CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, April 12, 2011
6:30 PM

COMMISSIONERS PRESENT
Lisa Batey, 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
Nick Harris, Vice Chair
Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Batey 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 January 25, 2011

Commissioner Stoll moved to approve the January 25, 2011 Planning Commission minutes as presented. Commissioner Wilson seconded the motion, which passed 3 to 0 to 1 with Commissioner Stoll abstaining.

3.0 Information Items

Commissioner Stoll welcomed Chair Batey as the new Planning Commission Chair.

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: Natural Resource Regulations Amendments *cont'd from 3/22/11*

Applicant: City of Milwaukie

File: ZA-11-01, CPA-11-01

Staff Person: Brett Kelver

Chair Batey called the public hearing to order and read the conduct of public hearings into the record, noting this issue was continued from March 22, 2011.

Chair Batey stated that while she was not present for the opening hearing on March 22, she had listened to all the audio of that hearing and had read everything in the packet, so she intended to participate. She declared a potential conflict of interest in that she owned 2/3 acres of property in the city that was not in a Habitat Conservation Area (HCA) but was largely within the 100-ft HCA buffer area. The Natural Resource (NR) Regulations Code and map amendments under consideration could result in some increase or decrease in the value of her property; however, because any potential impact might not be significant, she did not have an actual conflict of interest and was not disqualified from participation.

Katie Mangle, Planning Director, announced that Commissioner Churchill had decided to recuse himself from the hearing, because his property would be affected by the project in a way he believed might present an actual conflict of interest.

Commissioner Gamba declared a potential conflict of interest in that he owned 1.2 acres in the city currently zoned residential and fell entirely within the Water Quality Resource (WQR) area. The NR regulation amendments under consideration could result in some increase or decrease in the value of his property; however, because any potential impact might not be significant, he did not have an actual conflict of interest and was not disqualified from participation

Commissioner Stoll stated he had been involved in habitat restoration along Johnson Creek with Friends of Tideman Johnson Natural Area and was a volunteer with the Johnson Creek Watershed Council. His own personal interests were in favor of preserving and protecting the watersheds. In a partnership with his father and brother, he owned four properties in Milwaukie, but none were affected by the regulation. They might purchase additional properties in the future, possibly along a watershed. He was a licensed residential contractor and hoped to specialize in landscape and hardscape. He preferred laying pervious surfaces, so the more draconian the regulation was along the watershed, the more possible business might be coming his way. He believed he could give a fair consideration to all concerns.

Ms. Mangle stated Vice Chair Harris had intended to participate but was out sick. If the hearing was continued, he intended to catch up and participate in the next hearing. He had expressed no conflicts.

Brett Kelver, **Associate Planner**, reminded that this project stemmed from a requirement for

the City to come into compliance with state and regional goals and regulations. He presented the staff report via PowerPoint with these additional comments:

- He announced that Li Alligood, Assistant Planner, was available in the hallway to address questions about specific properties.
- This particular section of the Code was just a regulatory tool. The City was actively involved in protecting and enhancing the resources in the community. In most cases, determining if a project was allowed involved first looking at what type of review was necessary.
- He had many helpful conversations with people since the first hearing, including a discussion regarding Commissioner Gamba's concern about how to address the partitioning of large parcels with a high percentage of resource designation to keep the resource areas more intact.
    - He distributed a sheet with some sample language to address the issue, which warranted further discussion. Staff was not recommending the adoption of this language, but offered it as a starting point to discuss how to make it as difficult as possible to break up large habitat areas; however, the ramifications were not yet fully understood. The sample language would essentially try to prohibit subdivision or partition of properties that were 90% or more HCA or WQR.

Commissioner Batey asked if the goal was to push people more toward cluster development and away from actually subdividing the property.

Commissioner Gamba explained that his concern was the calculation that if a property owner had x amount of HCA or WQR on a property, they would be allowed to disturb a certain percentage of the property up to a maximum 50% of the HCA area or 5,000 sq ft whichever was less. If a 50,000 sq ft lot that was all HCA or WQR was subdivided into 10,000 sq ft lots, they could disturb 50% of every lot. He wanted to avoid disturbing half of the 50,000 sq ft.

Commissioner Stoll:

- Confirmed that when larger properties were subdivided, the idea was to promote habitat continuity in the entire parcel.
- Asked if the consultant, Cathy Corliss of Angelo Planning Group, was principally responsible for writing the regulation.

