



PLANNING COMMISSION MINUTES

Meeting held online via Zoom
www.milwaukieoregon.gov

December 8, 2020

Present: Robert Massey, Chair
Joseph Edge
Amy Erdt
Greg Hemer
Adam Khosroabadi
Jacob Sherman

Staff: Laura Weigel, Planning Manger
Vera Koliass, Senior Planner
Justin Gericke, City Attorney
Steve Adams, City Engineer
Brett Kelper, Associate Planner

Absent: Lauren Loosveldt, Vice Chair

(00:00:06)

1.0 Call to Order – Procedural Matters*

Chair Massey called the meeting to around 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>.

(00:01:06)

2.0 Planning Commission Minutes

2.1 **Chair Massey** asked the Commission, did anyone have any corrections or suggestions to the October 27th meeting minutes.

Chair Massey had a correction to 2.1 and 2.2, which were bolded during the meeting report. It said, "Commissioner Hemer motioned to approve the minutes as amended, Commissioner Edge seconded the motion." He believed that needed some clarification, "Commissioner Hemer recommended a motion to approve the minutes. That motion was seconded by Commissioner Edge and subsequently approved by the Commission."

Commissioner Edge recommended approval that the Commission approve the minutes as amended from October 27, 2020. Commissioner Sherman seconded the motion. The Commission approved the motion.

(00:03:06)

3.0 Information Items

3.1 No information was presented for this portion of the meeting.

(00:03:17)

4.0 Audience Participation

4.1 No information was presented for this portion of the meeting.

(00:04:05)

5.0 Public Hearings

5.1 Summary: The purpose of this continued hearing was to consider a proposal for a multi-family development consisting of four residential buildings, a community center with a swimming pool, and a community room built over three phases with 100 units. The proposed development was being submitted as a planned development application to provide more flexibility related to the development standards, such as building height and the Willamette Greenway Zone. The purpose of this application was to request an approval of the planned development and Willamette Greenway conditional use application on property located at 10415 SE Waverly Court. The applicant had the burden of proving the application was consistent with the City of Milwaukie Zoning Ordinance, Comprehensive Plan, and any applicable municipal code provisions. The proposal conformed with all the City's applicable criteria. During the hearing, the Commission recognized those who submitted testimony and asked that they state their names and addresses for the record. All testimony needed to respond to the new information that was being presented. Lastly, the Commission previously held a meeting about the planned development and heard over an hour's worth of testimony from the applicant and community members.

The Commission was responsible for making a recommendation to City Council as to whether the proposal conformed with all the City's applicable criteria. Commissioner Massey asked the staff to state the ordinance sections where the criteria can be found.

Vera Koliass, Senior Planner shared the applicable provisions of the Municipal Code, which were:

- Title 12: Street Sidewalks and Public Places
- Section 19.1007: Type IV Review
- Section 19.311: Planned Development Zone
- Section 19.302 Medium and High Density Residential Zones

- Title 17: Land Division
- Section 19.401: Willamette Greenway Zone
- Chapter 19.500: Supplementary Development Regulations
- Chapter 19.600: Off Street Parking and Loading
- Chapter 19.700 Public Facility Improvements
- Section 19.902 Amendments to Maps and Ordinances
- Section 19.905 Conditional Uses

None of the Commissioners had a conflict of interest.

None of the Commissioners wished to abstain.

None of the Commissioners reported an ex-parte contact.

Chair Massey and Commissioners Edge, Hemer, and Sherman had previously visited the site. None of the Commissioners talked to anyone on the site.

Ms. Koliias presented the staff report. This was a continued hearing from October 27, 2020. The focus of the hearing was to present new information and give a brief overview of the proposed development. The site was located at 10415 SE Wavery Court and surrounded by residential development on three sides. In the neighborhood, there was a mix of single and multi-unit developments and Waverly County Club to the west. The proposed site was connected to Dunbar Woods apartments. A portion of the site was in the Willamette Greenway, which meant the development needed to comply with the Willamette Greenway Zone. The site was also located in the Historic Milwaukie Neighborhood. The site was zoned Residential R2 (R-2), which was a high density residential zone and was adjacent to Residential R10 (R-10). The proposal was for a 100-unit apartment community with a goal to build in three phrases on 6.77 acres. The development was subject to a Type IV review, which required the Planning Commission to consider whether the applicant had demonstrated compliance with the code sections. The Commission also needed to make a recommendation to the City Council for a final decision. As mentioned above, the development was planned for three phrases. Phase one was building A1, which meant 32 units would be built along the ridge. Phrase two included building A2, which had a plan to develop 32 units. Phrase three was buildings B1 and B2, which consisted of 32 units between the two buildings and the community building. The applicant was seeking land use approval to develop 100 units and a community room through a planned development process. The applicant was also seeking a density bonus of 16 units through the planned development process and a height exception for a taller building in the Willamette Greenway Zone.

Various questions were asked during the previous public hearing regarding specific aspects of the project. The applicant answered the questions, which were.

- **Project Phasing:** The project's general contractor estimated each phase would take approximately one year to complete resulting in three years of total construction for all three phases over the permitted 7-year timeframe. Per Section 19.311.16 Expiration of Planned Development Zone, "substantial construction" of Phase 1 was required to occur within one year of the final development approval. Building A.1 was currently on schedule for a mid-Summer 2021 construction start with site utility work scheduled for late Spring 2021. Construction on Phase 2 would commence after Phase 1 construction was completed. The applicant also confirmed in writing and on a revised site plan that some of the amenities included tuck-under parking, preserved open space and vegetated areas, large community garden, viewing areas, and a forested path. The planned pathway would be accessible from the public right-of-way.
- **Construction Access:** The applicant confirmed that all construction access for the proposed project would be from Waverly Court and not from Lava Drive.
- **Distance to adjacent property:** The applicant revised their site plans to include an additional six feet setback for Building A2, which meant the building was setback a total of 49 feet. The distances proposed between buildings A2, B2, and B1 from the closest residents in the neighborhood were 218 feet, 200 feet, 143 feet, and 82 feet. The revised site plan also shared that Build A2 was 99 feet from Waverly Country Club property line, 54% of the site would remain in vegetation, open space area would be 40% of the site. In MMC 211, this area must be preserved as open space. The applicant had not proposed a conservation restriction or a conversation easement for the open space. Staff created a draft condition of approval for an easement that reflected the language from the code. This depended on whether the Commission wanted to require permanent protection of the area. The Commission planned to discuss this at their next hearing.

