CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, June 14, 2011
6:30 PM

COMMISSIONERS PRESENT
Lisa Batey, Chair
Nick Harris, Vice Chair
Chris Wilson
Mark Gamba
Russ Stoll

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

COMMISSIONERS ABSENT
Scott Churchill

1.0 Call to Order – Procedural Matters
Chair Batey called the meeting to order at 6:33 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes
2.1 April 12, 2011

Commissioner Stoll moved to approve the April 12, 2011, Planning Commission minutes as presented. Commissioner Gamba seconded the motion, which passed unanimously.

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: Natural Resources Regulation Amendments (cont'd from 4/26/11)
Applicant/Owner: 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 legislative hearing format into the record, noting the circumstances leading to tonight's continued hearing. She gave each Commissioner the opportunity to state their intent to participate in or abstain from the hearing.

Chair Batey declared a potential conflict of interest, stating she owned property in the city of Milwaukie, specifically 2/3 of an acre, currently zoned residential. The property was not in the Water Quality Resource (WQR) or Habitat Conservation Area (HCA), but a large part of it was within the 100-ft buffer zone. The Natural Resources Regulations Amendments under consideration could result in some increase or decrease in the value of her property; however, because the impact, if any, to the value of her property might not be significant, she did not have an actual conflict of interest and was not disqualified from participation in the proceedings.

Commissioner Gamba declared a potential conflict of interest, stating he owned a property in

the city of Milwaukie, specifically 1.2 acres currently zoned R5 that fell entirely in the HCA. The Natural Resources Regulations Amendments under consideration could result in some increase or decrease in the value of his property; however, because the impact, if any, to the value of his property might not be significant, he did not have an actual conflict of interest and was not disqualified from participation in the proceedings.

Katie Mangle, **Planning Director**, stated that Commissioner Churchill had asked her to make clear that he had chosen to abstain from the entire hearings process because he believes he may have a potential conflict of interest, which was the reason he was not in attendance.

- She reminded this was the fourth hearing the Planning Commission had held on this proposal. The WQR Chapter of the Zoning Code already contained regulations that preserved the areas around creeks and wetlands. The purpose of this project was to improve those regulations while also adding additional regulations to address HCAs. Title 13 of the Metro Functional Plan required that HCAs be addressed. Staff had worked on this for 2 or 3 years, along with an advisory group that included natural resource advocates and property owners, to come up with the right balance for Milwaukie. Milwaukie's regulations had to address living in and protecting resources in existing developed urban areas rather than large greenfield development swaths.
- The proposed amendments would continue protecting the WQR areas, and also expand the swath of HCAs to a larger geographic area, adopt a local version of the Metro map, develop new regulations based on Metro Title 13 Model Code to apply to both HCAs and WQR areas, and develop policies that were smart, local, and flexible.
- The proposal would replace the WQR Code with the Natural Resources Chapter, make some small Comprehensive Plan amendments with regard to HCAs, change some Code sections such as Chapter 19.201 Definitions to incorporate the ideas in the Natural Resources section, remove the WQR maps from the Zoning Code, and adopt an administrative map that would help keep the maps up to date.
- The Title 13 Model Code was important for source material for the package, but it was not the only source material. The Title 3 Model Code was a main source for Milwaukie's WQR chapter. The American Planning Association Smart Development Codes had been referenced for how to craft the cluster development.

Brett Kelver, Associate Planner, reviewed the staff report, noting the three key issues for the Planning Commission to consider:

- The current Code included a provision for allowing a Type II Review for small additions to an existing house or structure in a WQR area unless the new addition went closer to the protected water feature. The suggestion had been made to look into whether or not a small exemption could be established to allow very small additions to go closer to a water feature.
- There had been discussion about properties with a high percent of coverage by either WQR area, or more particularly HCA, and if there should be some restriction on dividing the properties or some encouragement that the resource be maintained intact if there was land division.
- A bigger theme was making sure adequate oversight and protection of the resources would be provided without over regulating.
    - The current proposal provided allowances for people to maintain the landscaping they already had onsite. Tree removal had also been called out as a concern, so both some protections and exemptions were included.
    - Certain activities would be allowed outright without need for further review, regardless of whether in a WQR or HCA area. Additional exceptions would allow for a little more disturbance in the HCA areas only, which tend to be further away from the wetlands and creeks.

