

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 13, 2010
6:30 PM**

COMMISSIONERS PRESENT

Nick Harris, Vice Chair
Lisa Batey
Scott Churchill
Teresa Bresaw
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Jeff Klein, Chair
Chris Wilson

1.0 Call to Order – Procedural Matters

Vice Chair Harris called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 May 11, 2010

Commissioner Batey replaced the “[inaudible]” on Page 23 Line 747 as follows, “especially in light of the riparian restoration in the plan, it seemed like *promoting goat trails for nonmotorized access was inconsistent with that.*” She verified the application noted on Page 28 Line 915 would formally return to the DLC to review some of the details of the plan because of a condition of approval.

Commissioner Bresaw moved to approve the **May 11, 2010, Planning Commission Meeting minutes as amended by Commissioner Batey. Commissioner Gamba seconded the motion, which passed unanimously.**

2.2 June 22, 2010

Commissioner Gamba moved to approve the **June 22, 2010, Planning Commission meeting minutes as presented. Commissioner Churchill seconded the motion which passed 3 to 0 to 2 with Commissioners Bresaw and Batey abstaining.**

3.0 Information Items–None.

4.0 Audience Participation –This was an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings

5.1 Summary: Pond House Deck and Landscaping
Applicant/Owner: Paul Shirey / City of Milwaukie
Address: 2215 SE Harrison St
File: WQR-10-02, CSU-10-06

Staff Person: Susan Shanks

Vice Chair Harris called the hearing to order and read the conduct of quasi-judicial hearing format into the record.

Susan Shanks, Senior Planner, cited the applicable approval criteria of the Milwaukie Municipal Code (MMC) as found on 5.1 Page 7 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

Vice Chair Harris asked if any Commissioners had a conflict of interest or any ex parte contacts to declare.

Each Commissioner declared they had visited the site. No Commissioners, however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners abstained and no Commissioner's participation was challenged by any member of the audience.

Commissioner Bresaw declared her neighbor, who was on the Library Board, had spoken briefly with her regarding the deck area at the Pond House and commented that she hoped the Commissioners would look at it in a favorable manner.

- She confirmed that her contact with her neighbor would not affect her judgment. She would not be biased and would be able to participate in this evening's hearing.

Vice Chair Harris stated he had briefly spoken with Chair Klein but their conversation did not involve anything germane to the application.

Ms. Shanks presented the staff report via PowerPoint, responding to questions and comments from the Commission as follows:

- She noted the application was only to review the impervious improvements; the landscaping improvements were allowed outright by the MMC.
- She clarified the new stairs would be in approximately the same location as the old stairs, which would exit from the back door, turn, and head toward the north of the building. The exit from the stairs would be a 5 to 6 ft wide egress path that would be created between the house and retaining wall.
 - She deferred questions about the current condition of the egress to the Applicant, though she believed it was old gravel.
 - Staff believed it was desirable to maintain the second egress off the rear deck because the Pond House is a public facility. The Applicant's Water Quality Resource (WQR) consultant indicated a larger disturbance would occur to the WQR area. A different configuration for the stairs would likely require additional footings or extending the stairs further out over an established rock wall and through existing trees due to the required run and rise. Further clarification was deferred to the Applicant.
 - Improvements involving the footings and stepping stone path added approximately 39 sq ft of new impervious area. The plantings would total about 525 sq ft which staff believed would mitigate the disturbance to the WQR area.
- The area where the plantings were installed had not been an impervious area, but primarily a grassy and weedy area not considered to be native. Some nuisance plants were removed. Brad Albert, Civil Engineer, had reviewed the application and many of the installed and proposed plants were listed on the stormwater facility list. These plants have a greater benefit of cleaning and managing stormwater before it enters the pond.
- The window for the in-water work period would be July 15 to August 31, 2010.

