

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Public Safety Building: Community Room
3200 SE Harrison Street
TUESDAY, June 8, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Scott Churchill
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelper, Associate Planner

COMMISSIONERS ABSENT

Teresa Bresaw

Natural Resources Overlay Advisory Group/Other Attendees:

Brad Smith
Christopher Burkett
Don Jost
Teri Melnichuk
Jason Smith on behalf of Blount
Dave Green

1.0 Call to Order – Procedural Matters

Chair Klein 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 – None.

3.0 Information Items– None.

Katie Mangle, Planning Director, announced that Mark Gamba was appointed to the Commission by City Council last week.

Commissioner Gamba said he had been in Milwaukie 8 years and lives in the Historic Milwaukie district. He is a commercial photographer with a small gallery. He was interested in sustainability and moving planning in that direction.

Chair Klein welcomed Commissioner Gamba.

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– None.

6.0 Worksession Items

6.1 Summary: Joint Session with Natural Resources Overlay Advisory Group
Staff Person: Brett Kelper

Brett Kelder, Associate Planner, explained that this was an opportunity for the Planning Commission and the Natural Resources Advisory Group (Advisory Group) to informally discuss the proposed Code and maps. The Natural Resources Overlay project did not require inventing everything from scratch because some rules were already in place in the zoning Code. The Water Quality Resource (WQR) regulations that covered riparian areas were already in the Code, but the Habitat Conservation Areas (HCAs) were new. The purpose of the project was to meld these items together. He believed everyone was on the same page about wanting to find ways for the Code to encourage, not restrict, restoration and enhancement efforts, while also balancing property owner rights with protections and clarifying that such work is not mandated. The process needed to be manageable in terms of administration, fees, etc. Along with HCA rules proposed and modeled by Metro, objective and clear standards are needed so that every development situation did not necessarily have to come to the Commission for consideration. The new Code should encourage restoration work and enhancement of areas while ensuring that work was being done according to standards.

The Commission, Advisory Group, and staff reviewed the overall goals of the project and discussed the following key issues, also listed on 6.1 Page 2 of the packet, with these key discussion points:

Natural Resource Management Plans: No permits are required in the current Code for standard landscaping maintenance, planting of native plants, and removal of noxious vegetation or invasive non-native plants. These plans applied to those with more long-term ideas that might involve removing trees. Pathways or footbridges were examples of improvements that cause a disturbance beyond what is generally allowed outright. How should the Code be structured so people can do such things? What criteria should be considered?

- The group briefly discussed the construction management plan, subsequent disturbance, and mitigation involved with the Oak Grove Water Reclamation Facility upgrade project which involved the adjacent Riverville Park. Key comments included:
 - There were 2 trees proposed for removal and 5 trees protected. Mitigation included planting 47 trees and 1,333 shrubs with associated ground cover. The mitigation was too dense and would result in the same issues that occurred at Reed College. Mitigation would occur outside the actual impact zone.
 - The project was under County authority and the County has different HCA requirements than the City. The planting plan for restoration of Riverville Park was developed before the HCA application went through, so the County did not apply their mitigation table, but based requirements on the applicant's planting plans.
- The issue regarded having reasonable mitigation levels.
 - In a development context, the same results at the facility would not be achieved using the mitigation table in the draft Code.
- Managing natural resources onsite should not be connected to any one particular table. The property owner should be allowed to propose a tree removal and mitigation plan for their property. This would eliminate using an arbitrary figure from a table or a one-size fits all restoration for the community.
- Putting Natural Resource Management Plans in a different category with separate criteria and processes applying to development was an approach unique to Milwaukie.
 - If mitigation led to an untenable outcome, a discretionary review option provided that approved mitigation could vary in the number and size of trees and shrubs.
- Most cities use the same Metro source document. The mitigation requirements seemed high.