Chair Batey:
- Noted that Type 1 review included 1:1 replacement and confirmed no replacement was required for exempt tree removal.
  - **Mr. Kelver** explained the idea was if it was exempt, one would not need to come into the City, and the City would not necessarily know the tree was being removed. There was nothing to tie the requirement to an outright exempt activity.
- Asked if it was true that those currently storing things on their property were allowed to keep doing so, but new people could not store junk in the HCA.
  - **Mr. Kelver** responded that under the Prohibited Activities section, there were a couple clear prohibitions, one being storing uncontained hazardous materials outside, and another was the outside storage of materials unless it began before the date that the amendments came into effect. Historical aerial photos might be used, but it could be difficult to determine in every case if what was being stored had been there prior to the amendments, especially if it was a vehicle or something similar that could be fairly easily removed.
- Confirmed that nothing about the language would give somebody a pass on what would ordinarily be acted upon by Code Compliance because of restrictions in different parts of the Code.

Commissioner Gamba:
- Noted that an entire paragraph had been removed in the Comprehensive Plan, as noted on 5.1 Page 129 of the packet, and a lot of that language was good.
  - **Mr. Kelver** responded that at least 1/3 of the paragraph was fairly specific in its language, and it could be that some of those numbers or references were no longer accurate. They had looked at the section with an eye to removing some redundancies and trying to update the language.
- Commented the list of values had some value and did not necessarily need to be struck.
  - **Ms. Mangle** responded that the intent was better described under the new paragraph on 5.1 Page 128. A lot of language in the struck paragraph had to do with community identity, education, and recreation, and it seemed a bit sprawling in terms of the intent by blending cultural and ecological values.
- Stated some of the values included groundwater recharge and discharge, air quality, flood control, water quality, microclimate control, sedimentation control, and noise attenuation. He would not stop a vote over this, but leaving some of these values would be helpful as it informed future generations as to the intent of what the City was doing.
  - **Ms. Mangle** said it seemed like a bit of a laundry list, but it was something staff could retain that would not affect other sections.

Vice Chair Harris believed expressing the City's values was important. He supported retaining the first two sentences.

Mr. Kelver stated the City had received the following additional written comments and material that were not included in the meeting packet with the staff report.
- The additional comments from Pat Russell had been forwarded via email and hard copies were distributed to the Commission. Additional copies were made available for anyone interested.
- Within the last several days, he had fielded a few calls; most sought information about the proposal.
  - Jean Baker had some questions about particular items referenced in the Code, specifically the DEQ 303D list and 6th Field Hydrologic Unit Code.

- Steve Abel with Stoel Rives LLP which represented Precision Cast Parts called to make sure he understood the latest information about the proposal, and he did not think there were any issues that he needed to follow up on.
- Howard Oakes of Lovena Farms wanted to get a handle on what the proposed rules would mean for some of the things that would like to do on that property.
  - The property was right on the edge of Johnson Creek. They were not currently in the city but had done a planned unit development through Clackamas County and were looking to annex to the city sometime in the very near future.
- Craig Lomnicki, 4420 SE Johnson Creek Blvd, was trying to understand what the yellow line shown on the map meant in the proposal. He did not have any resource on his property, but a significant chunk of his property was included within the 100-ft compliance trigger.

Chair Batey stated public testimony had been closed, but there were some people who wanted to testify. The Commission consented to reopen public testimony. It was requested that comments be kept to less than 5 minutes and to items that had been modified in the latest iteration.

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

Jean Baker, 2607 Monroe St, Milwaukie, stated she supported the ordinance and complimented the planners for their hard work and how they truly listened to the arguments. She also appreciated staff's accommodation and understanding the issue of building a small addition toward a water resource.