- Correspondence regarding the Pond House proposal included a letter received tonight from Kay Sweetland Bower, a member of Ledding Library Board and Friends of Ledding Library dated July 8, 2010 in support of the application. Copies of the letter were distributed to the Commission.

Vice Chair Harris called for comments from the Applicant.

Paul Shirey, Public Works Operations Director, stated the Pond House facility maintenance fell under the jurisdiction of the Public Works Department. The Pond House is unlike other City-owned buildings because of the number of people involved, including the Library Board and the Friends of the Library. The current principal function of the Pond House is to serve as the library book store, which was approved by the CSU, and it is a meeting place for City business and related community functions.

- Following the purchase of the Pond House, the Applicant anticipated that the Booktique application would require constructing the sidewalk to Downtown standards, which they were prepared to do. It was also discovered that the deck was close to collapsing and the decision was made to dismantle it.
- After the approval for the Booktique and learning that not as much money was needed for the sidewalk, the City Manager at the time asked that the deck be replaced. The driveway was effectively closed, providing the opportunity to replace the driveway, apron, and curb.
- The on-call carpenter, Steve Philips, was directed by Mr. Shirey to replace the deck without increasing its size. Mr. Philips determined the original footings were not safe, and poured expanded concrete footings without first consulting Mr. Shirey. This work immediately triggered the need for a Type III Review, delaying the project.
- The application also included small footings for the bench, a small footing for art work, and stepping stones, which would contribute to the overall esthetics of the Pond House.
- The mitigation for the addition of the impervious area was in the form of landscaping that had been completed. He noted the driveway was replaced with impervious pavers, which removed quite a bit of pervious surface, but was not included in the mitigation calculations.

Mr. Shirey, along with consultant team members Anne MacDonald, Rivergrove Environmental Consulting, and Sarah Smith, Landscape Designer, responded to questions from the Commission as follows:

- The recently poured footings had not been engineered and the depths of the footings were unclear; however, they were square, vertical footings, and sufficient to bear the deck's weight. Mr. Philips was licensed and bonded.
 - **Ms. Shanks** noted City Building Official, Tom Larsen, was satisfied with the current footings as stated in the attachment.
- The details on the deck style, including the handrails, had not been determined. The deck would be made with artificial decking material, such as Trex, with cedar, 2 ft by 6 ft capped, picket handrails and finishing trim.
- **Ms. Shanks** clarified that Facility Management Coordinator, Willie Miller, confirmed with the Mr. Larsen that the second egress was not required, so it did not trigger ADA accessibility standards. A greater impact would occur to get the egress ADA accessible based on the house design and height of the second egress. The City's desire was to have the second egress be ADA accessible, however, that was not included in the proposal.
- The purpose of the deck was to provide a second egress and allow users of the Pond House to take advantage of the pond amenities and natural resources surrounding the facility.

- About 6 people could occupy the deck at one time. The deck would be used for egress and entertainment, such as a guitarist performing for events occurring in the yard. The deck space would not provide a comfortable meeting place.
- **Mr. Shirey** clarified where the stairs would terminate onto the deck.
- The area near the water's edge at the rear of the Pond House was important for accessibility, but was not a walk that would be made by choice because the walkway is very narrow; only 40 inches existed between the back of the retaining wall and the foundation of the Pond House.
 - The intent was to place gravel along the rear of the house for the walkway, but not along the side of the garage near the existing bookstore. That area along the garage was now just bark dust, and was so shaded grass could not grow.
- The deck would be 8½ ft deep with the 36-in rail height as required by Code.
- The City budgeted \$20,000 for the deck. The Friends of the Library paid for the design, landscaping, and impervious elements. The cost of the deck included encapsulating, or wrapping, the deck's substructure to keep the pressure treated lumber from contaminating the pond. This was a specialized, labor-intensive approach. The artificial decking material was more expensive than wood, including cedar.
 - The encapsulation process involved "shrink-wrapping" a stretchy, clinging, heavy-duty material around the deck's substructure.