There were three issues for the Commission to consider:

- Did the proposed project comply with the applicable comprehensive plan?
- Did the project design adequately address the approval criteria for review of a development in the Willamette Greenway?
- Did the project provide enough "exceptional advantages" to warrant the additional proposed density and building height as allowed by MMC Subsection 19.311.3?

Comments were raised during the public hearing and in written testimony regarding the applicability of the 2020 Comprehensive Plan on the proposal. During the first hearing, there was a suggestion that the proposal needed to follow the previous Comprehensive Plan, which was adopted in 1989. The applicant submitted revised materials. The staff report reflected the updated materials and information about the 1989 Comprehensive Plan elements that were applicable to the project. Some of the key highlights were:

- Open Spaces, Scenic Areas, and Natural Resources, which discussed conserving open space and protecting and enhancing natural and scenic resources. The property did not contain any mapped natural resources subjected to our natural resources code 19.402. However, as proposed and discussed earlier 40% of the site was proposed as preserved forest and 54% of the site as vegetation. The proposed development responded to that element of the 1989 Comprehensive Plan.
- Residential Land Use and Housing Element was to provide for maintenance of existing housing, rehab of older housing, and development of adequate new housing to meet the housing needs of local residents and larger metropolitan housing market while preserving and enhancing local neighborhood quality and identity. A wide range of housing types were needed in the city and this project was providing 100 units of multi-unit development with additional setbacks and landscaping.
- Willamette Greenway Element was another section of the 1989 Comprehensive Plan. The proposed development was between 770 and 1000 feet from the river. There was private development between the river and the proposed site.
- Neighborhood Element was the last aspect considered from the 1989 Comprehensive Plan. Waverly Heights was a mix of large homes and high-density apartments. That was the description of the Waverly Heights neighborhood within the 1989 Comprehensive Plan.

During the last Planning Commission meeting, staff went into great detail about the Willamette Greenway Review. There was a summary presented, which stated the section of the code that discussed compatibility with the river, minimal impact on surrounding uses, mitigation of impacts, protection of views, conformance with Comprehensive Plan policies, landscaping, aesthetic enhancement, open space, and vegetation. The project had identified the walking paths, development was set back from the river, existing development between site and the river, and was designed to maintain and enhance views. The applicant created a view that is accessible from the public right-of-way.

The Planned Development review stated that the property was in the Residential R-2 zone, which was a high-density residential zone, as well as the Willamette Greenway. The Plan Development review process allowed the applicant flexibility in the development standards for the project, including deviations from the base code. The applicant requested a 20% density bonus, which allowed development for 100 units rather than 84. Also, there was a request for 203 feet building length rather than the 150 feet. This was permitted as long as the applicant proved the exceptional advantages to their development were not found in similar developments.

The applicant submitted additional information after receiving comments and decided to relocate and enlarge the community garden. The dwelling units were designed to have very large balconies. The smallest balcony was 195 sq feet. Those were significant parts of the overall design of the project, as well as, the cross ventilation and corner windows. The applicant proposed a public viewpoint to the river and large landscaped setbacks. The applicant shared they would like to offer solar panels and electric car chargers.

In a previous meeting, there were comments received about the proposed buildings' relationship to existing homes and building height. The applicant submitted revised site plans, which included Building A2 moved an additional 6 feet from the adjacent property line for a total setback of 49 feet. This was to ensure neighbors still had a view. There were large setbacks from the buildings surrounding residents, as well as, the Waverly Country Club. Regarding the building heights, the slope of the building was measured at 52 feet and from the top of the slope the building was measured at 43 feet. The R-2 zone allowed buildings of 55 feet in height and building height is limited in the Willamette Greenway zone to 35 feet.

The approval criteria for the key code sections for the zone development were compliant with 19.311, compatibility with surrounding area and landuse pattern and density, demonstrated need for permitted uses, adequate infrastructure, proposal demonstrated it addressed a public purpose, and provided public benefits and amenities beyond the base zone.

The staff recommended approval to the City Council. The proposal provided a better design than required by the base zone requirements.

The review process for the project was:

- December 8, 2020: continued Planning Commissioner hearing to include written and oral testimony regarding the information submitted to date, including the staff report, findings, and conditions.

- December 15, 2020: deadline for applicant's final written argument.
- January 12, 2020: continued public hearing for Planning Commission deliberations.

The 120-day deadline for this application was January 9, 2021. A waiver of the 120-day deadline was required.

This application was a Type IV application and required the Planning Commission to consider whether it demonstrated compliance with the code sections and to submit a recommendation to the City Council.

The decision-making options were:

- Recommend approval of the application with the recommended Findings and Conditions of Approval (staff recommended).
- Recommend approval of the application with modified Findings and Conditions of Approval – such modification needed to be read into the record.
- Continue the hearing.
- Recommend denial of the application.

Justin Gericke, City Attorney, informed the Planning Commission that they were not making any decisions tonight or deliberating. The deliberation was scheduled for January 12, 2021.

The Commissioners asked the staff clarifying questions.

Commissioner Hemer asked, whether the 40% forest preservation was the applicant's proposal or the City's?

