

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, May 25, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Chris Wilson

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Ryan Marquardt, Associate Planner
Brad Albert, Civil Engineer
Bill Monahan, City Attorney

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes – None

3.0 Information Items – None

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

5.0 Public Hearings

- 5.1 Summary: Riverfront Park *cont'd from 5/11/10*
Applicant/Owner: City of Milwaukie
File: DR-09-01, TPR-09-03, WG-09-01, WQR-09-01, VR-09-03
Staff Person: Ryan Marquardt

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

Bill Monahan, City Attorney, advised that at the close of the last meeting the Planning Commission decided to reopen the public hearing and accept input on the complete application as well as new information. He advised that the Commission go into hearing format, starting with the staff's or applicant's presentation.

Commissioner Wilson stated that he had read the rough draft of the minutes from the prior meeting along with all the material, and talked with Ryan Marquardt. He believed he had enough information to take part in the meeting.

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

Commissioner Batey declared that she received a call from Ed Zumwalt of the Historic Milwaukie Neighborhood District Association (NDA) who was concerned about the lack of non-motorized boat access. They spoke briefly on the phone. He said he might testify, but was not present at tonight's meeting.

Commissioner Churchill stated he also received a similar call from Mr. Zumwalt regarding non-motorized boat access. Someone else left a voice message on the same subject but did not state their name.

Each Commissioner had visited the site. No Commissioner, however, declared a conflict of interest, bias, or conclusion from their site visit. No Commissioner's participation was challenged by any member of the audience, nor was the jurisdiction of the Planning Commission to hear the application.

Ryan Marquardt, Associate Planner, presented the staff report via Power Point, stating that the bulk of staff's analysis, findings, and conditions of approval from the May 11th staff report were still in place because there were not many changes from the last hearing. He addressed questions the Commission asked at the May 11th meeting as follows:

- Additional materials submitted by the Applicant and sent to the Planning Commission on Friday addressed non-motorized boat access for the park. The Applicant would provide additional comments during their testimony.
- The left-hand turn pocket off Hwy 99E/McLoughlin Blvd to enter the Riverfront Park area was 140 ft long and would accommodate about 7 standard automobiles or 3, 50-ft long vehicles, such as a vehicle with a boat trailer.
 - City engineering staff measured the existing right-of-way on McLoughlin Blvd and found that the curb on the west side would need to extend west about 4 ft toward the river to accommodate the cross-section on McLoughlin Blvd. No changes would be needed to the east side of McLoughlin Blvd.

Commissioner Churchill asked if engineering staff believed the 3 vehicles with boat trailer combination pocket length was adequate considering the volume of traffic and how that determination was made.

- **Brad Albert, Civil Engineer**, stated that the left-turn pocket capacity of 3 trucks with boat trailers was adequate for the volume entering and exiting the facility, and designed to meet ODOT standards for the designed speed of, peak capacity, and trip generation forecasts for the highway. He deferred to the Applicant for more information.

Commissioner Batey asked if the 4-ft shift on the west side of McLoughlin Blvd would impact the Trolley Trail.

- **Mr. Albert** responded that the Trolley Trail was designed far enough away that the 4-ft shift would not impact it. The existing center turn lane at Washington St was 14-ft wide and could be re-striped to 11-ft wide, so moving the curb may not be required. After his cursory review of the site, the proposed shift would be a maximum of 4 ft, if needed.

JoAnn Herrigel, Community Services Director, thanked the Commission for hearing the application again and noted that more Riverfront Park Board (Board) members were present who would testify. She had provided some material in response to the Commissioners' questions at the last meeting about the non-motorized boat launch. She updated the Commission with information from further research with these comments:

- She found that 2007 open house renditions showed non-motorized boat access at Jefferson St and so had been viewed by the Commissioners and the public. It was also included in the 70% design details provided by David Evans and Associates (DEA) and used in the pre-application meeting with the Army Corps of Engineers (Corps), National Oceanic and Atmospheric Administration (NOAA) Fisheries, National Marine Fisheries Service (NMFS), and other regulators in July 2008.
 - At that time, a NMFS representative indicated to the design team that if multiple things

were along the edge as well as out into the water of the Willamette River, the application might not receive as positive a review as it otherwise might. There was now a new NMFS project manager.