- The mitigation table did not apply to the maintenance process, so thinning of vegetation in an HCA would not require mitigation.
- The Natural Resource Management Plans did not address ongoing maintenance. If a plan is submitted, the City should want to see how that plan will be managed over time.
- Residential applications:
 - A subdivision is 4 or more lots, and must go to the Commission for approval. Page 18 of 32 in the draft Code pushed to put HCA or WQR areas in its own tract. The Centex Maplewood subdivision south of Lake Rd had 2 wetland areas that were separated into 2 unbuildable lots and designated as natural resource areas. It would be different if a stream went through the property and touched each lot.
 - The mitigation table was a starting point, but the developer could propose another formula since the project would go to the Commission.
 - HCAs in backyards tend to be mowed lawns or gardens. Setting aside the HCA as a separate tract owned by the Home Owners Association (HOA) generally meant it would be disturbed less.
 - An alternative was to establish setbacks from the edge of the resource as is typical in partitions rather than subdivisions, which have enough room to adjust lots and density.
 - In subdivision development, much of the review is done at the time of lot creation, so when lots were later sold, the house footprint was already designed with tracts set aside for HCAs and to allow for restoration.
 - Under MCC Subsection 19.322.4, the first exempted item was a building site in a phased development because the applicant had previously met the building permit requirements for that building site. The developer will have created the lots, built roads, set up a mitigation plan, and completed restoration, so the individual lots could be sold and building permits obtained for individual homes on the designated building envelope, as long as they did not further disturb the WQR or HCA. The lots were shovel-ready because the developer had completed the preliminary work and the building envelopes were on the plat map.
 - The subdivision process was a larger disturbance, so it was assumed that tree removal was needed with mitigation addressed during lot creation. When the sites were sold, they had prior approval to remove trees, with mitigation already completed during the subdivision process.
 - Milwaukie has many big lots that were dividable. If an owner partitioned a lot but did no physical development, the lot creation was just on paper and did not trigger mitigation requirements. However, the buyer of that lot would have to complete mitigation and restoration requirements when they begin development.
 - Any required frontage improvements at the time of partition often would not involve an HCA or removal of trees. If trees had to be removed to build a house, some mitigation would be needed.
 - Milwaukie had many vacant lots that could be subdivided. A number of pockets could be subdivided into 3 or 4 lots, but most would be just simple partitions.
 - HCA issues could be addressed during partition and subdivision processes so that each individual lot did not have to go through the process again. It was easier to deal with mitigation when dealing with the larger original lot than with each individual residential lot.
 - The Code addressed cluster development and variances requested on lot size in an effort to minimize the impact. If the Code restricted development, taking away rights and making it harder for owners to deal with their property, something had to be given back.
 - The model Code dealt with cluster development and allowed for onsite and offsite transfer of development rights. Offsite transfers would not be included in the subject

Code because Milwaukie was not set up to handle it; only the onsite transfer of development rights would be included.

- During the subdivision process, the owner could be encouraged to configure the lots around the HCA, allowing more flexibility than normally given a property owner. The total density would not change, but the unbuildable HCA tract was designated and the developer could have flexibility in lot width, depth, and size.
 - The draft Code allowed for up to 30% reduction in lot size, width, and depth. If in a zone that allowed 7,000 sq ft lots, a 30% reduction to 4,900 sq ft lots would still comply. Otherwise, a lot would be lost and the community would not benefit from protection of a natural resource area. The lot size reduction provided flexibility to allow some clustering in order to preserve some open space. The community benefited from preservation of high quality natural resources without landowners losing development potential.
- Policy decisions regarded:
 - How much flexibility is acceptable in a single-family zone without increasing density.
 - What housing types should be allowed on small lots while protecting open space and natural resources.
 - What was the right reduction percentage to allow a balance between how small of a lot was acceptable when considering the single-family zones and other development types.
 - The best lot size reduction percentage had to be determined to allow a balance between more flexibility to preserve resources and acceptable housing types to neighbors.
 - Milwaukie gave the neighborhoods a lot of power through Land Use Committees (LUCs). If lot sizes were reduced and multi-family housing developed, how would it move through the neighborhood process?
- The group briefly discussed how a parcel owned by the Wetland Conservancy was developed through certain negotiations and allowed for smaller lots within the HCA.
- In a subdivision with an HCA, owners had smaller lots but benefited from the developed greenway. Private natural areas could be held by the HOA with a restrictive covenant and conservation easement.
 - Options could be discussed and something added to give the Commission the right to consider other appropriate maintenance arrangements as proposed by the applicant.
- Steps discussed in protecting natural resources:
 - Keep development out of a natural resource area, which failed long term because often people see it as private property, which it is, to do with as they wished. This tended to degrade the habitat value. It might be appropriate in some situations, but this was the least desirable of the protection steps.
 - Establish an open area tract; a good option but ownership could be a problem.
 - Deeding the open space to an HOA to be held in common meant having several different owners, practically guaranteeing that the property would not be managed and maintained, especially for its natural resource value.
 - An HOA might work if held by a legal corporation. However, homeowners typically have no idea what to do, so the natural resource degrades. Organizations such as the Johnson Creek Watershed Council could work with HOAs to develop a natural resource management plan. It was a positive idea, but very difficult.
 - Deeding to a land trust, such as the Three Rivers Land Conservancy, put the open space in the hands of professional land management, which would provide resource protection long term.