Ms. Kalias responded, the applicant proposed 40% forest preservation.

Commissioner Hemer followed up, the applicant did not propose the preservation with a deed restriction?

Ms. Kalias responded that the applicant did not propose a formal deed restriction. The development portion of code required a minimum of 30% of the site to be an open space and the applicant proposed 40%.

Commissioner Hemer asked, if the intersection on this project was falling from a C to a D would ODOT allow an applicant to improve the street?

Steve Adams, City Engineer, responded, that a section of 17th between 224 and Lake Road needed improvement. ODOT wanted the city to take authority of the road. Peter Pascarelli was the lead contact with ODOT. He agreed to talk to Peter about it. ODOT may want to have a say due to possible impacts to McLoughlin and 224. The main thing was the cost to place a signal there would be over \$0.25 million. Currently, that was not in the budget.

Commissioner Hemer asked, could you make the project developer pay it?

Mr. Adams responded, the only time he's ever requested a developer to pay for such a project was when they created a significant amount of traffic to signal one lane and the City signalized the other two lanes. Previously, he collected funds in the amount of 12% of the intersection cost if there was a significant transit increase to the area. He did not think the state would allow the City to require a developer to be financially responsible for implementing an intersection.

Commissioner Hemer asked, would that be the only upgrade that could be made to change from a D to a B or something like that? Or was a signal needed for the grade to change.

Mr. Adams responded, he needed to look into why the intersection was failing. He believed coming down Lava Drove there was a left and right turn lane eastbound as one came onto 17th street. A conversation with a traffic engineer was needed to understand how to improve the grade of the intersection at McLoughlin and 224. The main direction of travel on 17th Ave was running just fine. The side street would increase slightly to a D.

Commissioner Edge asked, was there an instrument the city needed or was this part of the draft Condition of Approval to preserve public access to the path and viewpoint?

Ms. Kalias responded, as proposed the public viewpoint and the path were adjacent to the public right-of-way. The materials from the applicant indicated the viewpoint and path were accessible for the public right-of-way. She needed to ask the City Attorney if the City needed an additional instrument to guarantee that.

Mr. Gericke suggested, documentation of the public's access to the viewpoint and path would be helpful for maintaining the area as a public space and ensuring the applicant complies with their proposal.

Commissioner Sherman discussed, the exceptional advantages and the applicant's studies. There were no avenues to ensure the exceptional advantages, such as the electric charges and solar panels would happen. He asked, had there been any discussions about adding this information to the Conditional of Approval?

Mr. Gericke responded, the items being studied were not set in stone because they were being studied. That was probably something the Commissioner should not count on because the studies could determine that the exceptional advantages should not happen. The Commission needed to concentrate on concrete proposals that were part of the development application.

Commissioner Sherman asked, if the applicant was willing to commit to a minimum of electric charges was it feasible to count on those?

Mr. Gericke responded, certainly, if the applicant was willing to offer up some concrete examples of items.

Chair Massey asked, the Planning staff to summarize the additional correspondences they had received.

Ms. Kalias shared, Steve Stone sent a comment last night regarding concerns about the historic neighborhood of Waverly Heights, the height of the proposed buildings, orientation of the proposed buildings, plans about removing diseased and neglected trees, pathways, and requested reevaluation of the building materials pallet to ensure it was compatible with the neighborhood. The department also received comments from Patty Justice about the compatibility of the development, as well as the development within the Willamette Greenway Zone. The attorney representing Waverly Country Club identified various areas they believed the application fell short of the requirements and recommended a denial of the application. The Applicant also sent a correspondence regarding the views of the development from surrounding neighbors. There were some graphic representations of what the development would look like from the surrounding properties.

Chair Massey invited the Applicant to share their testimony for 15 minutes.

Mike Connors, a Land Use Attorney with Hathaway Larson LLP, was representing the Applicant. He focused on three aspects the Applicant wanted the Commission to think about as they considered the application. The first theme was the Applicant minimizing the impacts to the subject and

surrounding properties. One of the big drivers around the Applicant's desire to pursue the planned development was it allowed for additional flexibility, certain design elements that may not strictly meet the code and offered trade – offs that would be beneficial. Some of the elements they were able to accomplish was a significantly smaller development footprint. That was a result of tucked under parking, the additional height that allowed the Applicant more density, the preservation of a significant amount of the natural forest, provided more open space than what was required, and provided greater buffers and setbacks from the adjacent properties. The Applicant conducted a lot of outreach with the neighbors and attempted to factor in some of their comments and concerns. The Applicant met with the neighborhood formally in July and informally. The Applicant also had individual conversations with neighbors closer to the property, such as the Stones, Waverly Country Club, and the Applicant continued having conversations with nearby neighbors. The Applicant worked diligently to ensure the Stones would not be impacted by their proposed development. The Stones had not seen the updates because the Applicant had recently created the updated development graphics. He wanted the Planning Commission to know that the Applicant was working closely with the neighbors. The next theme he shared was the Applicant was not asking for anything the code did not support or contemplate. The property was Comprehensive Planned and zoned for high density residential and that was the goal of the Applicant. While there were some concerns from neighbors in the single-family area, the Applicant was proposing a development that the City zoned for. There were concerns about development in the Willamette Greenway. The property's site was zoned approximately 70% in the Willamette Greenway overlay. With that being said, the code did not preclude development, or mentioned that the Willamette Greenway or the proposed site be maintained in its current state. The code required the Applicant to minimize the impact on the Willamette Greenway. The Applicant believed they were doing that by preserving 40% of the natural forested area and 54% open space. There were concerns about the planned development, which was recognized in the code and allowed the Applicant to provide some flexibility and trade-offs. The Applicant was not seeking a variance and was seeking design standards and phasing to better assist the neighbors and to follow the code. The third theme was to understand the benefits of what the planned development process allowed for. The applicant was seeking trade-offs for the building height, length, and density with the goal to provide additional setbacks and open space than required. The Applicant was proposing 54% open space as opposed to 15%. It allowed for 4 buildings instead of 5 and tucked under parking, which was a huge advantage of the residents and avoided providing additional surface parking. It enabled the Applicant to offer a superior design with a larger number of windows, views to the river, larger balconies, tuck under parking, community garden and pool, and cross ventilation. The proposed development was an exceptional project because of the planned