- One thing that could have been different was holding governments to the same requirements as citizens for the right-of-way. Without that, it appeared that the right to a hearing, reviews, and consideration of important things was lost. As there would be some big projects coming through in the future that would affect rights-of-way, there was a greater need to go back to the way it used to be with environmental impact statements. She did not want any government agency getting a carte blanche.
- She was puzzled as to whether or not the fees for some things would go down.
- She state, "The fact that a neighbor was not allowed to develop all the way to the water's edge provided certainty to surrounding properties and could improve their value." She was not sure anybody wanted to develop all the way to the water's edge. This came under the Fee Reductions section on Page 11 where staff was still gathering information about tax deferments for conservation easements. Such deferments involved a complicated process.
  - The ordinance seemed to put some strong restrictions on some properties such that, if they came out of the County, it would automatically qualify for a change in conservation status.
- Overlay zones were still mentioned, although it appeared they were not going to be on a formal map, which was confusing.

Mart Hughes, 3006 SE Washington St, said he was a conservationist and environmental worker and has lived in the city of Milwaukie since 1981. He had been involved conservation issues as well as in Goal 5.

- He was concerned because he felt they ought to be expanding natural resources to a certain extent. However, he believed they needed to seek a middle ground in order to have good, solid conservation. As a conservationist, he did not think the City was going far enough, and he knew some people in the community thought the City was going too far.
- He believed staff had worked hard on the proposal to come up with a process and product that reflected the community's values. He supported the product before the Commission and

encouraged that a decision that met the middle ground and rejected the extremes on both ends.

Jim Labbe, Audubon Society of Portland, stated the Audubon Society had been involved in the regional Goal 5 work and local implementation across the region for over 15 years. He urged the Commission to adopt the staff proposal and move forward. There were some issues with some of the recent changes especially around tree removal. It seemed like the longer this went on, the more things were weakened from the Audubon Society's perspective, and it would be better to move the amendments forward to City Council.

- One concern regarded the issue of tree removal for dead or diseased trees. There was already a provision for a hazard, so if not a hazard, those trees provided some of the best cavity habitat for 30 species of cavity nesting birds in the Portland Metro area. Dead trees could actually have more habitat value than live trees for certain species.
- There was also concern about the removal of nonnative trees in a degraded water resource area. A nonnative tree could provide significant water resource functions in the form of shade, as well as nominal aquatic habitat benefits in terms of nutrient input. He suggested this be changed to invasive species which they wanted removed and were a negative element. In general, the attention toward promoting and maintaining natives in the HCAs was critical to the overall strategy, particularly in the riparian areas.

Nancy Peterson, 4805 SE Robin Road, Oak Grove, said she owned property that ran 200 ft along Kellogg Creek on the Milwaukie side off Brae St. She had purchased the property in 1989 and had not been able to build on it. She had 3 large cedar trees that were 100 ft tall, and the neighbors would like her to remove them. She wanted to live in harmony with nature while not being in fear of falling branches. In order to build on this property, she wanted to know if she could restore it to what used to be called the picnic grounds on the Filinger Estate. She realized the floodplain would be a restriction, but not all the other added restrictions. She imagined her property was probably one of the few lands along the creek that had not been built on up to the present

Ms. Mangle suggested she call the Planning office and offered her business card. She noted that while some restrictions already existed in the Code, some would be lessened, such as the changes regarding tree removal.

Steve Melnichuk, 4520 SE Ryan Ct, said he has lived on Kellogg Creek for 35 years and was a former physicist with an oceanography background, including shoreline and estuary processes. He and his wife served on the advisory group for this project. He read his statement, "Homeowners Responses to the Natural Resource Project" dated June 14, 2011, into the record, which was distributed to the Commission and entered into the record as Exhibit 23. He complimented staff for the work that had been done, but more work was needed and they should keep people in mind.

Corky Coreson, 3648 SE Licyntra Ln, concurred with Mr. Melnichuk's comments. He noted he was completely unaware of what was going on until he received a letter from a fellow citizen and now wanted to be clear about his comments. He understood that the City had been required by Metro to meet certain standards including an exemption for a grandfather clause, so those who had lived there for a while would not be subject to some of the restrictions, but that the Commission had decided to not allow people to be grandfathered in.

- **Chair Batey** responded that was not exactly what was going on, but basically, nothing proposed would impose any obligations with the use and enjoyment of one's developed property.