Commissioner Batey:

- Asked if the long term plans existed for rebuilding the library or expanding the existing building. Her concern was spending City money now for the Pond House if the library intended to vacate its current site.
 - **Joe Sandfort, Library Director**, replied that no plans exist to tear down the current library. Plans did exist to expand the library pending City Council and City administration involvement. However, those plans were developed in 2003 and involved the library site itself, not the Pond House. At one time, relocating the library was considered. He had also heard a discussion about building a walkway over the pond. No discussion existed about tearing down or replacing the Pond House.
 - **Ms. Shanks** stated that new construction on the site would definitely be reviewed under the WQR regulations.
- Asked the main reason for constructing the deck.
 - **Mr. Sandfort** explained several reasons existed for needing the deck, but ranking them was difficult. The community deserves a building that is competently designed and maintained. People visiting the library could see the current condition of the back of the Pond House, which was an eyesore. The community would be better served with the building completed. The Friends of the Library's idea of having music playing during summer events would be nice for the community. And the deck was needed to function as an egress. It was a very important project for the community.

Commissioner Bresaw asked about the proposed garbage can enclosure's description, which seemed to be a wooden box with a Sunbrella or outdoor equivalent canvas on one side.

- **Mr. Sandfort** replied that the intention was to utilize a trellis; however, the trellis had been stolen which prompted the new design for the enclosure. He deferred to the Applicant's landscape designer for further detail.
- **Sarah Smith, Landscape Designer, The Gardensmith**, explained the intent was to enclose the garbage can screen with wood on 3 sides with the fourth side made of a sliding, fabric curtain to hide the trash cans. The garbage enclosure was very visible to the public, and close to the front door of the Pond House. Swing-type doors would take

too much space and the turf-block floor surface was difficult for the wheel-supported door to roll across.

Commissioner Batey:

- Asked the purpose of the path, where would it lead, and who would use it.
 - **Ms. Smith** replied there was a nice view along the proposed path's area. The path would lead to the existing stairs allowing access to the lower lawn area, which provides a nice view of the pond. The path would draw people through the landscape to an appropriate spot to view the pond, rather than cutting through across the grass.
 - The 2 vine maple trees on each side of the proposed stone path would grow to frame a view of the pond, and the path would draw people in to better experience the landscape.
 - The stepping path would provide access from the parking lot.
- Expressed concern about the path encouraging people to cut across the lawn, circumventing the use of the sidewalk.
 - **Ms. Smith** said she did not envision the path as a shortcut to the library. The sidewalk was still a much more direct way to the library. She was not aware of any plan to restrict people from walking or using the lawn.
- Noted there was a difference between using the lawn for recreation versus creating a path through the lawn from foot traffic.
 - **Ms. Smith** stated she had seen people at the edge of the water and believed they walked down from the sidewalk to access the pond.
 - **Mr. Shirey** noted that using the stepping stone path was not a convenient way to reach the library.

Vice Chair Harris called for public testimony in favor of, opposed, and neutral to the application. There being none, he called for additional comments from staff.

Ms. Shanks clarified that questions regarding cost had no Code basis, as cost was not a WQR Code approval criteria. Those criteria regarded whether alternative designs were considered, and if a reasonable design was proposed that minimized and mitigated for its impacts, etc.

Vice Chair Harris confirmed no Commissioners had any further questions for staff and that the Applicant had no rebuttal. He closed the public testimony portion of the hearing on WQR-10-02 and CSU-10-06 at 7:37 pm.

Planning Commission Discussion

Commissioner Batey believed the Pond House would be a nice addition. She initially had concerns that the Pond House would not be a long term fixture, but now understood it would be here for a long time. She had no problem with the proposal.

Commissioner Bresaw said she was glad to see people care by volunteering and getting involved with the improvements.