development flexibility and the trade-offs being offered. The adjustments the Applicant sought were not significant. An example was the height. They were exceeding the height for the Willamette Greenway but noted that the height would be allowed under the base zone. The proposed development was consistent with the R-2 height requirements. Only the A1 and A2 buildings were considering a height adjustment along the ridge line. The Applicant was not seeking increase heights on the B1 or B2 buildings, which were closer to the majority of the residents. The length was 203 feet and there were nearby apartments at 284 feet in length. Their building provided a significant recess in the open area that gave it some articulation. Also, the proposed development looked like two structures instead of one big monolithic structure. The Applicant asked for a density of 20% increase, which the code specifically allowed. The nearby neighbors were receiving a smaller footprint when considering the height and tucked under parking. The last theme he wanted the Planning Commission to consider was the staff's position. The staff had the expertise of the City code and how it should be applied. Throughout the process, the staff had recommended approval of the application because the proposed development satisfies the code. The neighbors had concerns and still do, and the Applicant planned to continue to work with them to the extent that they can address their fears and concerns. The proposed development needed to be judge based on compliance with the approval criteria.

Chair Massey invited the Commissioners to ask Mr. Connors questions.

Commissioner Hemer asked, had the Applicant visited the site to see how many golf balls had wandered onto the proposed site? Were there any concerns that the driving range could break some of the windows?

Mr. Connors responded, look at the distance between the driving range and the property, which was 100 feet. It was highly unlikely with the buffer that a golf ball would break a window. The applicant was willing to look into and he wanted to share that the Applicant was having ongoing conversations with the club.

Commissioner Hemer asked, did your client consider parking for non-residents so the public could access the viewpoint and pathway via a vehicle.

Mr. Connors answered, he did not know the answer and it was something the Applicant would consider.

Commissioner Hemer asked, would your client consider a deed or easement to keep the remaining forest area for preservation and to not remove trees unless they hold harmful to safety or healthy?

Mr. Connors shared, a conservation easement or re-dedication was required in order to accomplish that goal. He had not seen a development where a conservation easement was used. Here the Commission had a proposal with a layout that proposed preservation of a specific amount of open space and natural area in its existing condition. He believed that the Commission's approval of the Applicant's proposal was enough to prove an enforceable condition requiring them to maintain it.

Commissioner Hemer asked, you agreed with my statement that open space did not necessarily mean forest land. He wondered if they would be willing to call it a forest preserve as open space and not just a grassy space to protect the trees. One of the worries was trees would be removed so tenants could see the river. Would the Applicant be willing to call it a forest preserve?

Mr. Connors said, this was something he needed to discuss when his clients and address in their closing argument.

Chair Massey invited community testimony.

Erin Forbes, with the law firm of Schwabe, Williamson, & Wyatt, said she was attending the hearing on behalf of the country club. The firm submitted their four- page letter opposing the development for all the reasons they mentioned in their previous letters. They would like the Commission to take their reasonings into consideration.

Patty Justice shared, her property borders the driving range and golf balls have landed on her property on a regular occurrence. She submitted a letter earlier today and discussed thoughts in regard to the code and proposed development. She used to walk Cambridge Lane. Once, she was near the subject property, she saw the woods. That was the case for 50 years. The proposed development would change that. She would see building B2 with windows and balconies facing the neighbors. When the neighbors look to the right and down the driveway, the Stones, Reames, and her residents would see building A2. The residents would see lights from the windows of building A2 at night. The new development would take away from the neighbors' privacy. She knew the subject site would be developed with apartments. She asked, how would the Applicant protect that level of privacy that the neighbors had enjoyed for many years? She

shared possible solutions, which were to limit the windows and balconies facing the neighbors, don't place walking paths between the buildings and the fence, reduce the 4 story apartment buildings to 3 stories, move both buildings further to the south increasing the distance between them, choose a color palette and materials that were compatible with a forested setting and, landscaping alone would solve their privacy concerns. Lastly, she shared that the Milwaukie Municipal Code and Comprehensive Plan required these considerations.

Gloria Stone shared, she had golf balls in her front yard every day. They had submitted multiple documents, photographs, and testified previously. The proposed development looked directly into Waverly Heights, her yard, and home of 50 years. The development was between 65 and 70 feet from her land. The height of the building had not been clearly identified for her. It should have included the mechanicals and slope of the roof because she was looking at that. The developer shared the exceptional development of the nature features as the reason they should have granted approval. She discussed what exceptional was and shared, the developer requests an approval of plan that did not meet the Willamette Greenway, Comprehensive Plan, or the Milwaukie Municipal Code requirements. That was exceptional. There were no reasonable criteria for abolishing those approved documents that were designed by and for the citizens of Milwaukie. The amenities the developer shared were impactful and would have a negative impact on the existing neighborhood. There were no reasons the developer could not adhere to the existing urban planning rules. The community planned development next to the proposed site was exceptional in every way. She hoped the developer had taken the time to read the history of the neighborhood. The neighborhood was plotted in the 1800s and to this day residents were meticulous stewards to their land and homes. The Waverly Heights neighborhood was zoned R-10 and have protected their landscape and natural areas. There were historic homes preserved by Portland's renowned architects and some of them were on the national register. Those attributes were exceptional. She asked the Commission to consider the exceptional jewels of the neighborhood. The development would impact that and emailed the City and applicant suggestions. Until the development was changed, she asked the Commission to deny the Applicant's request.