  - **Mr. Kelver** replied staff started with the existing WQR Code and considered merging the existing Code with the model code, which was discussed when the consultant came on board.
  - **Ms. Mangle** stated the first draft was written by the consultant. The consultant was hired to give an outline and help as a policy advisor who more intimately understood the Goal 5 and Goal 6 State regulations.
- Asked if the regulations as currently proposed were the absolute minimum required for compliance with Metro and the State.
  - **Mr. Kelver** responded that some rules in the proposed Code amendments were a bit more restrictive and prescriptive than the model Code, at least with respect to the HCAs.
  - **Ms. Mangle** added that some areas were much less restrictive. The mantra has been smart, flexible, and local. Staff tried to focus efforts on the kinds of issues that came up in Milwaukie, and the concerns heard from the community.
- Noting the site visits done by staff and some Commissioners, he asked Mr. Kelver's general impression of what the citizens were feeling about the proposed regulation.
  - **Mr. Kelver** replied every situation was different. In light of the amount of public involvement early on, it seemed it was going to be impossible to make everyone happy and 100% satisfied with the rules. A gauge of how successful the proposal was might be that people were equally dissatisfied, in that no one got everything they wanted, but that they had some role in the process. There continued to be areas in the Code where not everyone was satisfied. Everyone believed their caretaking methods were best.
- Asked if there was agreement that everyone spoken to during the site visits had a lot of complaints and were good stewards of the land.
  - **Chair Batey** remarked it was not fair to ask staff to make that determination.
  - **Mr. Kelver** stated if he was to speak about Dave Greene's property and the Milwaukie Presbyterian Church, both of those parcels were in good hands, and he had seen evidence of good stewardship.

Chair Batey asked how the 150 sq ft was determined as the trigger threshold and how that compared with other jurisdictions in the area.

- **Mr. Kelver** responded the 150 sq ft threshold trigger for requiring a construction management plan, whether a resource existed on a property or not, appeared fairly consistently as a distinguisher to go through one type of review versus another type. This number came from the understanding of the rules the City had in place already in terms of

when an erosion control permit was required. Regardless of whether any designated resource area was around, if a project disturbed at least 500 sq ft, an erosion control permit from the City was required. Title 16 related to erosion control permits and had a provision that said any activity that might potentially disturb a protected natural resource area was also subject to an erosion control permit. This language could pertain to very little square footage. The 150 sq ft was chosen because it was less than 500 sq ft and even less than half of the 500 sq ft. If more than that area were to be disturbed, a construction management plan and a Type I review was required. Consideration was being given to waiving the fee to make the process as simple for the applicants and staff as possible.

- **Ms. Mangle** explained that every city had implemented the Metro titles differently. Most cities came up with a localized version. Wilsonville had a different approach and applied the Code to any development in the designated areas and that "nothing new is permitted if it has negative impacts on the water quality. In addition, no unauthorized clearing or grading …" It was very restrictive, but also had a higher allowance of up to 600 sq ft encroachment if it was an expansion of a single-family residential property. Gresham asked for a boundary verification within 50 ft and allowed 500 sq ft of encroachment for an expansion or alteration.
- **Mr. Kelver** noted Gresham and Happy Valley kept their construction management plan requirement and applied the rules more specifically to properties that only had the resource.
- **Ms. Mangle** added that Gresham and Happy Valley had an allowance of only 120 sq ft for a small encroachment, which was more like the 150 sq ft proposed.

Commissioner Stoll asked if the Metro model code called for 500 sq ft.

- **Mr. Kelver** responded it would depend. Some of the numbers that Happy Valley and Gresham were using were actually found in the version of Code Milwaukie had, and those in particular were exemptions. If only dealing with HCA, the model Code suggested up to 120 sq ft could be disturbed for a new patio, walkway, or little shed for example. They were considering making the 120 sq ft more similar to 150 sq ft to avoid gaps. Metro suggested 200 sq ft of temporary disturbance for installing a utility for example, and several jurisdictions had adopted that, but staff felt it made sense to make the number similar to the 150 sq ft and require a construction management plan. The 500 sq ft in the model code, which usually involved alterations to existing utilities or existing buildings, especially if in an area only designated as HCA, were adopted by the other jurisdictions and were in the proposed Code as well.

Commissioner Gamba asked if any of the restrictions spoke to gardening, such as tilling as opposed to development.

- **Mr. Kelver** responded most did. Gresham had a pretty clear statement about existing lawns and gardens being fine, but any expansion of these was not okay and came out of the exempt category.

Commissioner Stoll asked if an exemption existed for turning an existing lawn into a garden.

- **Ms. Mangle** replied that most of the other codes had much less detail than the current proposal, because many of these questions remained unanswered. Those cities would address reviews through either administrative rules or a director's interpretation.

Mr. Kelver stated that additional correspondence had been received that was not included in the meeting packet with the staff report, all of which the Commission had received electronically. This material was distributed to the Commission, made available to the audience, and entered into the record as follows:

- Exhibit 5: Letter from Metro dated April 8, 2011, responding to the City's amendments with regard to Title 13 compliance.
- Exhibit 6: Email received from Christopher Burkett dated April 9, 2011, responding to correspondence with Brett Kelver.
- Exhibit 7: Letter sent electronically from the Audubon Society of Portland dated April 12, 2011.
- Exhibit 8: Letter from Stoel Rives, LLP dated April 12, 2011, regarding mapping errors.
- He noted some of the mapping errors had already been addressed. One property of concern had HCA coverage over the Springwater Corridor which included the paved path down the strip and a couple of driveways accessing parking lots, so where it was very clear and easy to see, corrections had been made to those areas on the Administrative Natural Resource map. These changes were made after the meeting packet was distributed, so a newer version was available.

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

Steven Berliner, representative of the Friends of Kellogg and Mount Scott Creeks Watershed and the Audubon Society of Portland, read the letter submitted to the City by the Audubon

Society of Portland, which was entered into the record as Exhibit 7 and recommended specific changes in language.