Commissioner Churchill said he strongly supported the application. It was wise of staff to realize what had been done with the footings and require more appropriate review, but he believed there was no apparent impact to the WQR zone. It would be inappropriate to leave the Pond House unfinished. It was an asset not just to the library, but to the city of Milwaukie as a whole. Completing the deck would provide the public an area to enjoy Milwaukie's water quality resources.

- He noted a sign posted toward the library on the Harrison St side that stated, "Nature Area Keep Out." It was absurd that people could not be respectful of the water quality resources and enjoy them. He strongly supported the application.

Commissioner Churchill moved to approve WQR-10-02 and CSU-10-06 with staff's recommended findings and conditions of approval as found in Attachments 1 and 2. Commissioner Gamba seconded the motion, which passed unanimously.

Motion passed 5 to 0.

Vice Chair Harris read the rules of appeal into the record.

The Commission took a short recess.

6.0 Worksession Items

- 6.1 Summary: Review Procedures Code Amendment project briefing part 2
Staff Person: Susan Shanks

Katie Mangle, Planning Director, noted that Serah Breakstone worked closely with Mary Dorman of Angelo Planning Group and both were working as consultants for the City on the Code Amendment Project.

Susan Shanks, Senior Planner, stated the first draft of the amended Zoning Code Title 19.1000 was attached to the staff report. This chapter was the essential component for how the City did everything in Development Review, Zoning Administration, and Land Use Review. The Commission would be familiar with this very important chapter because staff cited this chapter during the quasi-judicial process at each hearing.

Ms. Shanks presented the staff report regarding Title 19.1000 amendments via PowerPoint.

Discussion points from the Commission and staff regarding key topics were as follows:

- Table of Contents, Chapter 19.1000 - The proposed Table would be more focused, straightforward, and organized with a section of General Provisions and the 4 types of review processes. Also included would be preapplication conferences, application, public hearings, and appeals.
 - Items in the existing Table of Contents would be reorganized, or moved elsewhere but retained.
 - Some changes were proposed; for example, changing the number of review processes from 4 to 5, the actual number of City review processes; however, the basic procedural content would remain the same.
 - Review types in the draft were organized alphabetically, but the final Code Table of Contents would follow numerical format similar to other jurisdictions.
 - Providing examples according to the different types of review would be helpful.

Serah Breakstone, Angelo Planning Group, reviewed key changes proposed for Chapter 19.1000.

Comments and discussion regarding the following items was as follows:

- Time limits on land use approvals.
 - The next set of revisions would address consistency to better define time limits on public

- notices and notices of decision, and would include clarification on business days versus calendar days.
- Type II reviews will only go to a Type III hearing if appealed; and would no longer be 'bumped up' a level by the Planning Director or others.
 - No criteria exist for making the decision, resulting in a very arbitrary process. Different rules, timelines, costs, and processes were involved, but the criteria for approval were the same.
 - The responsibility should be placed on those appealing the decision or trying to make changes.
 - The appeal process should be clear; even the permitting process can be daunting.
 - The recently adopted fee schedule has 3 appeal fee categories:
 - No charge for Neighborhood District Associations (NDAs) that already have standing.
 - Type I or Type II appeals, involving the Planning Commission, cost \$500.
 - Appeals from the Planning Commission to City Council cost \$1,000, which typically involves staff enlisting the City Attorney's assistance, increasing expenses dramatically.
 - Public Notice. The applicant would be required to post signs at the site and provide an affidavit stating they posted the sign in an appropriate place in a timely manner.
 - The affidavit affirms the applicant had posted a sign a minimum number of days prior to the hearing or decision. It was the onus of the applicant to follow through with this process, ensuring the sign had not blown away, been removed, etc.
 - Not meeting this posting requirement would be treated like not meeting a Code standard. It could be reason for denial or to have the applicant waive the 120-day land use clock.
 - Map Amendments. Proposed changes would result in the Planning Commission making more decisions on map amendments.
 - Because Comprehensive Plan maps are adopted by ordinance, Ms. Breakstone would verify whether small changes would be governed by some type of ordinance.
 - It was discussed that Commission decisions would be the accepted decisions and Council could adopt the ordinance on the Consent Agenda. Council would not redo the hearing, but would review an item for adoption. Council could always pull the item for discussion.
 - Questions regarding how maps are adopted would be clarified for the final amendments.
 - Public noticing in newspapers. Recommended replacing this requirement with more effective practices, such the City's website and bigger noticing signs.
 - The City's website will be used for paying utility bills by next year, creating more common traffic, and providing a more effective public noticing tool.
 - Newspaper noticing was a useful way to get public notices out, but with multiple, lengthy listing requirements and a \$4,000 per year expense, newspaper notices was considered inefficient.
 - Reducing the size of the newspaper notices was suggested, such as the content included on the public notice sign.
 - No changes would be made to Type III and Type IV public noticing. Written notices would still be required to be sent out by mail to property owners within 300 ft of a Type III quasi-judicial and 400 ft for a Type IV legislative procedure. This distance was measured from the outside edge of the property.
 - Legislative Code Changes. The next set of revisions being considered would allow staff to initiate a Type IV application; currently the Code allowed anyone to submit a Type IV application.