Chair Massey invited the Applicant to share any rebuttals or additional comments to the public testimony.

Mr. Connors responded to Mrs. Stone's comments first. He shared, the Applicants were not asking the Commission to disregard the code. They were asking for the Commission to apply the planned development process. The real criteria were if the proposal satisfied the applicable approval

criteria. The applicant believed they do. To be clear, they were not asking for an exception to the standards. He has been doing this for 25 years and knows that a neighborhood who had a vacant lot did not want to see change. However, that was part of living in the city and the zoning code to allow properties owners and developers to understand what is allowable. This development was allowed based on what the code required. The height of the building was based on what the code allowed. The walkway was not proposed for the at large public. The trails were designed for residents of the apartment complex. In terms of visual impact, he hoped the Stones had an opportunity to review the updated information. In terms of Ms. Justice's comments, some of her suggestion the Applicant would be able to consider, such as the colors. The Applicant could not consider the windows and walking part as those were not restrictions under the code. Those features of part of the amenities that they were providing for the Planned Development.

Commissioner Sherman shared, some of the written testimony was about noise impacts from construction, especially when considering asphalt blasting. He wondered if Mr. Connors and the Applicant would give notice and/or create a website to share project updates with neighbors?

Mr. Connors shared, not to his knowledge. That was the first time he was hearing that suggestion. He believed that was something his client could consider.

Mr. Adams had experience with asphalt blasting and shared, in his past he was a geotechnical engineer. He was involved in a building being constructed and needed to blast asphalt. The surrounding property was concerned about damage to their building. He measured the vibration and the noise from blasting and found out that it did not make much noise if any. He stood 100 feet from the blasting and the noise was less than what can be heard from a truck or car driving by.

Chair Massey shared, the next hearing was January 12th and the Council hearing on February 16th. This would require an extension of the 180- day clock by the Applicant. The Commissioner asked for an extension through February 18th for the issuance of a Notice of Decision. There was not deliberation during the hearing tonight. The Applicant was given seven days to provide a final written argument and which was due by close of business on December 15th. The testimony is now closed. The Commission entertained a motion to continue the public hearing to January 12, 2021.

Commissioner Edge recommended approval that the Commission continue the hearing to a date certain of January 12, 2021.

Commissioner Sherman seconded the motion.

All Commissioners agreed.

ZA-2020-001 Emergency Shelters - Temporary Use Code Amendments

(01:37:53) **Chair Massey** invited individuals to share their testimonies regarding the proposal based on the code. He asked Ms. Kolas to state the applicable code sections, which were:

5.2

- Section 19.902: Amendment to Maps and Ordinances
- Chapter 19.1000: Review Procedures

None of the Commissioners had a conflict of interest.

None of the Commissioners wished to abstain.

Ms. Kolas presented the staff report. Staff was before the Planning Commission in November during a worksession to discuss the amendment. The proposed amendments had changed significantly based on November's Planning Commission meeting. The Planning Department was proposing a two-phase approach for emergency and transitional housing. The first phase was to formalize a process for temporary emergency shelters for warming, cooling, or hazardous air quality. This was the phase the city was in right now. The second phase focused on permanent and semi-permanent transitional housing. Staff were in the initial research phase of research for that phase. The staff planned to conduct a needs analysis and host discussions later in the year. The City wanted to implement a third phase for short and longer term emergency shelters and emergency planning efforts. The first phase, which Ms. Kolas was presenting focused on allowing indoor emergency housing as temporary uses during certain situations, such as extreme cold or hot events and during hazardous air quality. Within the staff report, staff included the proposed code language and the requirements and limitations within the code language. A permit was for no more than 90 days in any 12-month period. There was an opportunity for one 30 day extension. Each applicant needed to comply with the Milwaukie and Clackamas Fire District's joint policy for temporary and emergency shelters. Those standards were included in the staff report. Leila Aman, Director of Community Development, was in attendance to answer any questions.

Ms. Kolas invited the Commission to ask any questions.

Commissioner Hemer asked, in the Clackamas Fire District policy there was a red line about 110 square feet because of Covid and wondered if the language would change to its original requirement after Covid?

Ms. Koliass responded, normally, the requirement was 35 square feet for any one individual and that was expanded to 110 square feet for social distance. She did not know if the requirement would return to 35 square feet. She presumed it would return to its previous requirement prior to Covid.

Ms. Amam shared, we were tracking with the Clackamas County rules since this was a joint initiative. Clackamas County was also working with Oregon City to ensure we are serving everyone to the best of our knowledge and in a safely.

Commissioner Hemer wondered, how was the policy going to be updated? Were we following Oregon City or County's Fire District? Or did we need permission from City Council?

Ms. Amam responded, it was all the above since this was an agreement between the Building Departments. Typically, when regulating something like this, which is a non-residential use, the Building Departments must be involved. Her guess was we would revisit our policy and stay in communication with the County. Staff believed if the City had ideas for improvement, we could take that information to City Council and Clackamas County.

Commissioner Hemer asked, what were the requirements for applying for a permit.

Ms. Koliass responded, regarding a warming shelter, there were specific triggers for that, which were temperatures below 32 degrees. Staff planned to issue one permit and count the number of days of cold weather. It was safe to say, the City normally did not have 90 days of cold temperatures in a year and probably never would. Staff have never had to enforce the 90 days permit before.

Commissioner Hemer wondered if there were any fees associated with the permits?

Ms. Koliass responded, there was not a fee. The City does not charge for temporary use permits. This was also used as an example for the outdoor seating that we were doing for social distancing with restaurants.