Commissioner Gamba inquired about the comment that the City had already weakened some protections in comparison to the Metro version.

- **Mr. Berliner** replied that he only had the example in the letter which was the combining of the low and moderate habitat value areas, apparently lessening the standard on the moderate and treating it more like a low habitat value.

Dick Shook, 4815 SE Casa Del Rey Dr, Clackamas County, stated he was a board member of the Friends of Kellogg and Mt. Scott Creeks Watershed and served on a number of other conservation boards and committees, but he was representing himself as an individual citizen. His piece of property in unincorporated Clackamas County was contiguous with Mt. Scott Creek and was directly across from North Clackamas Park. The City needed to move forward with this measure and let some of these details that were more or less individual items work themselves out through regular hearings with the Commission in the future. He urged the Commission to move forward and adopt Code they could work with and refine as needed later. He confirmed that he had been a member of the Natural Resources advisory group and had attended a number of the hearings.

David Greene, 5431 SE Willow St, stated that he owned a 4-acre parcel with a large portion now covered by either HCA or WQR designations. He supported the intent of the Code and the regulations Milwaukie was trying to move forward, but had concern about some of the specifics.

- Regarding the discretionary aspects of the Code, there was a lot of use of the terms “shall” and “must” when it came to what property owners were required to do, but many “maybe” and “may” and “we will consider” when it came to how the Planning Department and the Commission considered variances, cluster development, etc.
- The ordinances and Code in place basically said the HCAs and WQRs were important to the community and the region, but private property owners were being asked to bear that burden for what was seen as a community good. They were not only being regulated but also being asked to pay a number of fees and hire boundary verification specialists and construction managers and natural resource scientists in order to simply move forward with projects that had been planned for some time. The administrative and financial burden of the new Code should not be deemphasized.

- He was concerned with the lightness with which the Commission took to what Mr. Kelver handed out as a potential change to the Code. He was concerned that suddenly now there was a different thought process on larger parcels or larger areas of habitat. He did not understand why additional burden should be placed on larger properties.
- The specifics of the Code had been worked through with the advisory group. As there was a shift away from the base Code that had been worked on for the last 6 to 9 months, the concern was if there was enough public process and opportunity to comment on the changes being considered.

Chair Batey responded that given all the caveats Mr. Kelver raised, she did not believed the Commission would vote on the issue regarding larger parcels tonight. It would be continued for further discussion and further opportunity for comment. She asked if Mr. Greene had a sense of what the burden was on him under the Title 13 model ordinance versus the proposed ordinance.

- **Mr. Greene** replied he did not know the specifics of Metro's model ordinance, he did not know how it would change the affect on his property.

Commissioner Stoll:

- Stated he had made a site visit to Mr. Greene's property, Mr. Greene wanted to do a sensitive development of a portion of his land, which was a good thing as Milwaukie needed to add residential units to meet their Metro goals. The WQR had come through years ago, and now the HCA expansion was coming down. Mr. Greene had expressed concerns about what would happen in 5 years and if there would be another set of regulations.
    - **Mr. Greene** stated that was correct, and he had raised this issue during the advisory meetings. If he continued to plant trees on his property, expanding the habitat area and another survey was done by Metro in the future, he might further degrade his ability to development his property. Adding trees along his property line might also impact his neighbors further. The people who were involved currently understood the intent, but there could be complete staff and commission turnover in 5 years. This was counter to protecting some of these places as it tended to force people's hands to develop sooner.
- Stated there were 7,500 tax parcels in the city with about 500 being affected by the WQR and an additional couple of hundred by the HCA. The burden of protecting and regulating the watersheds fell on 10% of the taxpayers in the city. It did reduce the ability to do what one wanted on their property and it did somewhat reduce the value of a property. There should be a property tax reduction from the City for complying with the regulation, and there

should be a modest tax increase for the remaining 90% of the citizens to make up the lost revenue.

- **Mr. Greene** responded that he did not know that property tax was the right vehicle, but it was important to point out that the property owners were providing what was a public good and they were not being compensated. They were being asked to jump through more administrative and regulatory hurdles.

Chair Batey noted one question sent by email from Vice Chair Harris was if Mr. Greene had any idea how these rules impacted his real estate value.

- **Mr. Greene** replied he did not have specific numbers. Basically, the development potential for the one acre parcel in the southwest corner has been pushed essentially up to the top of the hill in a pretty small area. There had been some attempt to address that with the cluster development concept.

Commissioner Gamba:

- Asked what Mr. Greene would change in the way the Code was currently written to address his concerns.
  - **Mr. Greene** responded that his biggest concern was the discretionary aspects of things like variances and cluster development. The onus was on him to move through the review and Commission process in a Type III process of some sort. There were no specific allowances in the Code. There were attempts to identify possible solutions and avenues to pursue, but there was a pretty big discretionary process. The Code language should be more definitive.
  - **Ms. Mangle** noted the Type III review for residential cluster development had been the specific request of the Commission.
- Asked if the cost of the various levels of review was the issue, or the extra amount of work it would take to move through the process.
  - **Mr. Greene** replied it was both. A lot of it was just his time or the cost to pay a developer to move through the process, hearings, and review. The fees could be substantial as well. He did not know if there was an opportunity for the City to provide some of the boundary verifications and various other things for property owners working to protect their HCA and WQR, but this would be an avenue to minimize the additional impact.