- Applicants that continually run into Code issues could also apply to change it.
- Concerns were expressed that allowing anyone to initiate a Type IV application could require extensive staff time. However, the current legislative application fee is \$3,500, requiring people to consider the expense of changing the Code if they did not like a City decision.
 - NDAs would be required to pay the fee; however, most NDAs contact the Commission, Council, or staff about a change being a City project.
- Some applicants were willing to help staff with the legwork involved and pay the fee. No one should be eliminated from proposing a good change for the community.
- The City would ultimately have control of the actual language adopted. The Commission and Council would still have to approve the change.
- The applicant would have to demonstrate that a public benefit would result from changing the Code.
- All applications would still be subject to the approval process, and applicants must address all the applicable criteria. Are the criteria stringent enough to weed out obviously bad ideas?
- Time Limits for Preapplication (6.1 Page 24). Should the more informal preapplication meeting have an expiration date?
 - The preapplication meeting was a more informal process involving just a staff member with no other City department and did not require written notes; similar to an over-the-counter application meeting.
 - A preapplication meeting would be offered when it was not required to complete a full application or when the City authorized that the preapplication conference be waived.
 - Preapplication conferences (6.1 Page 26, Section 19.106.5) currently had an 18-month time limit.
 - A 1-year maximum time limit was suggested for preapplication conference because standards may change; a sunset should exist.
 - New language under the Purpose Statement was proposed to clarify that if the standards had changed between when an application was submitted and the preapplication conference, the Code in place at the time the application was submitted would apply. The applicant would be notified of Code changes in advance to assist them in the planning stages.
- Appeal Section (6.1 Page 35) Proposed language was consistent with State law, yet clarified how the appeal process works, who can appeal, and when an appeal can be made.
 - Type II decision can be appealed by the applicant or any party that feels they have been aggrieved by the decision. This language was from the Oregon State statute and would also be a de novo hearing before the Commission.
 - Type III decisions can be appealed by the applicant or any person having official standing, meaning they provided comment during the public comment period or at the initial hearing.
 - In Section 19.1009.1.A.2, should the term “party” be defined or clarified?
 - The language probably should be revised, especially for the Type II process where the appellant did not necessarily need to be a party per se; they could be an aggrieved party rather than someone who testified.
 - The Type II appeal process has no hearing, but does have a public comment period. One would not have had to provide comment to be considered an aggrieved person. Appeal must still be based on approval criteria, but a party does not need to be a person of standing to be an aggrieved party.
 - The language regarding aggrieved parties should also be carried into the Type III appeal process.