- He replied it seemed that if he wanted to add on to his deck, change landscaping dramatically, or remove a small tree, any of these things would be subject to very substantial monetary interests on his part. He would have to pay a lot of money and go through a process to proceed with these items.
    - **Chair Batey** clarified that was not the case with all the things he listed, but it depended on the situation on the property. Tree removal was exempt and that depended on the kind and size of the tree.
- He referenced 5.1 Page 8 Item 4 Exemption for Existing Residences, which stated that the Commission did not favor the grandfather clause. Item 2 stated, "The exemption would apply to most residential properties but not to all, unfairly setting one standard for properties developed prior to 2006 and another for infill development properties, so next door neighbors might have to follow different rules."
    - He specifically opposed the logic of that statement if "unfairly" was used sincerely; that logic was upside down. Someone coming to the neighborhood could make a choice about whether or not they wanted to buy a house in a place with restrictions, but current residents felt sucker-punched.
    - The rules were being changed after the fact, and many citizens would concur with his position

Daniel Cassette, 2502 SE Lake Rd, owned a large lot and a house about 200 ft from the creek on a private road that went down to Kellogg Lake. He knew nothing about this until he received a letter from the City. He also owned a duplex facing the church.

- He had been told that he could not build more than a 2,400 sq ft home, which restricted him from what he had planned for his retirement. He purchased his home in 1975 and planned on building a 4-plex. The restriction to 2,400 sq ft would financially set him back, and who would pay for that? He had owned the property for years and had paid a lot of money in taxes over the years because of the duplex and the vacant land next to his home. It was not at all fair that the City was going beyond Metro's guidelines.
    - **Chair Batey** clarified that the proposed Code did not address whether or not a 4-plex could be built.
    - **Ms. Mangle** offered to speak to Mr. Cassette individually about his property to ensure he had the information he needed as several different parts of the Code applied to regulating the number of units, etc.

Nathan Hobson, 4004 SE Licyntra Ln, stated his property also abutted Kellogg Creek. He also owned an adjacent empty lot, purchased 8 or 9 years ago with the intent of using it as a garden, and one day building on it. Placing additional restrictions on that particular piece of property limited its value. It was currently being used as a garden, and if he did something bigger than 10 ft x15 ft or 150 sq ft, a review would be required. The lot was 17,000 sq ft, and a 10 ft x15 ft section was nothing to put plants in. The property used to be overrun with blackberries, rocks, and bushes, but this ordinance changed what they could do with their property.

- Type I, II, and III Reviews all involved fees. He opposed in principle that the discussion of fees had not been as open as it could have been. Also, the value of properties on the creek would be affected by the ordinance. Like other property owners on the creek, he did not use fertilizer or remove trees and he left a huge buffer for the creek. The owners were just trying to manage their properties. He noted the huge cottonwood trees over the top of his house would have to come down one day, which would entail a big review process and a huge expense.
- It was important to understand that such ordinances impact every individual differently, and consideration must be given to ensure the regulations were appropriate for achieving the goal of having a clean, healthy habitat.

Chair Batey closed the public testimony and called for a brief recess. The Planning Commission reconvened at 7:55 p.m.

The Planning Commission deliberated on the following key issues with these comments:

Homestead Exemption

Commissioner Stoll read the following statement into the record: "As we grow closer to a vote on the natural resources amendment, it's worthwhile to go back to the Metro Title 13 Model Ordinance to see where we started. After Sections 1 and 2 on the intent and applicability of the law comes Section 3, Exempt Uses and Conditioned Activities. This is right on Page 2. Paragraph B is worth reading in full, 'Where construction of a residence was completed before January 1, 2006, the owners or resident shall not be restricted from engaging in any development that was allowed prior to September 22, 2005, unless such development required obtaining a land use decision or a building, erosion control or grading permits.' While the dates are outdated, the concept is not. This is what is commonly known as the homeowner's exemption, and this is currently missing from our legislation. Note it does not exempt activities such as erosion control that were previously required. On Pages 3 and 4, Section 3E details limited types of development, redevelopment, operations, and improvements that are also exempt from the model legislation and lists a page and a half of common sense conditional activities that, when followed, will protect our watersheds. These protections of the people's traditional rights on their homesteads are right at the top of the model legislation, where they should be as the concept that a man's home is his castle is fundamental to our basic liberties, and in two pages of manuscript, our citizens will know all they need to know about the proposed legislation. Twenty or so years ago, the actor, Mr. T, bought an estate in Lake Forest, a tiny suburb of Chicago. He wasn't satisfied with his views of Lake Michigan, so he got out his chain saw and cut some 2 dozen stately old trees down. I think that the legislation as proposed without the homeowner's exemption and the expansive list of conditional uses seems to fear the citizens of Milwaukie as all potential Mr. Ts. Everything I have seen in my site visits including Kellogg Creek and volunteer work along Johnson Creek and Crystal Springs Creek indicates that residents place a high value on protecting the watersheds they are lucky enough to live on. In fact, pretty much since I graduated high school in 1969, I have seen steady progress is protecting the environment and a growing consensus, nearly unanimous in Oregon, that we all need to be good stewards. I believe Milwaukie's new regulations should include Section 3 from the model ordinance, and without it, it would be an unacceptable intrusion on the people's rights. I would vote no on such a proposal."