Commissioner Sherman asked, more about the requirements of the permit and believed it was unclear. He wondered if an applicant would receive one permit for 90 days, have a punch card, and how did the one additional 30 days permit fit in? He believed more clarity was needed.

Commissioner Edge shared, he was also confused. He wondered if the plan was to offer flexibility or the applicant had to use the permit at chunk of time. 3 months was a season and the applicant had that timeframe to offer emergency shelter.

Ms. Kolias responded, for the warming shelters no one has ever exceeded or come near the 90 days. She shared it was good question and staff needed to determine how the permits would be issued, including the days they offered shelter.

Commissioner Edge responded, that sounded terrible to administrate.

Ms. Kolias agreed.

Commissioner Hemer suggested, every time the City manager or dedicated member issued an emergency that required shelter every applicant received punch card with a permit. It would be rare that we had 120 days where shelter was needed for warming, cooling, and hazardous air quality. Was it possible for an applicant to receive a permit for one year and the Planning Department kept track of the number of emergency days? Once, we were close to the 90 day mark, we would reach out to each applicant and asked if they need the one additional 30 day permit. That seemed feasible and would offer a punch card system.

Ms. Aman added, there was setup involved when a shelter was established. If we offered a punch card program the Building Department had to complete an inspection to ensure the space was safe. The applicant then would not be authorized to proceed until an inspection was completed and this was one way to track the number of days a shelter was in use. A 90 day permit was proposed because of the Building Department's code an applicant cannot offer shelter in a non-residential use for more than 90 days.

Commissioner Hemer shared, he understood Ms. Aman's point and wondered if more than one inspection in a year was needed?

Commissioner Sherman suggested, the Commission to approve of the 90

days permit with a one time additional 30 day permit and let the City figure out how to administer the program.

Commissioner Edge asked, if an application was appealed would it come to the Commission and what type of application was emergency permits considered?

Ms. Kolias responded, this did not need a landuse review and would not come to the Commission.

Commissioner Hemer shared, Oregon City and other jurisdictions had figured this out and it was a copy of paste of what they were doing.

Chair Massey asked, if we had received any correspondence or individuals who wanted to testify.

Ms. Kolias responded, we had not.

Chair Massey announced, the public testimony for ZA-2020-001 Emergency Shelters - Temporary Use Code Amendments was now closed and invited the Commission to have a discussion.

Commissioner Hemer recommended approval of ZA-2020-001 Emergency Shelters - Temporary Use Code Amendments and adopt the recommended findings of approval found in Attachment 2. Commissioner Edge seconded the motion. The Commission approved the motion.

(02:02:58)

6.0 Worksession Items

6.1 Update on Central Bikeway Concepts Plan

Summary: **Brett Kolver**, Associate Planner presented an update about the Central Bikeway Concepts Plan to the Planning Commission.

Central Milwaukie was bounded by Highway 224 along the West and South, 37th Ave on the East, and on the Northern side by the County's Hillside Development and Providence Milwaukie Hospital, with Harrison Street running through it. The area had some opportunity sites, including: (1) the Hillside Manor site, with the Clackamas County Housing Authority in the process of preserving the existing multifamily tower and developing 400 additional units; (2) the Murphy site, which does not have a development

plan at this time; and (3) the McFarland site, which has already been approved for a 230-unit multifamily development. Providence Milwaukie Hospital is also looking to develop their property at the corner of Llewellyn St and 34th Ave, potentially with a building featuring a mix of clinic space and senior housing.

Some of the key businesses in the area are Kimmy's Market, Harrison Plaza, Pit Stop & Purdy's Car Wash, and ISE Labs. The City's Public Safety Building is at the intersection of 32nd Ave and Harrison St, and a City well and water treatment facility are situated between 34th Ave and Oak St/Monroe St. The 29th Ave greenway route comes into the area from the north and the Monroe St greenway runs east-west from downtown to Linwood Ave.

In 2015, the City developed a Land Use and Transportation Plan for Central Milwaukie. There are at least five projects in the Transportation System Plan (TSP) for better connections through the area.

The City is participating once again in the Department of Land Conservation and Development's (DLCDD) Transportation and Growth Management program (TGM). The TGM program is focused on creating thriving, livable places with diverse transportation choices. The City was awarded a grant that is allowing Planning and Engineering staff to work with Alta Planning + Design to identify a safe bikeway connection through the area, in anticipation of the upcoming development of the Hillside and Murphy sites.

To date, the team's progress has included initial interviews with key stakeholders, development of an existing conditions memo, identification of concept alternatives, follow-up interviews with key stakeholders, and preparation for an online community survey (to launch in mid-December). The key stakeholders include Providence Milwaukie Hospital, Clackamas County Housing Authority for the Hillside site, the owners of the Harrison Plaza, the Murphy site owner, and representatives from the Bike Milwaukie advocacy group.

Mr. Kelver shared the three concept alternative routes, the goal being to connect the southern end of the 29th Ave greenway with the Monroe St greenway.

- Option 1 (blue line): This route follows the general concept of the 2015 Central Milwaukie Plan. It would cut through the Murphy site, make an at-grade crossing of Harrison St alongside the railroad tracks, and then continue along the railroad to connect to Monroe St. There was some concern with placing the route through the Murphy site, as that would impact the development plan for the site. Crossing Harrison St so close to the railroad (as well as so close to the intersection of Harrison St with Highway 224) presents a serious safety concern and may not work.

- Option 2 (orange line): This route takes the newly re-established Meek St from 29th Ave to 32nd Ave, goes along the west side of 32nd Ave on a separated shared-use path, crosses Harrison St at the 32nd Ave intersection, and then follows Railroad Ave to Oak/Monroe. One significant drawback is the very busy intersection of 32nd Ave and Harrison St.
- Option 3 (green line): This route takes Meek St to 32nd Ave, where it would either cross to the east side of 32nd Ave or go down the west side to cross at Llewellyn St. Either way, the route continues along Llewellyn St from 32nd Ave to 34th Ave, where it goes south for a safer crossing of Harrison St, then through the City-owned treatment plant property to connect with Oak/Monroe. This option has some notable safety benefit and provides less actual out-of-direction travel than first appears.