- Discussion clarified that a legal basis and a formal effort stating a clear objection should be made for a person to be considered an aggrieved party to the appeal process. Comments could be received by letter, email, or even a phone call to staff.
- All parties affected by an application receive written notice 20 calendar days before the hearing, which describes the appeal rights and the process to appeal. Written notices of decision are mailed out the next day after the hearing.
- The City's website could be used to notify citizens that an application has been received. The website could include a map indicating land use application sites. The applications should need to be searchable by certain key words.
- The NDAs and Land Use Committees (LUCs) are able to get the word out about applications quickly. The LUC and relevant NDA Chair of where the property is located are notified and receive information within 2 days of an application being deemed complete. A 2-week comment period is allowed for NDAs.
- Staff currently responds to all questions and concerns in any contact format, and informs those individuals about the requirements to be a person of standing in case of appeal.
- The Oregon State statute was clear about who has standing to appeal for a quasi-judicial procedure. It does not imply a minimum, but any changes would need to be reviewed by legal counsel for ramifications.
- Applications Procedures and Summary Table (6.1 Page 39).
 - The Design and Landmarks Committee (DLC) should not be the review authority on Downtown Design Review applications; the DLC reports to the Commission.
 - Further clarification about Minor, Moderate, or Major Downtown Design Review was requested.
 - One topic for discussion to revisit in the future was how DLC hearings are conducted; staff does public notice for the Commission, but did not want to redo the work done by the DLC, which sets up a strange process.
 - The table would be revisited with the Commissioners' suggestions and comments taken into consideration and presented in a more complete form at the next worksession.
- Application time limits and extensions of approvals. Issues associated with land use approvals that do not expire were reviewed (6.1 Pages 2 and 3). Staff sought input from the Commission about:
 - Better clarification of the vague term, "substantial construction," which is commonly used but better defined in other jurisdictions' codes. Is "substantial construction" the appropriate threshold?
 - What problem was the City trying to solve by limiting or not limiting, extending or not extending approvals for all types of land use approvals? Should current limitations and extensions apply to all applications?
 - Should extensions require approval by the Commission, or should straightforward criteria be developed so staff could approve extensions, or should only certain extensions be reviewed by the Commission.
- Time limits would help with applications that have multiple conditions about remedial plantings, for instance. Changes in personnel after such long time lapses create inefficiencies in implementing the application and enforcing conditions of approval, resulting in a project that may not be completed to the Commission's expectations.
- There were reasons to consider not having time limits.
 - The Southgate Park and Ride project was a CSU, which have no time limits, and would not have been completed if a 2-year time limit was implemented. The project had to wait to receive stimulus funding. Going through the permitting process would not have prevented the project from being built because it would not have met the stimulus funding criteria.