- The best option is to let the developer continue to own the open space and dispose of it as they see fit. That decision could be made privately as a commercial transfer to the government or as a donation and done fairly simply.
 - It is more difficult to recapture and manage the property with multiple owners when in an HOA or held in common.
- How should the City encourage owners to set aside and protect HCAs? Incentives are needed so HCAs stayed as they are.
 - An owner had a stack of bureaucracy to go through to ensure he was compensated for developing a property while maintaining the existing ecosystem. The idea was to recognize larger natural resources, and although a donation could not be forced, a greater density in a subdivision might allow the owner to get more out of it than expected, causing him to donate the HCA tract.
 - It might be a good policy to discourage or not accept land subdivisions to be held in common by an HOA and encourage one owner. If the land is not donated, it was still possible to sell it to Metro, the City, or another organization for conservation purposes.
 - There was still value to the original owner/developer who could negotiate a fair market value with an organization wanting to acquire and manage the natural resource. Governmental organizations hire professional appraisers to determine a fair market price.
- Ownership of separate natural resource tracts should be identified to distinguish it from lots intended for sale. A natural resource tract is defined as a private natural area held by the owner or HOA by a restrictive covenant and/or conservation easement. The lot had to be called out separately.
 - After the lot is registered as an easement with the County, the HCA tract is unbuildable. It is shown on the plat map as a separate tract with an easement and held by the owner or HOA. Ownership could transfer, but the property would not become buildable. It could be held by an HOA, but not by the owners in common, which should be made clear.
 - Although undevelopable, an HCA lot adds valuable open space to surrounding properties.
- The advantage of having one owner keep the property is that the owner is usually motivated to maintain it.
 - When a property is conservancy-owned, such as Elk Rock Island, it can result in not being maintained. Once land is transferred into a conglomerate, it can become a weed pile depending on how it is managed.
 - It is difficult for conservation organizations to have small lots scattered throughout the city that are not part of a larger system. Owners like to dedicate property for small pocket parks, but they were hard to maintain unless attached to a larger tract. Groups are now looking at areas such as Milwaukie as a whole and seeking park areas adjacent to other park areas that can be combined.
- Isolated open areas have value, even if in disrepair, as habitat for migrating birds, butterflies, and animals, and as an interface between grasslands and wetlands.
 - A property could have adequate management and proper stewardship by a homeowner with a vested interest.
 - One point of contact was preferred to ownership in common.
- Staff has received complaints from homeowners in HOAs, asking who is supposed to take care of a common area that was falling into disrepair. Some people liked overgrown areas with blackberry bushes for safety reasons because they prevented people from climbing a fence, for example.
- Commercial application. What could be done differently?

- Mitigation is still required whether a subdivision was commercial or residential. An easement may not necessarily be required to protect the mitigation area, but it could be included in the Code as a standard.
- If a new industrial building on a site required restoration to mitigate impact, the mitigation would take place on the site. Long-term protection was not currently included as a Code standard.
- The Panattoni site was discussed as a development that required a lot of mitigation in the WQR area. Conditions on the project included a 3-year requirement to maintain the plants.
- There is not much difference between residential and commercial mitigation improvements when a footprint impacts HCAs. The draft Code has some flexibility to allow reduced setbacks or other adjustments to avoid the HCA area or to reduce the impact by using the mitigation table. These options for flexibility are provided through clear and objective standards or by going to the Commission for a Variance Request. Each property in the HCA, except for WQR areas, was allowed some area of disturbance. WQR areas were stricter.
- Issues regarding Harmony Road Mini-Storage were discussed. The original proposal put the water treatment along Harmony Rd, which then required fill in the back because the project encroached into the creek banks.
 - There should be flexibility to keep the development close to Harmony Rd and place water treatment in the riparian area at the back of the site.
 - There was also interesting habitat, including oak trees and an uncommon wildflower called dogbane. The first thing the developer did was cut down the large oaks and sequoias. No natural resources management plan existed at the time. It did not appear that the developer was working in good faith with the resource value of the site. It was proactive development without any review.