Chair Batey noted that staff had circulated a purple sheet as a proposal to basically incorporate the Title 13 Model Code.

- **Mr. Kelver** stated the proposed language was drafted in response to Commissioner Stoll's request. Staff essentially took the 2 particular exemptions listed in the Model Code and tried to find an appropriate place to put them in the proposed amendments. Staff inserted the language in Subsection 19.402.4 Exempt Activities and recognized they should create a special category; it did not really fit any limited exemptions within the HCA category, because that included the provision that if more than 150 sq ft was disturbed, a construction management plan was required. The idea was if the activity fit within the HCA category, it would be exempt.

Commissioner Gamba stated that in concept, the homestead exemption sounded good, but not when they started dealing with reality and details. Many other cities had code preexisting Title 13 that did not allow things like tree removal. Saying something was exempt except for

what already existed only continued what Milwaukie was currently doing. Milwaukie had been behind the times as no tree ordinance existed. Things were allowed in Milwaukie that would not be allowed in the rest of the Metro area if the grandfather clause was adopted. They had done a pretty good job in specifically crafting something for the City that was not a rubber stamp for Metro. For the most part, they currently had the right balance.

Chair Batey observed that Milwaukie did not have a tree ordinance, yet it was something that was on the City Council's agenda to address in the next 10 years. Reading the list of exemptions, she considered they could be going too far. If both sides were a little unhappy, they were probably striking the right balance.

Vice Chair Harris:
- Agreed that when both sides were unhappy, the Commission might have found the right balance. He supported the spirit of the homeowner's exemption, but the practicality of it became disturbing. As he understood the supplemental information, there would be an exemption for erosion control, building permits, and grading permits, and that would be bad
  - **Commissioner Stoll** clarified that if an erosion control permit was required before, it would still be required even with the exemption.
  - **Ms. Mangle** stated the best estimate of what would be allowed without any review would be tree removal, erecting a small shed, or new buildings that did not trigger a building permit or erosion control, regrading or land disturbance that did not trigger erosion control, and such things that could include significant vegetation removal.
- Stated the potential extent of vegetation removal was something that had really struck him as well. He had been losing sleep contemplating whether or not they had found the right balance. They had certainly worked a long way toward the balance, and they were close, but an exemption was not a balance. It was favoring rights over the environment.

Commissioner Wilson believed that staff and the Commission had found a balance.

Chair Batey stated that they had created some additional flexibility with the tree removal, but she recalled that the homeowner exception allowed any tree removal and the community was working to preserve oaks. There was a big consensus in Milwaukie about preserving the Three Creeks area and not have the oaks mowed down. It was disturbing to think that someone could cut down an old oak grove on their property. There were many good stewards in Milwaukie, but some were not very good stewards.

Vice Chair Harris moved for an up or down vote on the proposed homeowners' exemption amendment as provided on the distributed purple sheet. Commissioner Gamba seconded the motion, which failed 1 to 4 with Commissioner Stoll in favor.

<u>Tree Removal</u>
Commissioner Gamba said he was squirming about the allowance to remove 3 trees in the WQR; that was a huge compromise. In some areas, if 3 trees were removed, a whole city block's worth of shade would be uncovered. It was a huge nod to people like Mr. Burkett who wanted to landscape their property. They might have gone a little far that way, but he could live with it if everyone else was in favor.