Jeanne Baker, 2607 Monroe St, Milwaukie, made the following comments:

- On 5.1 Page 3 of the packet, the question, “What is ‘disturbance’?” was pretty clear except for the tree replacement options on 5.1 Page 30. In Option 2, it stated so many shrubs and trees had to be put in for 500 sq ft of disturbance area, but it did not stipulate if that was temporary or permanent, and that should be clarified.
- On 5.1 Page 30, the over 30-in trunk (Table 19.402.11.D.2.a) had been changed from 25-in; but in Option 2, it was still the old numbers.
    - There was also a distinction between the disturbance area and the number of trees removed. This was good, but it still neglected the size of the property. One thing that seemed to be a goal was to develop with some sensitivity to the topography and the individual land. When a mechanical number was being used without regard to property size, it could backfire later in overplanting.
    - The idea of getting instant replacement of the whole canopy was an important consideration, but she believed they could wait and use more judgment. She had suggested using “practical”, but that was stricken. Some planning methodology was needed rather than just doing tree replacement by the numbers. The property’s size must be considered.
- There had been a lot of improvement in the way Type II reviews had been modified by the exceptions. However, on 5.1 Page 14 in the Type III review, “development activities” in subdivisions needed some adjustment/explanation. "Development activities" was a vague term.
- She admired how the City had really responded to complaints, suggestions, and questions. There was a good planning process underway, and even though she did not like everything she saw, she admired the process.
- On 5.1 Page 16, B. Limited Exemptions, anything more than 150 ft required a construction management plan, and then on Page, B.2, everything was subject to a construction management plan regardless of size. This seemed to be a conflict.
- On Page 21, D.3, the minimal impacts was excellent in scaling things down. When a big planned unit development or cluster development or anything like that got to go in under a Type III review and tiny little projects had to meet the same thing, it just did not seem practical. There needed to be an exemption for the miniature project. If an existing property owner wanted to move one foot closer to the resource they would not be allowed, but a new development would be able to do things to get closer to the water than some of the existing homes.

- She stated that the same review was required to move one foot as was required for a whole planned unit or cluster development. The amount of work required for a very small project was huge. Mr. Kelver had advised her that an engineering report was needed which was a couple of thousand dollars, in addition to a couple of thousand dollars in fees to the City, plus building permits, etc. Essentially, the regulations were not addressing any differences in scale between a large developer or a whole new building and an individual homeowner doing a minor addition.
- Homeowners would have to expend a huge amount of money to make any modifications to their homes. She agreed a review was still necessary, and the Type II review had been good at looking at the need for smaller projects, but more needed to be included. The Type II review, engineering reports and proving the case were all good, but to have to pay double engineering fees was not good.

- She appreciated that the City and the Commission were taking time to do this right.

Christopher Burkett, 4512 SE Ryan Court, Milwaukie, distributed a 2-page letter dated April 12, 2011, which was entered into the record as Exhibit 11, as well as pictures of his commercial and residential properties, entered into the record as Exhibits 9 and 10, respectively. He noted the driveway of his studio property was a WQR, perhaps because of the City's culvert going underneath it. On his residential property, 85% of the potential landscape area was considered either WQR or HCA. He had talked with Bryan Harper of Metro who had made it clear that Metro was comfortable with the way Milwaukie was progressing, and there was no time pressure. He read his letter into the record with these additional comments:

- The home exemption clause in Metro's model ordinance included a large number of things that would be prohibited by the regulations being considered by the City.
- Cutting any 4-in diameter living tree would require a full Type III review by the Commission and cost $1,700 plus a possible $2,000 resource review. Metro's model ordinances allowed the prohibition on tree cutting be limited to WQR areas with severe restrictions on tree cutting not being applicable to HCAs.

Ms. Mangle clarified that the definition in Section 6.28.020.C was an existing definition and was not a proposed change.

Mr. Burkett stated this would still apply, because it basically said if one had muddy footprints, there could be some erosion. It was pretty wide open.

Commissioner Stoll understood Mr. Burkett was saying that the current restriction in the WQR was too prescriptive.

Ms. Mangle clarified Mr. Burkett was referring to that the erosion control policies that were not WQR, but a separate title in the City Code.

Mr. Burkett responded that it was a catchall thing, but it seemed that it stated that whenever there was potential for erosion, a permit could be required.

- If tree removal involved ground disturbance of any size, the permitting process was automatically bumped up for review. If a small tree was cut down and only 16 sq ft was disturbed to deal with the stump, it would be automatically bumped up to higher level of review.
- In his study of all the different regulations, Metro's guidelines, and some other jurisdictions, some other jurisdictions were less detailed but they did not have that awful word "activity" in terms of prohibitions; they were more generalized, but did not prohibit anything that was not mentioned.
- The proposed regulations were much more specific and still used the catchall phrase covering any type of activity, which left the door wide open for any kind of restriction. This was consciously done 8½ years ago. A woman had asked if she could remove large cottonwood trees from the WQR area and was told she could maintain her landscape plantings and cut small trees and shrubs. That Planning Director knew tree cutting was not specified in the regulations, yet were intended to be applied. If the City wanted to prohibit something that dramatic, it ought to just be written in there instead of pretending it did not exist.
- He had discussed the Portland Japanese Gardens with Mr. Harper as the Metro maps showed them completely exempt from any HCA regulations.