Tree Removal

- Trees not in WQR areas could be cut down. The City restricted tree removal in WQR areas approximately 50 ft from a stream and in the right-of-way. No other type of tree protection exists in the City for private property. The proposed Code would add tree removal protection to HCAs.
- The original HCA maps were completed by taking pictures from planes. While it seemed that anything green and bushy was designated an HCA, more analysis had been done.
 - HCAs did include areas of blackberry bushes and other invasive species, as well as the street in front of the Waldorf School. Communities should use common sense to determine which HCAs were supposed to be on the map.
 - The current Code included a table of water features and distances in terms of protected buffers. HCAs are based more on inventory, but did consider proximities to streams or water features. The resource decreased in value moving away from the water feature.
- Efforts were being made to correct the original GIS maps. A methodology was outlined in the draft that provided a process for map correction if a designation was made in error.
- Most map correction processes were an attempt by private owners to minimize the HCA boundary on a property. Metro was unable to answer or address why more areas of Dave Green's property and the school district property did not have a broader HCA area mapped south of Willow St.
- WQR regarded only slope and distance from the stream or wetland and had nothing to do with vegetation. HCAs mostly involve low structure vegetation and the distance from a protected water feature even on developed land.
- The HCA process did not appear to be a land grab by Metro, and Metro was not trying to purchase the HCAs. Riparian, habitat, and other natural resource protections are called out

in State Planning Goal 5 under the Oregon Administrative Rules (OARs) this process is something all local Oregon governments go through. Metro is doing this on behalf of the region.

- The HCA program has a regulatory aspect, which the draft Code addresses, as well as a property acquisition program and public education. This project is really about how Milwaukie can save the salmon, and talk to developers about being softer on the land. There was a regulatory aspect, especially with the timeline Metro is requiring of the City, but staff is focusing on natural resource management in a meaningful, responsive way that does not make the City the bad guy.
- The tree canopy in Milwaukie is thinning. No City tree ordinance regulated tree cutting on private property unless the tree is in a WQR area or right-of-way. The Advisory Committee had discussed the role that shade, woody debris, streams, and the flood plain play in natural resource quality, and noted that in WQR areas it extended to tree removal as well. They discussed size of trees, safety concerns about a tree that might fall, and identifying how a downed tree in a resource area could be removed without causing earth disturbances.
 - In WQR areas, even invasive trees had to be reviewed by the City before removal. The Advisory Group discussed what size limits of invasive trees could be removed.
- Ongoing Issues 6.1 Page 4, Item 8 discussed the removal of vegetation to preserve view corridors. The current Code had a potential for conflict between WQRs areas and Willamette Greenway(WG) areas, in which views to and from the river were a consideration.
 - Should the WG and its consideration of view corridors trump major pruning or removal of trees in WQR or HCA areas?
 - Currently, the Code is set up so that WG protections or maintenance trumps WQR area rules, so a tree could be removed in a WQR area to maintain a view corridor. This seemed backwards because a WQR area should perhaps weigh more than a right or requirement to provide a view on the WG. The WG and downtown were the only areas with view corridor protection.
 - View corridors to the river were important in the development of the Kellogg Wastewater Treatment Plant. The river was a natural, calming resource and nice to see. It would not be good to have regulations change to forbid trimming bushes that obscure the river.
 - At Riverfront Park, the desire was to preserve some area as more of a natural habitat to provide a direct link between water and upland habitat, including tall trees for birds to nest in.
 - Some view shed should be allowed, but an entire area of trees should not be cut.
- A Type I Review required an arborist's confirmation. The City does not have an arborist on staff, but has a list of arborists on call.
 - Occasionally, the City expects a homeowner requesting a tree removal permit in the right-of-way to hire an arborist to demonstrate that the criteria have been met. Removing trees in the right-of-way required information provided by an arborist about the tree's health and whether it presents a hazard. City staff could hire an arborist to confirm findings by the homeowner's arborist.
 - Perhaps a fee could be structured for the application to cover the City's cost to hire an arborist. Arborists carry liability insurance in case a tree falls over for various reasons after inspection. The City is aware of the liability issue and also carries insurance.
- Anyone living in an area with a view of the river would not want to clear cut their lot and would maintain the health of the trees.
- No conflicts exist regarding landscape planning and ongoing maintenance in WQR areas.
- Currently, trees in the WQR area could be pruned or cut to maintain the view corridor. Should that be different? The issue was about developers being able to prune or cut existing