Chair Batey stated they had a list of native plants and asked if they would also have a list of nuisance plants.
- **Ms. Mangle** answered 'yes'; the City referenced the City of Portland's plant list which included native and nuisance species.

- **Mr. Kelver** added that within the nuisance category, some were identified as requiring eradication. These were nuisance plants that had not yet become established, and if caught now, might not become so pervasive.

Vice Chair Harris asked how the 4-in breast height reference for tree removal was determined.
- **Ms. Mangle** replied that breast height was a common agriculture term.
- **Mr. Kelver** noted the definition in Section 19.201 for trees referred to the measurement piece in Section 19.202 which discussed measuring tree diameter. It stated, "Existing trees are measured at a height 4.5 ft above the mean ground level at the base of the tree." Other references to diameter at breast height were included in other parts of Section 19.402.
- **Commissioner Gamba** suggested including breast height in the Definitions and defining it as 4.5 ft.
- **Mr. Hall** suggested adding that 4.5 ft was sometimes referred to as breast height.

Ms. Mangle noted the Code section Commissioner Gamba referenced regarding the removal of 3 trees was on 5.1 Page 34 under activities requiring Type I Review, 19.402.6.B.1.f, which would be the section to focus on if a change to that section was suggested.

Vice Chair Harris confirmed that the exemption for removing 3 or more nuisance trees was during any 12-month period.

Commissioner Gamba understood that 3 non-nuisance trees could be cut down per year within a Type I Review.
- **Mr. Kelver** clarified that 3, nonnative, nonnuisance trees could be cut down per year with the requirement for 1:1 replacement. Everything in the Type I category had the requirement for a 1:1 replacement unless the property owner could demonstrate that they planned ahead by planting a tree in advance or that not enough room existed to plant a tree in that area and expect it to be healthy.

Chair Batey reiterated that she thought they might be going too far. On the other hand, if the City was going to visit the question of a tree ordinance in the next few years, there would be an opportunity to revisit the issue at that juncture. It all depended on the size of the trees. If they were small caliper trees in a dense landscape, it was reasonable, but if they were the 3 biggest trees that shaded a whole area that was another story.

Commissioner Gamba:
- Asked if staff had the opportunity to deny a Type I Review if the trees were too big or important to the habitat.
  - **Mr. Kelver** responded 'no', the point of the Type I Review was to establish very clear and objective standards that one either did or did not meet. There was no real room for discretion, except in the replacement category where a bit of discretion was built in as far as whether or not requiring a replacement tree was important. The default was to require a replacement tree.
  - **Ms. Mangle** stated if this was a concern, one alternative was to limit the size of trees that could be removed under this category and require others to go through Type III Review, which came before the Commission and had a lot of discretion. Another proposal was to limit the fee and not charge the normal Type III fee for that kind of review.

Vice Chair Harris asked if the tree was in a good WQR on a Type I Review, it would be pushed to the next level of review.

- **Mr. Kelver** responded 'yes', that if one did not qualify for that Type I Review, the next step was going to the Type III with the Commission.
- **Ms. Mangle** explained it would be a Type III Review as opposed to a Type II Review because staff felt that in those situations, the level of discretion that would be appropriate would be Commission-level discretion. Even during a Type II Review, staff was still limited to how much discretion they had. A Type III Review would enable the Commission to consider site situations, mitigation plans, etc.

