustments and variances and focuses on economic hardship as the main reason for a variance, which was not usually an allowable criterion.
- Staff also questioned whether someone requesting a variance needed to address the three criteria of Chapter 19.700.

Commissioner Churchill believed the proposed economic hardship language was headed in the right direction. The decision had to be made on the basis of economic viability. For instance, a historic structure could be done out of respect for its historic nature to push that envelope harder, but that was a rare condition.

Commissioner Wilson noted economic hardship was a tough sell for the Planning Commission. Although the zone change off Lake Rd at a previous hearing involved a different set of criteria, the nature of it was economic hardship.

Mr. Kelper suggested that it might be helpful for staff to provide a specific example of the appropriate process for an applicant who did not believe they could comply with other discretionary parts of the Code.

- Staff was considering May 25th for the Planning Commission to meet with the Advisory Group for a hand-off opportunity. The Commission could ask questions and hear what the Advisory Group had done on the Code. Many different viewpoints regarding the level of regulations would be presented.

Commissioner Wilson asked where flood plain maps came into the process and if Metro had completed an overlay and adopted the flood plain areas.

- **Ms. Mangle** responded that the Federal Emergency Management Agency (FEMA) did the flood plain maps, which were adopted by the City. FEMA redrafted their maps a year and a half ago.
- **Mr. Kelper** added that Title 18 of the Code dealt with flood management and paid more attention to the latest FEMA maps and flood information. He understood that Metro's inventory of HCAs did involve looking at flood plain areas. HCAs did not follow the flood plain boundary, but Metro did take it into account when looking at the location of the resources.

7.0 Planning Department Other Business/Updates

7.1 Summary: Fee Schedule Update Staff Person: Katie Mangle

Ms. Mangle stated the fee schedule was really a City Council decision but she believed the update would give the Commission important background information regarding the Planning Commission's work. If the schedule changed significantly in the future, she would seek the Commission's formal concurrence. This was a challenging budget year for the City, so staff was researching and reviewing many different items, including fees, procedures, expectations, and service levels, to see what changes might be made. She noted the following findings, and subsequent proposed changes to the Planning Department's Fee Schedule:

- The City's Planning fees were very outdated and were some of the lowest fees in the region.

Many discounts were also offered. The fees did not cover all the costs of completing development review and in some cases, did not cover the actual expenses.

- However, there had never been an expectation that fees would cover the development review work, which was different in Milwaukie than in other jurisdictions. The expectation set by the Planning Commission, City Council, and the community was for a high level of customer service and high levels of service to the committees, which was staff's focus. Staff also needed to be efficient with their time and resources.
- Increasing fees to fund services was not the most important issue. The proposal was designed to make sense, make the fee schedule understandable and as simple as possible, and to keep the City from giving money away.
- Staff proposed collapsing the list of 60 fees down to 4 key fee types with a few extras, and reducing discounts substantially. For example, reducing the senior discount to 10%.
 - New fees are proposed to cover services that require staff time but are not currently being charged. For example, a Land Use Compatibility Statement requires research and a staff signature to confirm that a property complies with the Zoning Code. A \$25 fee is proposed for that service. Staff also proposes charging a fee if any applicant changes his application half way through the process, as staff time is involved with the changes.
- Most fees for actual applications would not increase much more than \$100 to \$200. While this still will not cover all of the City's expenses, many applications are for government agencies, non-profits, and small families, and staff wants to be sensitive to that.
- It was helpful for the Planning Commission to be aware of the fee schedule to understand that the applicant paid fees each time they appeared before the Commission and the City incurred expenses every time there was a hearing or an issue was re-noticed.

Commissioner Churchill commented that for a Milwaukie resident to appeal to the City Council, the cost is \$500, which was a stretch, so pushing it to \$1,000 would rule them out. He understood that a reasonable correlation to staff's effort was needed. He was concerned that increasing the fee could be obstructive and prevent anyone who may not agree with the opinion of the Planning Commission from being able to appeal it effectively. For the average developer, \$1,000 was not a problem, but it was a problem for a small homeowner who felt they were not heard. Perhaps the fee could be \$750 or \$800 because the \$1,000 threshold looked onerous.

Ms. Mangle believed that was a fair comment, and explained that her motivation was that having the same \$500 fee for appeal to Planning Commission or to appeal to City Council appeared to devalue the Planning Commission process. The Planning Commission should be and was the deciding body most of the time because very few appeals occurred. The fee increase was not meant to be obstructive.

- She confirmed that the fee would be waived for an NDA-sponsored appeal if the NDA had commented during the process. One only had standing to appeal if they commented during the process.

Commissioner Bresaw agreed with Commissioner Churchill's comments. She asked about the cost of building a new house in Clackamas County and Milwaukie, since they work in conjunction.

- **Ms. Mangle** replied that staff did a fee comparison amongst seven cities and the County. The building permit fees were not being changed because most were set by the State. Only Planning staff fees were being reviewed.

Vice Chair Harris commented that reducing the discount for senior citizens might be onerous, since most were on fixed incomes. However, providing any discount for senior citizens was

outstanding.

- **Ms. Mangle** responded that staff had discussed it and noted that many seniors were not on fixed incomes. Some recent applications involved seniors who were doing full development of buildings and projects, and were receiving the discount. Perhaps other metrics could be used, such as a senior who was on a fixed income. The low-income discount was 25%.
 - Most communities did not have discounts. Milwaukie staff was not expected to generate their own revenue, so they could do community-oriented things like discounts.

Ms. Mangle reported that the fee schedule would go through the budget process, then be presented to City Council in May and adopted in June with the rest of the budget. It was still a draft, so she welcomed additional questions or comments.

- Staff was in the process of doing a cost forecast. The City offers discounts for multiple applications, for example when a builder applied for Water Quality Resource, Transportation Facilities Review, and a Variance, the first application was full price and the other two received a 50% discount. Those discounts made it hard to build a forecasting model, but staff was doing it because they wanted to answer that question. Staff had to reconstruct which applications were half price or full price and what the new fees would generate. She would report back to the Commission with those figures.

8.0 Planning Commission Discussion Items—None.

9.0 Forecast for Future Meetings:


May 11, 2010	1. Public Hearing: DR-09-10 Riverfront Park
May 25, 2010	1. Worksession: Review Procedures Code project update

Ms. Mangle stated that the Riverfront Park meeting could be continued to a second meeting if needed because it was a big application. She corrected that if Riverfront Park was not continued, the May 25th meeting would be a joint session with the Natural Resource Overlay Advisory Group.

Meeting adjourned at 9:25 p.m.

Respectfully submitted,

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



Jeff Klein, Chair