trees in a WQR that affect the view corridor. What degree of pruning should be allowed? Light pruning was different than removing a substantial amount of canopy.

- The conflict regarded new development. New view corridors could be created in the WG but other sections of the Code protected trees within the WQR.
 - When one buys a lot screened from the river that is what they get.
- An ongoing concern for one homeowner was that old trees could not be removed without planting others or it would mess up the landscape design. Regulations said that landscape maintenance was exempt, but that was a big topic. Most of the trees were non-native, so if an Oregon Ash fell down, was it treated differently than a magnolia tree?
 - If a tree is not on the plant list as an invasive, nuisance, or prohibited plant, then removing it even if non-native would require some review. If the tree had fallen and could be removed without disturbing the earth, then it was exempt.
 - Currently, significant tree pruning in the right-of-way was defined as more than 20% of the tree canopy or more than 10% of its root area. The draft Code's definition should be similar to the current definition.
 - Ongoing maintenance should not require significant pruning because no more than 20% of the canopy should be removed, so it would continue to be exempt.
 - Current WQR area rules said that if a tree was not an immediate danger to life and safety or a prohibited or nuisance tree, then it needed some degree of review before being removed from a designated area. The City wanted an arborist to determine if a tree was at the end of its practical life.
 - An ongoing maintenance plan should be crafted to identify trees that should be removed, which could be done with a minimal level of review.
- Exempt trees should also include trees removed or thinned as part of the Natural Resource Management Plan. Staff clarified that a general exemption exists for all activities that occur under a Natural Resource Management Plan.
 - The description of invasive nuisance trees was too limiting. A better term was any non-native tree. It was more important to conserve native communities, which are assemblages of trees and shrubs that tend to be very unique associations. Non-native trees disrupt the native communities tremendously. A non-native tree inappropriate to a site should not be protected by institutional language that is contrary to good stewardship. Anything non-native should be able to be removed at any time, particularly if conservation is the focus.
- The phrase "limit of 3 or fewer" did not identify tree size or size of property. A percentage of canopy cover was a better. If there were 3 trees that created significant cover for the creek, it would affect water temperature if all 3 were suddenly removed.
 - Most Codes set a 6- to 8-inch minimum caliper to identify trees.
- Any non-native tree, even if not invasive, impacts the ecological canopy. All vegetation and trees provide stormwater, water retention, and shade benefits. Cutting down a 30-in Sequoia removes a lot of tree cover. The regulations were originally about water quality, not about blending in habitat. The question was whether to be stricter in protecting native trees. There were some nuances to consider, but the intent was to have a more flexible process.
- One goal is to identify what can be done quickly and easily when a property owner calls staff, so that staff can just look at the Code to decide what action to take. More nuances added complexity, requiring a review, site visit, etc., to evaluate coverage and canopy. If it met certain criteria, it was exempt, but beyond that more time and resources were required to evaluate the situation.
- If new trees were planted to replace a sick tree and the sick tree is removed, no additional mitigation is required. The Advisory Group discussed requiring 1:1 replacement or a ratio of inches diameter for mitigation, unless the owner justified why it should not be done, such as a tree being planted before removal of the sick tree.