Chair Batey verified that all that was green on the photos was WQR, and this new regulation had no additional impact on his commercial property.

- **Mr. Burkett** replied that was true because there was not HCA, but there were still additional restrictions. He was not complaining about that property, because it was wild and pretty much kept that way with all native trees, a stream, and an artificial pond the City made years ago. Aside from being unable to extend his garage, it was really not a

problem. The real issue was the landscaping that had been done for 80 years on his residential property.

- He confirmed he had not had any problems or been prohibited from doing things due to previously approved regulations. They were very conscientious and did not use poisons or produce any runoff.

Commissioner Gamba:

- Stated Mr. Burkett had noted Metro had already made the exception for homes and landscaping. He asked which specific things that were proposed would Mr. Burkett prefer be exempted.
  - **Mr. Burkett** stated the proposed document included the intent, which was stated very similarly to what Metro had as exempt, so it simply needed to be the same kind of wording put into the exempt category. The document stated that was the intention, but it was not being implemented. He would take out the word "activity" in the prohibited uses, because it still covered new structures and development. Also, 5.1 Page 15, 19.402.4.A.1 talked about if one already had a building permit, they could keep building. Metro referred to something already built and not just a building in progress. That was the home exemption.
- Asked if the City exempted a fully matured landscaped property, what would keep someone who was not a good steward from coming in and clear cutting their property.
  - **Mr. Burkett** responded that was covered by Metro which stated up to 10% of the vegetative cover could be removed within the original mapped HCA or lot.

Chair Batey asked if Mr. Burkett had talked with Mr. Kelver about remapping his property.

- **Mr. Burkett** stated he had quite a few discussions with Mr. Kelver about the matter.

Commissioner Stoll:

- Had visited Mr. Burkett's property and noted he was a good steward of the property. He understood Mr. Burkett felt that the regulations did not make enough of a distinction between people developing empty land and citizens with already developed homesteads, which might not be fully manicured and landscaped.
  - **Mr. Burkett** stated that was correct, and the definition of development in Metro's model regulation gave more protection to existing homes than the current Milwaukie definition.

Mr. Harper at Metro had said the intent was primarily to regulate new development and not existing situations.

- Noted that under the current classification scheme, Mr. Burkett's property was considered degraded. He assumed the properties along the creek across from and next to Mr. Burkett would also be considered degraded.
  - **Mr. Burkett** replied that Mr. Harper said that was what happened when biologists were put in charge of classifying things.
- Said that calling properties degraded that people had maintained well in the watersheds was not a good way to win support amongst Milwaukie citizens. He suggested calling a homestead with all native vegetation and all native plants and no invasives "ideal", calling a property such as Mr. Burkett's that was exquisitely landscaped and manicured but using many ornamental plants "good", calling currently open lands that had not been developed "wild", and properties like those of neighbors who did not take care of their property "degraded".
  - **Mr. Burkett** stated calling his property degraded showed the biologists' mentality. This was not the only round of regulations; he was here 8 years ago saying the same thing, and now there were significantly stiffer regulations. This was a creeping thing that was taking over property. It was very important to include something in the regulations that specifically protected one's ability to take care of their landscape as opposed to having it taken away year by year by year.
  - He appreciated the Commission having this process, adding that staff had been very good throughout the whole thing.

Chair Batey called for a brief recess, reconvening the meeting at 8:54 p.m. She closed the public testimony and called for any additional comments from staff.

Ms. Mangle explained that Mr. Kelver's comments would focus on addressing many of the questions raised by some of the people who had testified tonight. Staff had been working on this for 2½ years. Many players had changed including members of the Commission. Something staff had received direction early on from the Commission and City Council was their broader strategy of building on the WQR code. There were obvious, egregious problems with it that staff wanted to fix, but they did not go through and question every assumption. If the Commission identified some specific things that needed to be renegotiated or reworked, that should be focused on.

Chair Batey stated when Mr. Kelver finished his comments they would put a list on the board of all the outstanding issues.

Mr. Kelver addressed the following points heard during public testimony:

- Regarding the difficulty revising the map, he agreed with Mr. Burkett's assessment that someone trying to have their property reassessed in terms of the HCA values and locations would not be easy. All the analysis that went into that process by Metro had to meet certain rigorous criteria, and a property owner wanting a reevaluation would have to go back through a similar process.
    - There were specific features on the Precision Castparts site, such as a driveway, walkway, or some other kind of developed feature where small corrections had been made.
    - The citywide revisions focused on edges of the HCAs in terms of where it seemed important to trim some things away.
        - On the Burkett property, there was a concrete circle-looking feature in the middle of the property which was clearly not habitat so it could be taken out. The feature that appeared to be a walkway near the driveway would get shaved out if it was impervious. The citywide revision did not get into this level of detail.
- A Type I review existed for tree removal. If the tree removal was not exempt because it required some earth disturbance, it was worth considering that an exemption be included in the outright exempt category for tree removal if it could be done with less than 150 sq ft of disturbance, if that remained the threshold.
- The 4-in size tree definition did not sound entirely consistent with other jurisdictions, as 6-in was the number used. The Commission could consider making that amendment to that definition.
- With respect to the 1:1 tree replacement requirement, if it was not involving development as well as other mitigation options, it was suggested to move to a 1½- in caliber size. As far as survivability and rate of growth, if the Commission could consider lowering the caliber to 1 in or ½ in, or including some provision for a certain caliber or height to allow for a more consideration of species, because different species of trees grew at different rates.
- The one particular erosion control provision was included in the packet of changes primarily because staff was trying to be consistent with references throughout the rest of the Municipal Code, so WQR regulations were changed to natural resource rules.