Commissioner Gamba:
- Asked if the calculations could be done based on a percentage of canopy.
  - **Chair Batey** noted that the Model Code referenced 10% canopy, so someone had envisioned measuring things that way.
  - **Ms. Mangle** replied that she was uncertain, but she would look into that; she inquired if he meant measuring by canopy instead of caliper.
- Stated that 3 big trees on most properties would be the entire canopy over a creek area. He would be comfortable dropping the number of trees allowed to be removed down to 1 as 3 seemed like a lot. One tree per year was still significant.
  - **Mr. Kelver** commented that as proposed, the Type I tree removal option was not available in a good WQR area, which has about 80% tree canopy in place.
- Believed they should be more concerned about shade being removed from an area that did not have much shade as opposed to areas with a lot of shade.
  - **Mr. Kelver** responded there were different ways to look at it. They could work to get minimal shade areas into a better condition, or protect the existing canopy in a high level resource from being threatened. It was a good ecological question.
  - **Ms. Mangle** stated the key was that the Commission had to determine its objective. A Type I Review was a disincentive as a procedural step; anytime one had to deal with the City was a disincentive. The review would not guarantee the protection of trees; fewer applications might be submitted, but the ordinance would still allow for the removal of 3 trees per year regardless of the condition of that specific environment.
  - The Commission needed to decide where the line was in terms of City policy and where regulation was the best tool to set a boundary. Then staff could craft the language to fit that by either changing the number of trees or moving things around. There was a range of solutions depending on the objective.
- Was leaning toward either 1 tree or a percentage of canopy. He believed the percentage of canopy could be problematic for staff.
  - **Chair Batey** agreed that percentage of canopy could be problematic. She noted that allowing the one tree to be removed was still in addition to removing those that were dead, diseased, dying or nuisance trees.
- Added it was 1 tree a year, so over a period of 3 years, one could still remove 3 trees if determined to cut down three trees.

Vice Chair Harris and **Commissioners Stoll** and **Wilson** consented to retain the language regarding the removal of 3 trees per year.

<u>Practicable</u>
Chair Batey:
- Stated her dilemma with the definition of 'practicable' was that it was really 2 definitions. It was saying that 'practicable' meant capable of being realized, which was more or less how it was defined in online law dictionaries, in which 'feasible' was used pretty synonymously. Then it referred to whether or not something was reasonable, and not whether or not it was capable of being realized.

    - **Commissioner Gamba** read it differently, that reasonability was a further definition that further defined 'practicable' over 'feasible.'
    - **Damien Hall, City Attorney,** agreed with the concept noted by Chair Batey, but did not see it as a problem. They were trying to find words to define a somewhat squishy concept.
    - Enough terms were included to allow this and future Commissions to interpret the factual scenario before them. People with different views of what 'practicable' should mean within the context of the definition would have debates about what it meant, and it was not perfectly clear, but he did not know if they could get to perfect clarity.
- Foresaw struggling with this issue. There was a feasibleness test and a reasonableness test; perhaps those 2 words should be used instead of 'practicable' which they were trying to make cover both pieces of ground.
    - **Mr. Kelver** stated that as he went through replacing 'feasible' with 'practicable,' he questioned whether or not it was more or less okay for there to be squishiness or a bit of discretion in the context of where the replacement occurred.
    - 'Practicable' was used 38 times in the Code. He reviewed a couple examples of the use of 'practicable' in the draft Code, including 19.402.9.B.6 on 5.1 Page 38 and 19.402.12.B.2.a on 5.1 Page 52.

Vice Chair Harris also foresaw a small problem with the use of 'practicable,' but believed it would be beneficial in that it would spur conversation and prompt people to think outside the box.

Commissioner Wilson commented it was kind of in the spirit of that middle road the Commission was seeking and included the hard stuff and the squishy stuff.

- **Mr. Hall** added that one way to look at it was that it directed the decision-maker to consider that list before considering whether something was capable of being realized. It did not say what priority must be given to any one of those items in the list versus the capability of being realized, and it did not set a hierarchy of those considerations. From a legal standpoint, the City had to have a definition so that when a decision was made, the City could make adequate findings against that definition, so it could be a defensible decision.

Chair Batey agreed to let the issue go.

- She confirmed there were no other issues to address. She stated that she would like to restore the two sentences stricken from the Comprehensive Plan on 5.1 Page 129 as discussed earlier, and possibly move them to the previous page.
    - **Ms. Mangle** also requested that in implementing this direction the Commission allow staff to make sure there was no duplication.
    - She confirmed that the extra section in the supplemental packet regarding lighting was now part of the proposal and did not need to be added.

Vice Chair Harris moved to recommend adoption of the Natural Resource Regulation Amendments, File ZA-11-01 and CPA-11-01, with the restoration of the values that were stricken with the first two sentences of the paragraph on 5.1 Page 129 of the Comprehensive Plan. Commissioner Gamba seconded the motion, which <u>passed</u> 4 to 1 with Commissioner Stoll opposing.