Mr. Kelver invited the Commissioners to provide feedback.

Mr. Edge loved the idea of giving cyclists access to main streets, but he was concerned about giving them access to 32nd due to safety concerns. He believed the third option was the best for providing the safest and most comfortable route, even if it was a little out of direction. He encouraged the City to tie the routes together at 34th, Monroe St, and Oak St and make that connection work. He wondered if the new North Clackamas Greenway Trail tied into any of the proposed trails. He wanted to make sure we make the trail safe, especially at busy intersections. He wondered if there were opportunities to work with the Murphy site to have the path go through the interior of that site and cross 32nd Ave at Llewellyn St to travel to 34th Ave.

Mr. Kelver explained that, for option three, the idea was to have a shared bike/ped path between Meek St and Llewellyn St on one side or the other. A path on the west side of 32nd Ave would cross 32nd Ave at Llewellyn St; if the crossing of 32nd Ave happened at Meek St, the path would be on the east side of 32nd Ave.

Mr. Edge wondered whether a separate path on 32nd Ave would be wide enough for cyclists and pedestrians to feel safe. He explained that the North Clackamas Greenway Trail was designed to parallel Railroad Ave and noted that the maps provided by Alta showed a connection from 40th Ave to Railroad Ave, which he confirmed was roughly approximate to the trail.

Chair Massey asked about the meaning of dotted blue section of the option one trail on the railroad property.

Mr. Kelver responded that the City had some property or public right-of-way near the new stormwater facility at Railroad Ave and Oak St, which might be a space the route could use. The goal was to build something that was in the public right-of-way or create an access agreement with the railroad.

Chair Massey noted that the intersection at Railroad Ave and Oak St was confusing for individuals who are not familiar with the area. Oak St had the stop signs on either side. The intersection needs to be reconfigured.

Commissioner Hemer suggested the City should think about the future. If the Hillside site is redeveloped and doesn't trigger any improvement on 32nd Ave, he did not know what would. He believed a development at the Murphy site would certainly trigger a requirement for improvements. In his opinion, 32nd Ave had its challenges because of the nearby railroad crossing and traffic concerns. He was also concerned with the proposed crossing of Harrison St at 34th Ave because a speed van was often located there, and he believed that street was the most unsafe compared to the other streets. The proposed crossing is also near the fire station and is an area used heavily by our fire trucks.

Commissioner Erdt commented that when traffic backed up due to trains crossing Harrison St, cars often pulled out of line and turned around, which could create some dangerous situations for cyclists and pedestrians trying to cross Harrison St at 34th Ave. She believed there were a lot of tricky areas being proposed. She thought this may not be the best time to implement a new route because individuals were in more of a rush due to Covid-19. The City needed to pay attention to the trains and take that into consideration.

Commissioner Khosroabadi asked whether option three would involve any improvements to the road surface on Llewellyn St and 34th Ave, because they were pretty banged up. He asked if any of the other routes would see street improvements. It appeared to him that 32nd Ave had the safest infrastructure in place because there was a light and a crosswalk at Harrison St. If option three was going to be the route, he wondered how many individuals would use 32nd Ave to avoid going out of direction along Llewellyn St and down 34th Ave. If individuals planned to use the 32nd Ave route (option two), then that was the route where the City should make the necessary improvements.

Mr. Kelver responded that he was unsure what improvements were proposed in general for the area. He assumed that if the Providence site was developed at the corner of Lewellyn St and 34th Ave there would be at least some half-street improvements. If the Providence development didn't happen, the Planning Department would probably need to work with the Engineering Department to discuss street improvements for that part of the route. He thought Commissioner Khosroabadi's point about 32nd Ave's infrastructure was a great point. The City needed to think about it more and understand what it would take to ensure that route was safe if it was chosen.

Commissioner Sherman wondered whether there was an opportunity to think about the Urban Renewal Area and property acquisition to better organize development in the area. He believed 32nd Ave was scary to walk on—the sidewalk was narrow. He encouraged the City to consider making 32nd Ave a safer place for bicycles and pedestrians. He agreed that option three was maybe more feasible. The Alta report shared that Clackamas County advised against enhanced crossings using rapid flashing beacons within 300 ft of an intersection—he wanted to hone in on the word “advise” (rather than “require”) because with option three, if there was a rapid flashing beacon at Meek St to cross to the east side of 32nd Ave, there might be an opportunity to take advantage of existing facilities as well as new facilities built on Lewellyn St when the Providence site redevelops at the corner with 34th Ave. Further discussions with the County about their advice might be useful in working creatively to determine the safest route option.

Commissioner Erdt suggested that a roundabout may be a great option for the intersection of 32nd Ave and Harrison St because they are safer than a conventional intersection.

Commissioner Hemmer thought that crossing on the east side of the intersection of 32nd and Harrison was a lot safer than the west side, so maybe using beacons to cross people at Meek St and then keeping them on the east side of 32nd Ave all the way through the intersection with Harrison St would be a good way to go. Perhaps a double-lane bike path on the east side of the 32nd Ave was the safest.

Mr. Kelver noted that to do that the City would probably need to acquire some land to widen the right-of-way in front of Harrison Plaza, but the idea made a lot of sense.

Ms. Aman indicated that the City could discuss Commissioner Sherman's request about the Urban Renewal Area with the community advisory committee once it was formed.