- This does not exist in the current Code for trees in the right-of-way. Every time a tree removal permit is approved, staff could not require the planting of a new tree.
- Was it possible to create a procedure that allowed for a painless tree removal process for the conscientious homeowner, with the government being a helpful entity while still drawing a hard line to stop the person wanting to clear cut their land?
 - That spirit had motivated the Natural Resource Management Plan.
 - It was difficult to know which person was requesting the tree removal permit. If the initial process did not require a lot of time or cost and was done well, staff should be able to establish which type of person they were working with.
 - Another key was whether staff could use common sense when the property owner requests a permit, or have to defer to a rigid law. Common sense and knowledge during the review process from the beginning would be very critical.
 - In writing code, legal limits also exist regarding how much “common sense” staff can use. Staff was trying to craft review processes while working within the confines of legal abilities to be discretionary. If it was non-discretionary so that the same rules applied to everyone, then the process could be cheap and easy with checklists. But highly discretionary items come to the Commission for a decision. Staff spent a lot of time trying to figure out how to get more done with the Type I and Type II Reviews. Developing clear and objective criteria for simple things like tree permits and using more “common sense” would be very useful and supported by staff. However, State law requires public notice be made with regard to discretionary decisions to allow for public comments.
- Draft 2 included a placeholder for feedback about language still needed for tree removal permits within HCAs and WQR areas before preparing the hearing draft.
 - A landowner with an approved Natural Resource Management Plan in place could do a number of things, including removing or replacing trees because that plan’s actions are exempt.
- Should the Type I application be expanded or was it a good starting place for the hearing draft?
 - A Type I application was a one-page application with a 7- to 10-day turnaround. Staff could make a decision in the office if an applicant provided good information with clear photos and an arborist’s report. If staff disagreed with what is presented, they go to the site.
- If not expensive, it would benefit the City and landowners to require that all properties along stream corridors have a Natural Resource Management Plan in place. It would be nice to have the Watershed Council working with a group of property owners along a stream corridor to consider the resource as a whole.
- It was important to know how the City did outreach to get the best management practices to property owners along HCAs and WQR areas. That communication pushes the landowners where desired without having to drop the hammer.
- The City is very supportive and appreciative of the new North Clackamas Urban Watershed Council, but more support would have more impact.
- Under the “Exempt” section was the suggestion to allow removal of downed trees if it could be done without further disturbing the earth. If a tree that went down into a creek, removing the tree would be allowed as an exempt activity as long as there was no excavation, stump grinding, or backhoe work to get it out.

Ms. Mangle concluded by saying that staff was still working to incorporate feedback into the draft Code. She invited everyone to email any specific feedback to Mr. Kelter. Worksession would be held with the Commission in August to which the Advisory Group would be invited. Hopefully public hearings would be held in late fall.

- An open house is planned for the larger community, but not just about the Code. Staff hoped to expand the event to include broader management and stewardship practices.
- A firm date has not been set for the final draft. Draft 3 should be ready by the end of July. Draft 4 would be the hearing draft presented in August/September.

7.0 Planning Department Other Business/Updates – None

8.0 Planning Commission Discussion Items – None

9.0 Forecast for Future Meetings:

June 22, 2010 1. Public Hearing: WG-10-01 19th Ave Replat & Duplex

July 13, 2010 1. Public Hearing: WQR-10-02, CSU-10-06 Pond House Deck
tentative

2. Worksession: Review Procedures Code Project briefing part 2

Ms. Mangle reviewed the future meetings. Staff wanted to ensure a quorum for the June 22nd meeting; Commissioner Batey would not participate and Vice Chair Harris would be out of town.

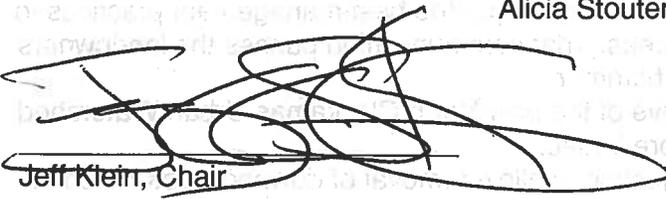
- The July 13th public hearing regarding the replacement of the Pond House deck was now certain and no longer tentative.
- She confirmed that the rezoned property on Lake Rd had submitted their land partition and were talking with the City Engineering Department about whether they could save the tree by designing the street around it. The applicant was willing to do so, but was determining if it was technically feasible because the tree's health was important. The project was moving forward.

Vice Chair Harris offered to adjust his vacation time to accommodate attending the June 22nd meeting if needed.

Meeting adjourned at 8:58 p.m.

Respectfully submitted,

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


Jeff Klein, Chair