- The inclusion of the word "activity" was intentional in the prohibition section. Rather than listing everything the City did not want people to do, this was set up so they were as clear and specific as possible about the things that could be done and in particular what levels of review were required. If it was not found in the list, it could probably not be done.
- There was a gap with regard to tree removal in terms of the process step. The path to tree removal could be found in the exempt category, which was limited, and the Type I path which was specific and limited. Currently, if there was not some kind of an emergency situation that would require tree removal, a property owner needed to go directly to the Commission. Staff had tried to identify some specific reasonable situations where one could be exempt or go through a lower level review.
    - For certain situations such as that of the Burkett's where a lot of the property was in a resource designation, most of the property was already landscaped to some degree and the day-to-day management of the property could involve tree removal, there was not currently a clear or easy path. There could be a difference between WQRs and HCAs with regard to tree removal.

Commissioner Gamba asked why staff had moved away from the Metro language exempting current landscaping with some caveats of not more than 10%.

- **Mr. Kelver** answered that a sound majority, 25 or 30, of other jurisdictions in the Metro region had some kind of tree protection ordinance on private property. With the exception of regulating tree removal in the public right-of-way, it has been the only place for some limited protection for trees. It seemed reasonable to include tree protections within the designated resource areas because a significant part of the HCA inventory was involved.

Chair Batey stated Section 3B of the Title 13 model ordinance said, "Where construction of residence was completed before adoption date, owner shall not be restricted from engaging in any development that was allowed prior to adoption date." She asked if development meant tree cutting, trees and other landscaping activities, building onto the house, building an outbuilding, etc.

- **Mr. Hall** responded there was an exemption in the draft Code for landscaping, so they were dealing more with the tree cutting issue specifically.
- **Mr. Kelver** stated that early on in the process, there was a conversation about how to potentially administer or handle that kind of exemption, and how easy it would be to evaluate on a property-by-property basis. It did not seem appropriate after all the inventory and

recognition of some habitat resources on these properties to say a property owner could basically go ahead and do whatever they wanted as long as they did not scrape the house off and build a new one.

- **Ms. Mangle** added that only 20% of Milwaukie's HCAs or WQRs were actually in private ownership; the rest were parks, schools, and fully developable public lands as well. There had been as much skepticism in Milwaukie about that kind of development as anything else. In terms of the strategy, there were more questions about how Section 3B would be implemented than the language answered. Staff tried to be very specific about what that would mean in Milwaukie.

Mr. Kelver continued addressing items heard during public testimony as follows:

- All the definitions provided in the model Code were fairly specific to Title 13 whereas the definitions they were dealing with pertained to the entire Zoning Code, so by nature, they were a bit more general. He would be hesitant to make the current definition of development too much more specific to deal just with WQRs when it was found over and over throughout other sections of the Code.
  - The model ordinance was a model. It had a lot of structure and elements that Metro was looking for as a minimum for compliance. Metro recognized that many jurisdictions had tree removal ordinances already in place, and the tree removal provisions in the model code were pretty much focused on how they related to development. Room was left for the different cities to implement whatever other tree ordinances they had.
- Regarding the two criteria involved for a Type II review for very small alterations like a small addition to a building, staff did not want to loosen the existing WQR rules, but did recognize there were some areas where it might make sense to provide some flexibility. It was fair for the Commission to consider and discuss whether there was appreciable danger in removing something such as keeping it at 150 sq ft regardless if it was getting closer to the feature or not.
- He reminded with regard to the discrepancy noted in the paragraph under B, Limited Exemptions on 5.1 Pages 16 and 17, that they were in the exempt category that basically had three levels: Outright Exemptions, when no more than 150 sq ft would be disturbed; Limited Exemptions, which were specific provisions for being exempt whether WQR and HCA; and Additional Exemptions, which were only for HCAs. The distinction was because if one was within 100 sq ft of a WQR and within an HCA, it did not matter how much was

being disturbed, a construction management plan would be required because it was close enough to the WQR. The trigger was the distance to the WQR.

  - He clarified that the 120 sq ft in 19.402.4.B.2b came from language in the model Code. The number in 2c used to be 200 sq ft from the model Code, and was standardized by bringing it into the 150 sq ft. It would be fair to make the 120 sq ft consistent.