(02:49:49)

6.2

Mr. Kelper closed by sharing the project's timeline. In December 2020 and January 2021 there would be more discussions with key stakeholders and an online community survey. From February to March 2021, the City planned to analyze the options, make a recommendation, provide estimates for implementation, follow up with key stakeholders, and check in with the Planning Commission and City Council. The goal was to have the City Council adopt the concept plan in April 2021.

Update to Title 18 – Flood Hazard Regulations

Summary: The purpose of the update was to discuss the flood hazard areas in the city. Part of downtown was on the Willamette River. Also, there was Johnson, Kellogg, and Mount Scott Creeks in the city. There was not a lot of flood area in the city and there were some flood areas in the city. Federal Emergency Management Agency (FEMA) mapped our flood areas in the country and there were a few concerns for Milwaukie. The goal of the Flood Hazard Regulations was to preserve flood storage capacity, limit impacts to other properties, participate in FEMA's National Flood Insurance Program, the code was last updated in 2008. In 2019, FEMA prepared a model ordinance that they were encouraging communities to implement. The Title 18 Regulations the City had currently were based on an earlier model and changes were needed in order to stay in compliance with the updated code. The proposed changes were administrative, which included changing some of the definitions and numbering within the Milwaukie Municipal Code to make it less bulky. The City wanted to follow the model ordinance that was provided by the DLCDC. The City was proposing to the Commission the minimum that was needed to continue to participate in the FEMA's National Flood Insurance Program. The Planning Department did not want this to be a more complex project because there were other code amendments projects the City was working on. The City planned to conduct public outreach and propose other changes later when the City and Community had more capacity. Currently, the City and Community were working through other code amendments from the Comprehensive Plan. The project timeline was outlined and in December 2020, the City shared an update with the Planning Commission and began the public notification process. On January 12, 2021, the Planning Commission held hearing on the amendments. On February 2, 2021, there was work session update to City Council. The Planning Department's goal was to have City Council adopt the updates on March 2, 2021.

Mr. Kелver invited the Commissioners to provide feedback or ask questions to help them move forward with recommending the code amendments to City Council.

Chair Massey wondered, when was the City and Council going to discuss the floodplains and additional policy changes?

Mr. Kелver responded, there were two options he believed the City could work on. The first option was to have a larger policy discussion regarding if we wanted to require individuals to elevate their structures even higher or require individuals to not just balance cut and fill when they were dealing with the flood storage capacity. Maybe they needed to do 1.5 to 1 or something similar. The second option was to receive updated maps from FEMA to ensure we felt more confident in our updates. The Planning Department still needed to think about their capacity and balance other the other things they were trying to do. He asked if Laura Weigel, the Planning Manager, or Leila Aman, the Director of Community Development, had any suggestions.

Ms. Weigel shared, the last time the Commission and Planning staff met they discussed the floodplain updates. The floodplain activities were teed up with the natural resource's conversation. The Planning Department scheduled for the discussion for 2023 according to the workflow plan.

Chair Massey shared, he was unsure if we wanted to tackle mitigation and code changes about elevating structures and other activities until there was more knowledge about the floodplain areas. From his understanding, the federal government accepted locally developed floodplain plans in lieu of theirs. He did not believe FEMA would update their floodplain plans anytime soon and the City should not wait.

Commissioner Edge shared, the last update was 50 years ago.

Chair Massey said, he understood this was not easy to complete and wanted to City to implement a plan soon.

Mr. Kелver wondered, if there were grant opportunities the City could apply for to get the ball running and implement some policy changes.

Commissioner Edge wondered, if the floodplain assignments could go through the Comprehensive Plan Implementation Committee process as this is a safety concern. He believed 2023 was too far away. He wanted the City to keep in mind that FEMA and DLCDC were working together to implement a new model code for buy-off that was published a few years ago by the National Marine Fisheries Service over the jeopardy to salmon, killer whales, and other species in the area. There was a big settlement that came through FEMA about the implementation in Oregon and the impact on salmon and steelhead. There were more changes coming down the line and many of those changes he had been participating in. Many of ideas that were coming out of their plan were consistent with the policies that were adopted in our Comprehensive Plan. He mentioned that we may need to implement changes before the federal and state governments do so. Or hold off for a couple of years to understand what the scientist were recommending. Maybe in 2023 was a great time to do some code amendments around floodplains and it might be too early if we jumped in before that.

Ms. Weigel responded, we would look at DLCDC's and FEMA's schedule to understand how to proceed with the hopes that we cross paths at the same time. The City wanted to use their information and data to inform our code amendments and plans.

Commissioner Sherman informed, the Commission that he shared his comments with Ms. Weigel and Mr. Kolver earlier. He thought it was important to think about elevation certificates to better understand one's property relations to the floodplain areas. The process was a few thousand dollars. We needed to consider if property owners needed an elevation certificate when completing any development or when selling the property.

Mr. Kolver said, that the Engineering Department had met some of the FEMA DLCDC requirements by establishing standard operating procedures and a formal permit. When there was development in the city an elevation certificate was required. He planned to return to the Commission on January 12th to further discuss the plan.

Planning Commission Committee Updates and Discussion

(03:08:07)

7.0

Planning Department Other Business/Updates

There were no updates.

(03:08:07)

8.0 Planning Commission Committee Updates and Discussion

Commissioner Hemer shared the Blue Ribbon Committee Open House was still live online until December 22nd, 2020.

Commissioner Hemer encouraged the Commissioners to think if they would like to serve as a Chair.

(03:08:49)

9.0 Forecast for Future Meetings

- January 12, 2021: Hearing items are Waverly Woods Continued Public Hearing, Proposed Amendments to Title 18 (Flood Hazard Regulations) and worksession items were the Comprehensive Plan Implementation and Planning Commission Bylaws Update
- February 16, 2021: Joint meeting with City Council

Meeting adjourned at approximately 8:45 PM



Robert Massey, Chair

Respectfully submitted,
N. Janine Gates
Assistant Planner