- Consideration should be given for the larger public projects, like the Riverfront Park. Having too stringent of time limits may leave projects without ways to get extensions.
- Establishing unlimited extensions was mentioned. However, the applicant would need to demonstrate an understanding of the conditions and why the extension was needed. The applicant should be able to do the project as originally envisioned.
 - The applicant would have to verify that certain conditions, like traffic or water quality resource areas, have not changed, or that the project would not really impact those items. Some level of review would be needed to verify that the project should proceed.
- Written records should be very clear as to not be affected by a change in staff.
 - While engineering conditions of approval are often clear cut, only some planning conditions, such as those regarding setbacks, are clear. Other planning conditions can be unclear, like those involving benefits, mitigation, or intent, even though every effort is made to avoid ambiguity.
 - Staff has been diligent about keeping clean records and being disciplined to retain the last, most recently approved plan. Most items can be digitally recorded, but many materials cannot be included in a digital format for the record.
- “Substantial construction.” Legal precedent was found in a case in upstate New York. The previous definition was not satisfactory to the Commission.
 - The definition for “substantial completion” which regarded occupancy was preferred to using “substantial construction.” 10% of construction should not be considered “substantial construction.”
 - The term or definition used needs to identify the problem the City was trying solve. Was it to ensure the project was done and ready for occupancy? What if construction is not involved? Was it to prevent unintended impacts?
 - “Substantial construction” is difficult to implement even with a clear definition, primarily because removing the applicant’s ability to finish a project could leave a half-finished project. When should a project be stopped?
- The land use application process does not verify proof of the applicant’s ability to fund a project. Generally, the Commission reviews applications that are at 60% completion, so the applicant has a lot more work to do, but wants to get approval before moving forward.
 - Applicants should be required to prove that funding was available/in place before any work could be done on the project, like tree removal, grading, etc.
- A mechanism was suggested to deny the occupancy permit if a project did not reach 100% completion after approval is given.
 - Some applications involve allowed use permits.
 - One approach might be to differentiate between applications that do or do not include structures, or for those involving new construction.
 - Sometimes it takes a long time for applicants to submit the required materials for their building permit application, lowering staff’s confidence that the project could be constructed in a timely manner. Staff could determine an application has been incomplete too long and the applicant must start over and resubmit a new application. This would occur during the post-approval process.
- Opportunities for extensions or a more generous time period were preferred to using “substantial construction,” which is a bad policy idea. The idea is to get projects finished. Having 2- or 4-year time limits with a possible 2-year extension was a consideration; although costs and the process requirements may make applying for an extension less appealing.

- The applicant must prove nothing has changed as far as the original application approval.
- Making Code for extraordinary situations was not desired, but maybe exceptions should be allowed for publicly funded projects; projects involving more than a specific number of acres or dollar amount could involve different time limits.
- Clear and consistent deadlines should be set for at least 80% to 90% of the projects in the city.
- Currently, applicants are subject to the Code in place at the time the application was submitted. If an extension is denied, the application would have to be resubmitted and therefore subject to the most recent Code.
 - That process can be quite costly, and not necessarily result in a different conclusion. Both staff and the applicant go through the time, money, and energy of reprocessing the application, but no different analysis results, which is not good public policy.
- Extension requests should consider any Code changes from the initial application submission. There are too many struggles, research efforts, and ramifications on projects being “grandfathered” in.
 - Flag lots were subject to special regulations implemented decades ago, creating real challenges for staff. The current Code cannot be applied.
- The extension process did not apply to land divisions, which operate under a separate set of ORS rules.

Commissioner Gamba sought clarification in the future about how an application is categorized as a conditional land use. The term “land use” needs to be clearly defined to consider past and present philosophies for more sustainable lifestyles.

- Staff explained that all zones have a list of allowed and conditional uses that has evolved over time. Some zones having a prohibited use list. Decisions were needed about which uses should and should not be allowed to coexist.
 - Future meetings would include further discussion about use zones, including how they related to the Willamette Greenway being an automatic conditional use, the upcoming residential standards project, and a broad consideration of the Comprehensive Plan over the next 2 years.

The Commission consented that it was generally appropriate to have time limits and extensions for all applications, not just conditional uses and variances. Discussion continued as follows:

- “Substantial construction” did not make sense as an appropriate threshold in many situations. Perhaps another type of threshold could be used that was appropriate for all situations.
 - Large commercial projects require a completion bond, but this was not appropriate for private development. Currently, the City utilizes completion bonds for public facilities improvements and to allow for temporary occupancy on private projects.
 - Again, the goal was to get the project completed or cancel the application.
- Should some applications, like more sensitive CSU projects, be singled out for things like extended deadlines?
- The only real benchmark would be substantial completion, but no milestone existed to tie to completion. Judging the level of completion is difficult; 10% did not seem like enough, but also needed clarification. Was it 10% of the value?
 - “Substantial completion” was defined by AIA and essentially meant that a certificate of occupancy could be obtained, which provides time to close out and get a final inspection.