- Staff could look at the issue regarding the activity chart and how the development activities were labeled. It sounded like it could just be as language issue.
- With respect to what appeared to be a discrepancy between numbers in the chart and those under Mitigation Option 2 on 5.1 Page 30, he reminded these were two different options for tree mitigation. The table went with Mitigation Option 1, 5.1 Page 29, with 10 trees and 30 shrubs required for replacement if the tree being removed was over 30 in. This was deliberately different in Mitigation Option 2, which was a different path one could choose with the standard being 5 trees and 25 shrubs.
  - He clarified the 1:1 replacement was if a property owner just wanted to take out one tree and wanted to know if this was allowed as an exemption, allowed through the Type I process or, as currently, requiring a higher level such as a Type III.
    - He explained that as the Code was proposed, if one tree were removed and another planted elsewhere in a yard, the property owner would technically need to come to the Commission, which was a $1,700 process. The Type III process was a discretionary review process. Mitigation could apply if the tree was in an HCA or a WQR.

Commissioner Gamba asked that the issue about taking into account the size of the property be addressed.

- **Mr. Kelver** explained that Mitigation Options 1 and 2 were not intended to be used for the exempt and Type I tree removal. Those options were part of the clear and objective, nondiscretionary Type I process in place specifically for HCA-related disturbance. This was one feature of Title 13 that if not included, the City would not be compliant with Metro. By asking for special consideration, one could not be in the Type I process, because discretion was being requested. One way to address the issue was to establish a clear and objective standard involving some kind of percentage of tree canopy per the area or something similar.
- **Ms. Mangle** clarified that the concern raised applied to both homestead properties and properties undergoing new development.

Mr. Kelver agreed that more clarity was needed with regard to 19.402.1.C.8, "Preserve existing native vegetation against removal and replacement with lawns…" on 5.1 Page 11, and 19.402.1.E.4, which talked about it not being the intent to prohibit lawn and yardscape planting and maintenance.

- Regarding Mr. Berliner speaking in the context of the Audubon Society letter and issue of the weakening being the combination of the moderate and low, the City combined all three HCA layers instead of designating low, moderate, and high.
  - **Ms. Mangle** noted that compared to many other jurisdictions, most of Milwaukie's HCA areas were already covered by WQR areas.
  - **Damien Hall, City Attorney,** added that the letter from Metro regarding being in substantial compliance with Title 13 stated the options were to either adopt their model Code outright or demonstrate to them that what was adopted was as or more protective.
- He acknowledged Mr. Greene's point about the nature of the discretionary process and if something could be identified, for example with cluster development, to establish more specific standards that would provide more of a guarantee.
  - **Ms. Mangle** stated the model Code did not have that type of development allowed in going to the Commission, so the Commissioners had specifically requested that if more dense-appearing development was happening in the neighborhoods to make sure that it came through the Commission.

Commissioner Stoll:

- Asked if Commissioner Gamba's point that in subdividing larger parcels into 10,000 sq ft parcels that habitat continuity be maintained was currently covered.
  - **Ms. Mangle** stated that was addressed in the proposal Mr. Kelver handed out.
- Asked if there were provisions for enforcement in the proposal if one was being a poor steward in an HCA.
  - **Ms. Mangle** replied if they were doing something prohibited that the City found out about, Code Compliance could be notified. The City had no recourse if they were just not maintaining their land.

Commissioner Gamba:

- Quoted the Metro letter, Page 2, Item 3, "Title 13 requires the removal of barriers to Habitat Friendly Development Practices. In order to determine compliance, please send this

information on new practices you will implement and/or how various elements in your local Codes currently help meet this requirement," and noted that this was the first he heard of this.

  - **Ms. Mangle** replied staff had sent a letter regarding the matter. One thing staff started with was a Code audit Metro had done on barriers to Habitat Friendly Development Practices. Staff believed they had met this requirement given the work on the Transportation System Plan, Parking Code, and others, which was outlined for Metro. If staff found other parts of the Code that were barriers to development, it would be included in the Code package.

- Could think of barriers throughout the City Code that the Commission was trying to address in the other Code work but was not included in this proposal at all.
  - **Ms. Mangle** stated habitat-friendly development was the purpose. As development happened, the City wanted to ensure development was mitigating for improving on habitat, while also making sure people were not being precluded from doing things that were habitat-friendly.
  - **Mr. Kelver** commented that the Code amendment projects focused on the regulatory aspect of the Code. When working on revisions to the Code language, they wanted to make sure the allowance for people to remove noxious blackberries was maintained, for example, and not require a permit or other hassle for planting native plants.
  - **Ms. Mangle** added that some recommendations in the 2006 audit were to expand flexible site design provisions to allow their use within the HCAs, which this Code was doing, and to revise the street requirements and design standards to allow narrow street rights-of-way through stream corridors and habitat-friendly culvert designs, which had already been done.
- Would like to see Metro's response to the City's letter when it came back.

Commissioner Batey suggested making a list of issues for the Commission to consider and discuss further.

Mr. Hall advised that the Commission determine if everyone generally agreed there was an issue and provide clear direction to staff where possible to maximize their time over the next two weeks.

