

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, April 25, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Adam Argo, Vice Chair
Sherry Grau
Scott Jones
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
Brett Kelter, Associate Planner
Tim Ramis, City Attorney

COMMISSIONERS ABSENT

Shannah Anderson
John Burns

1.0 Call to Order – Procedural Matters*

Chair Hemer called the meeting to order at 6:30 pm and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

2.0 Planning Commission Minutes

2.1 February 28, 2017

It was moved by Commissioner Jones and seconded by Commissioner Grau to approve the February 28, 2017 Planning Commission minutes as presented. The motion passed unanimously.

3.0 Information Items – There were 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 – There were none.

6.0 Worksession Items

6.1 Summary: North Milwaukie Industrial Area Framework Plan and Implementation Strategy – *rescheduled*
Staff: Amy Koski/Denny Egner

Denny Egner, Planning Director, noted a number of issues were still being addressed with the Framework Plan. He noted a special worksession would be held May 25th and the public hearing was scheduled for June 27, 2017.

6.2 Summary: Natural Resources Approval Criteria
Staff: Denny Egner/Brett Kelter

Mr. Egner presented the Natural Resources (NR) Overlay Zone section of the Milwaukie Municipal Code (MMC 19.402) via PowerPoint. He highlighted the background and approval criteria for the code. Staff addressed several clarifying questions.

Key discussion items and responses to Commissioner questions were as follows:

- Habitat Conservation Area (HCA) and Water Quality Resource (WQR) concepts originated from the Metro Title 13 process. Prior to that, concerns were focused more on water quality and water resources than on wildlife habitat. The HCA considered the relationship between wildlife and riparian areas. Some upland habitats were designated HCA; however, on a regional level most HCAs had some association with water.
- The City had wetland and riparian protections prior to Metro's Title 3 and Title 13, but no wildlife habitat protection. Staff provided a brief history on code amendments made to bring the City into compliance with Metro's regulations, noting the City did not have the staff resources to challenge Metro's mapping. However, some minor adjustments had been made, namely on the edges of existing HCA areas that were clearly developed areas, but not on a property-by-property basis.
- The HCA and WQR inventories were basically the mapped inventory work. The findings that Metro made related to the maps provided the broad justification for each area. The City still had the ability to adjust the maps locally.
- The City's Natural Resource Administrative Map was based on inventory data provided by Metro and adopted after some modifications by the City. The map was the City's inventory and protection map. Insignificant resources were dropped off the map at the regional level, so every resource on the map was considered a significant resource. The map was essentially rolled into the zoning code as an overlay zone.
- The Commission discussed the resource overlay map example in the staff report. Concern was expressed about a building and parking lot being located within the natural resource areas.
- Staff described the differences between HCA and WQR areas and riparian boundaries, noting that the code recognized that discrepancies existed. Developers must have a natural resource expert evaluate the natural resource to see if it qualified as a primary protected water feature. If the expert determined the resource did not need that level of protection, the map would be modified during the development review process.
- The natural resource designations were part of the zoning map, which would be explained if a potential buyer contacted the City about the property. Resource information was not listed on property deeds.
- The zoning code applied to real property, not the public right-of-way, so development within the public right-of-way was not subject to the zoning code or Natural Resource criteria. For example, utilities placed within the public right-of-way do not require a land use application.
- Staff discussed problematic language in the General Discretionary Review criteria related to satisfying the need for practicable alternatives to avoid and minimize impacts to the resource area.
 - Minimizing impacts and mitigation of impacts were often addressed in an application because fully avoiding a resource might prevent a landowner from exercising the right to develop their land, which could create a taking situation.
 - It was difficult to show that no practicable alternatives existed. Further discussion on how to address this issue was needed, including how to determine what was a truly practicable alternative.
 - The avoidance portion of the approval criteria standards was a starting point and gave

the Commission a platform for asking questions about alternatives and put the applicant on notice to explore alternatives.

- To qualify for a discretionary review, the applicant had to file a report prepared by a natural resource professional. The City did not require an Environmental Impact Statement (EIS) for development review. An EIS was specific to the Environmental Protection Act of the federal government. Washington and California have environmental protection agencies that require EIS-like documents for certain projects. Oregon's Goal 5 process was designed and programmed to be easier, more streamlined, and to provide certainty to a developer, which made it easier to develop inside the urban growth boundaries (UGBs).
- The 2008 Buildable Lands Map had recently been updated, but had not yet been adopted. None of the buildable lands should include natural resource areas. Although the sample map presented to the Commission showed two parcels of undeveloped land clearly within the natural resource area, the land inventory calculations would remove the resource area from the amount of buildable land since part of the property could be developable.

Tim Ramis, City Attorney, was not aware of any litigation regarding the term "practicable," which had a slightly different meaning, but was synonymous with the term "possible," but not the term "practical."

Mr. Ramis responded to a comment by Chair Hemer and confirmed that in order to approve an application, the Commission must find that the applicant had met their burden of proof on every one of the criterion, and in order to deny a project, the Commission must tie the reason to one of the criterion.

7.0 Planning Department Other Business/Updates

7.1 Planning Commission Notebook Interim Update Pages

Mr. Egner noted the Sign Code correction pages had been distributed for updating the Planning Commission's Code books. The new [revised] Bylaws were also provided.

8.0 Planning Commission Discussion Items

Chair Hemer reminded that the Visioning meeting would be May 3, 2017 at 6:30 pm. He announced plant sales would be held by the Friends of the Ledding Library, the Annie Ross House, and Milwaukie Garden Club on Saturday, May 13th

9.0 Forecast for Future Meetings:

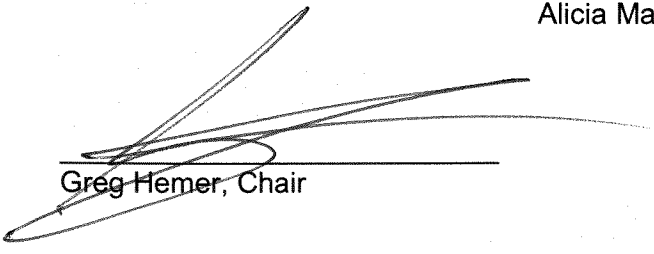
- | | |
|--------------|--|
| May 9, 2017 | 1. Public Hearing: CSU-2017-002 4107 SE Harrison St dance studio/theater
2. Public Hearing: WG-2017-001 10663 SE Riverway Ln addition
3. Public Hearing: HR-2017-001 4217 SE Railroad Ave demolition |
| May 23, 2017 | 1. PD-2017-001 13333 SE Rusk Rd planned development |
| May 25, 2017 | 1. Special Session Worksession: NMIA Recommendation of Framework Plan and Implementation Strategy Variance Training |

Chair Hemer announced that on May 9th, he would be recusing himself from the public hearing on the Railroad Ave demolition due to a conflict of interest.

Meeting adjourned at approximately 8:07 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Greg Hemer, Chair