Ms. Mangle explained that this decision was a recommendation to the City Council who would make the final decision after another public hearing scheduled to be held on July 5th. If the hearing was continued, it would be continued to August. She requested that one Commissioner attend the hearing to represent the Commission. Each Commissioner was able to participate as

individuals as well, and if they did so, they should be clear they were participating as an individual as opposed to representing the whole Commission.

6.0 Worksession Items – None.

7.0 Planning Department Other Business/Updates

Ms. Mangle updated the Commission about the following 3 items:

- Another electronic sign application was being processed along the McLoughlin Blvd Corridor on Beta St. She learned about the new application right after reviewing the draft Sign Code that would be brought to the Commission worksession on June 28, 2011.
  - **Mr. Kelver** explained the sign would be located on the roof of the Holman building, near the ODOT historic building, and oriented toward the north so southbound traffic on McLoughlin Blvd would see it.
- Carol Mayer-Reed from the TriMet light rail design team would be talking about walls and fences at the Design and Landmarks Committee's (DLC) regular meeting on June 22, 2011, at 6:30 p.m. at the Public Safety Building. Generally, these walls and fences of the whole Milwaukie area corridor most likely would not trigger land use review; but she encouraged the Commissioners to attend the meeting. The design team might also be talking a little bit more about the bridge. The DLC would also be talking about the Downtown Façade Improvement Program. There were a lot of interesting things happening at the DLC presently.
- Kenny Asher, Community Development and Public Works Director, and she had a good worksession with City Council last week about the South Downtown Concept Plan. She distributed the staff report from that meeting to the Commission. Council directed staff to bring the Concept Plan back for adoption through a resolution, giving clear direction that was the vision that staff, through the light rail and land use planning, should be moving forward. Staff would hold a worksession with the Commission probably in August. At this point, Council was giving staff direction to go do Code and Comprehensive Plan amendments. It would require a big legislative hearing at some point. Right now, especially with the light rail assumptions, it was really important that everyone had the same vision of where the City was going. Until Council took action, the Concept Plan was nothing but paper on a shelf. Some property owners were already assuming that the Concept Plan was the vision and beginning to work toward that vision, which was getting awkward.

Commissioner Wilson asked if there were any changes from what Mr. Asher had presented to the Commission.

- **Ms. Mangle** replied it was the same vision, but there was now a document they did not have that night that elaborates on the process and details. She would send it to anyone interested. The document was also online and would be discussed at the August worksession.

8.0 Planning Commission Discussion Items

Vice Chair Harris clarified that the links he sent out about habitat architecture stemmed from Commissioner Churchill's questions about preventing bird damage on the Kellogg Bridge, which raised the question of what the City was doing to not damage the birds with the bridge design. Certainly, preventative measures would be wanted on the bearing plates to keep the birds from nesting in there, but perhaps some fairly low cost bird houses or a bird habitat could be included in the design. He also found it interesting that LED lighting greatly reduced bird strikes. Bat houses should also be considered. They were simple to make and bats reduce the insect population.

9.0 Forecast for Future Meetings:

June 28, 2011	1. Joint study session with City Council to discuss progress on projects, including the Residential Development Standards project
	2. Worksession: Electronic Sign Code amendments draft review
July 12, 2011	1. TBD

Ms. Mangle explained that the Planning Commission meeting and City Council study session were scheduled to occur simultaneously on June 28th. She would conduct a Land Use 101 training at about 5:30 p.m. The Commission was welcome to attend, but their meeting would begin at 6:30 p.m. The Residential Development Standards project would be discussed. Following the worksession, the Commission would continue with its regular meeting where the draft Code for downtown electronic signs and billboards would be presented. The July 12th meeting would possibly be cancelled.

Commissioner Stoll asked if there would be anything in the Sign Code about informational kiosks in parks.

- **Ms. Mangle** answered 'no'.

Chair Batey stated the Commission had been told in the Spring Park application that it was a sign if it was legible from the street; and if not legible from the street, it was not regulated by the Sign Code.

Meeting adjourned at 8:50 p.m.

Respectfully submitted,

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

Lisa M. Batey

Lisa Batey, Chair