The Commission listed items for further discussion were:

- The 150 ft threshold for a construction management plan as well as for distinguishing one type of review from another across the board.
- High percentage resource parcel division.
- The “feasible”, “practicable”, “possible” language.
- Matching Metro’s definition of home exemption on Section 3B of the model ordinance as far as scope, impact, and differences.
- Tree removal issues.
- The concept of protecting properties for the greater good and putting the bulk of that burden on individual landowners. Consider a fee structure where the fees were lower or zero in an HCA or WQR, and other fees bumped up to cover the lower fees.
    - Consider the danger of getting frivolous applications if there was no burden or fee on HCAs or WQRs.
- Whether a landowner had any opportunity to get their taxes reassessed if their property value was diminished because of restrictions placed on their land.
    - This could be addressed by seeing if the presence of these resources was a factor in the County’s assessment.
- Prohibition language.
- WQR categorization language and definitions.

Ms. Mangle clarified that at this point, the proposal had not changed, so it would be up to the Commission to open the hearing again for deliberations. The Commission had the option to leave the record open and take more public testimony, but as of now, the public testimony was closed and would be closed until reopened.

Mr. Hall added that was at the Commission’s discretion in a legislative matter.

Commissioner Stoll stated there were two ways of viewing the issue, either nothing was permitted except that which was not prohibited, or everything was permitted except what was prohibited.

- He still liked a classification of property where “ideal” was what they wanted everyone to move to if they were comfortable or Mr. Burkett’s property was “good”. The City should ask Metro to change their classifications a bit, because it was a political question to enlist the citizens in the watershed. It was important that property was not degraded. If they could comply with Metro’s requirements and classify the property in such a way that was friendlier

to citizens and the good things they were trying to do, the City would be a lot better off in the long run.

- He confirmed that he was talking about changing "good", "marginal", or "degraded" to some other words, but also about redefining the categories. He also wanted the home exemption to be part of that.

Ms. Mangle commented if such a wholesale approach was the direction, the project would need to start over, and in the interim the Title 13 model code would be adopted. The question was whether the Natural Resource amendments could be accomplished within the framework established by staff, building on the existing WQR Code, and adjusting certain areas to refine the Code and achieve compliance, or an overhaul as indicated by Commissioner Stoll. She reminded about the public involvement to this point that helped develop the current proposal, and added she believed the issues could be addressed.

A straw poll was taken, with Commissioner Stoll preferring an overhaul, and Commissioners Wilson, Gamba, and Chair Batey preferring further refinement.

Chair Batey stated the City had way too much invested in the current proposal and too many people had given their time for two years to start over.

Commissioner Gamba believed that by and large it was really good. He was suggesting tweaking it, because this document was meant to last for a long time, so it was best to get it right now.

Commissioner Gamba moved to continue ZA-11-01 and CPA-11-01 to a date certain of April 26, 2011. Commissioner Wilson seconded the motion, which passed unanimously. [4-0]

6.0 Worksession Items – None.

7.0 Planning Department Other Business/Updates

7.1 Draft Wastewater Master Plan (for discussion on 4/26/11)

Ms. Mangle noted a copy of the Wastewater Master Plan had been sent early so the Commission would have time to review for a brief discussion on April 26.

7.2 April 16 Volunteer Brunch and Fair at the Masonic Lodge 10am to noon
Request for PC representative and group photo

Ms. Mangle requested that a Commissioner volunteer to talk about what the Commission does for those who might consider being on the Commission.

7.3 Library Taskforce Assignment

Ms. Mangle stated a volunteer was needed to serve on the Library Taskforce by the end of the week. Information was available in the packet.

Chair Batey stated she had submitted comments as a citizen to the Council that she believed they were jumping the gun on assuming a bigger library was needed and that reconfiguring the current library was probably enough. Although she was probably not the volunteer they wanted, she was willing to be involved if there were no other volunteers.

7.4 PC Letter for Kanso Case

Ms. Mangle stated that Chair Batey had prepared a letter from the Commission to Judge Gray regarding the Kanso case essentially explaining the Code was still being worked on and begging his understanding. The letter was included in the packet, and if everyone agreed, the final version was available for Chair Batey's signature tonight.

The Commission consented to the drafted letter which was then signed by Chair Batey.

8.0 Planning Commission Discussion Items

Chair Batey stated that North Clackamas Park was in the City's Master Plan and was something the Commission could help tweak. She had redlined the document to address her concerns and invited the rest of the Commission to do the same and get in their comments to the North Clackamas Parks and Recreation District before they returned in May or June.

Ms. Mangle asked that staff be kept in the loop so they would know what was going on.

Commissioner Gamba stated he would be meeting with Tonia Burns on Thursday to talk specifically about the creek restoration and some of those concerns.

9.0 Forecast for Future Meetings:

April 26, 2011	1. Public Hearing: WQR-11-01 Johnson Creek Confluence Project
	2. Worksession: Sign Code Draft Amendments
	3. Worksession: Wastewater Master Plan
May 10, 2011	1. TBD

Ms. Mangle stated a public hearing would be held on April 26 on the WQR application for the Johnson Creek Watershed Council. This continued hearing could be held after that and the time available be utilized for deliberations instead of continuing it until May. The scheduled worksessions would be postponed. The Wastewater Master Plan would have to be addressed briefly, as that would be coming up for a hearing also.

Meeting adjourned at 8:53 p.m.

Respectfully submitted,

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

Lisa M. Batey

Lisa Batey, Chair