- In doing variance research and talking with Mr. Larsen, staff discovered that a project could be really close to completion, but still get occupancy. Bonds had been secured for completing a parking lot or water quality resource mitigation.
- Construction case law involving litigation about substantial completion regarded the ability to get pay applications approved. Connecting substantial completion to the beginning of a construction project was difficult.
- “Substantial completion” was more palatable than the term “substantial construction.”
 - Issues arose with Harmony Mini-Storage when substantial completion of one building meant substantial completion of the whole project.
 - Phasing was an important factor to consider.
 - If an applicant decided to build only the first building of a multi-building project, they should reapply for the second building.
 - Perhaps a more abbreviated or less expensive process could be used than the original application process.
- Development involving multiple parcels or buildings, like a small university, would have a master plan involving phases of completion. Approval of the master plan would occur and then each project/phase of that master plan would be reviewed.
 - The City was contemplating a master plan application process for the future. Would that process be similar to the master plans adopted for parks, which was a legislative, more policy approach? The applicant essentially returned for individual land use development approvals for each portion of the project, but had some certainty about the approvals given.
- Phasing was simpler than a master plan. An applicant developing an apartment complex could decide to complete only 2 of 3 buildings. Phasing would allow them to build what made sense for the project without losing their approval because they did not build the third building.
 - Phasing made sense. Water quality areas, transportation, or other conditions might change, requiring staff review, but that would not necessarily need to come back to the Commission.
 - Industry standards applied to wetland delineations, which are good for 5 years, and traffic studies, which are good for 3 years.
- For extensions, staff discussed having a staff level review to confirm that conditions had not substantially changed to allow the applicant to move forward. If new development had occurred or a transportation condition changed, then the applicant would need to return for another approval.
 - Certain standards are never grandfathered in and applicants are required to comply with current standards, such as the Public Works Standards.
 - Changing the City's standards so much as to not allow development would affect the development rights of the applicant.
 - Project changes that might harm the environment were another issue of concern if an applicant was not held to the standard of Code changes.

Ms. Shanks reminded that in addition to revamping the Review Procedures Chapter, Ms. Breakstone and Ms. Dorman already evaluated the Code's basic structure and found missing basic aspects of the review process, such as a clear development review structure and process, and even having development review as an application type to do things like site plan review, or modification of an approved plan. Given these needed changes, potential opportunity existed to change the Code's actual structure similar to the Table of Contents for the Review Procedures Chapter.

- The proposal was to essentially overhaul the entire structure of Title 19 in the MMC while

retaining most of the content. This restructuring would allow for the appropriate insertion of a development review chapter and application type, while also clearly grouping the City's applications all in one place.

- Discussion on the Review Procedures Code Amendment project would continue, and a detailed restructure of Title 19 would be presented to the Commission in late August, particularly regarding development review.

7.0 Planning Department Other Business/Updates—None

8.0 Planning Commission Discussion Items—None

9.0 Forecast for Future Meetings:

- | | |
|-----------------|---|
| July 27, 2010 | 1. Public Hearing: CPA-10-01 North Clackamas Park North Side Master Plan |
| August 10, 2010 | 1. Worksession: Natural Resources Overlay project update <i>tentative</i> |

Ms. Mangle reviewed the upcoming meeting schedule with these additional comments:

- She was uncertain whether the July 27th hearing would require a continuance. Some comments had been received. The application was sent to the Lake Road NDA and the Community Planning Organization in Clackamas County, with limited response from either entity. Notice was sent out to those within the 300-ft radius, which resulted in only some clarifying questions. Staff was preparing for a long, complex hearing, but no signs for such were being seen. The application included the area north of Camas Creek and west of the Milwaukie Center.
- Assuming the Master Plan is not continued, the August 10th meeting would include two worksessions, the Natural Resources Overlay project, which was being prepared for public hearing in early fall, and the land use hearings training.

Meeting adjourned at 9:43 p.m.

Respectfully submitted,

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



Jeff Klein, Chair