- The Board believed it was advisable, given that non-motorized boats could be accommodated with the existing structures and current development, to remove non-motorized boat access from the plans submitted to the Corps in January 2008 and the Commission in March 2009. At that time, the Board assumed that non-motorized boats could be accommodated with the transient dock or the boat ramp. Her personal idea was to lower a fork of the transient dock or add something to the edge of it to accommodate non-motorized boats. She never considered not allowing non-motorized boats and wanted to accommodate as many boaters as possible with the proposed design.
- The Board was prepared to offer 4 options to the Corps and NMFS staff reviewing the Corps application within the next couple of weeks. She asked for feedback from the Commission regarding which would be preferable and receive the most positive review. The proposed options were:
 - Option 1: Use the proposed boat launch and transient dock for non-motorized boat launch. These structures were 12 to 18 inches above the water and less convenient, but could be used to access a non-motorized boat.
 - Option 2: Lower part or all of one fork of the transient dock to a 6-inch height, making it easier for non-motorized boat access. This was similar to a dock that non-motorized boats could use on the east side of the Willamette River, north of OMSI. It was also a similar distance from automobile parking as the proposed access in the Riverfront Park plan.
 - Option 3: Put smaller gravel along the top of the boulders along one side of the planned boat ramp to create a non-motorized boat launch alongside the dock next to the boat launch. To avoid conflicts with motorized and non-motorized boats unloading in the same area, a ready lane could be installed for non-motorized boat users to park, unload their vessel, and then move their vehicle to the parking area. This option was not yet designed, but being discussed.
 - Option 4: Reintegrate the access path and launch proposed in the 70% design. This option had not been designed in detail.
 - She proposed that Mr. Williams and DEA develop more details regarding these options and send them to the Corps and NMFS to discuss which options were preferable.
- The Board's considerations regarding the 4 options included:
 - They wanted to accommodate non-motorized boaters. They believed they already were, but needed to explore other options.
 - They wanted to allow a timely approval of the joint permit application, which had already been in review for more than one year. The total review process would take 2 years, so they wanted to be careful to not extend the time the Corps needs for review by adding an additional element. However, discussions with the Corps had not indicated that it would delay the review process.
 - Any option considered had to work for both motorized and non-motorized boats with no conflict.
 - The closest parking lot was some distance from the non-motorized boat launch proposed in the 70% design. The walk down to the transient dock was fairly steep, although not as steep as the launch by OMSI, which had a 25% incline. She proposed that while the design team was considering the access, non-motorized boat groups could be contacted to ask about their preferences.
- After meeting with the head of Water Environment Services (WES), it appeared that a full traffic light would be needed for accessing the riverfront, regardless of the entrance's location. The sewage trucks were mostly going north, so the proposed entrance may need

to be modified, or remain at Washington St, which would not have a major impact on the design.

- Further information was also available about the survey in response to Commissioner Batey's inquiry.

Commissioner Batey:

- Asked if the Board consulted the public through Willamette Riverkeepers or any other groups representing the rowing community before removing non-motorized boat access.
 - **Ms. Herrigel** responded that the focus was primarily to get the application in and make sure it was positively reviewed, so it was not taken out to other organizations.
 - **Gil Williams, David Evans & Associates**, noted that preliminary conversations were held with Travis Williams of Willamette Riverkeepers, who indicated that non-motorized boat access was desired. The notes from those conversations were limited, but there were preliminary conversations about the same time as the pre-application meeting with the Corps.
- Asked if the dock gangplanks were wide enough for 2 people to carry a canoe and pass each other.
 - **Ms. Herrigel** believed the gangplanks were about 6-ft wide.
 - **Mr. Williams** added that the 6-inch height from the water was the primary consideration for easy boarding of non-motorized boats. The regulators look at the footprint on the water, so if the facilities were widened, extended, or added to it was looked at negatively. Maintaining and providing non-motorized access using the existing footprint by lowering the height of one dock would be the way to do it.

Commissioner Churchill stated that the traffic bottleneck did not exist at the water's edge, but at the single point coming from the old log dump down the single path on the transient dock. He understood the footprint on the water was important, but the congestion point appeared to be the narrower part of the ramp.

- **Ms. Herrigel** replied that as designed, the transient dock was 6-ft wide with no railings.
- **Mr. Williams** stated there were railings on the ramp going down to the transient dock, but the width was 6 ft clear inside the railings.

Chair Klein clarified that nothing restricted him driving his 4-Runner with a kayak on top down the boat ramp and unloading the kayak and tying it to the dock, and then parking his vehicle.

Commissioner Churchill:

- Noted comments in Ms. Herrigel's letter about speaking with John Holm of the Army Corps of Engineers, who has been reviewing the Riverfront Park application through the Corps' Joint Permit Application process.
 - **Ms. Herrigel** stated that the Board did speak with Mr. Holm about the 4 options for non-motorized boats and his interpretation was that they would not be a major modification to the original application. Mr. Williams would confer with the other agencies about the options. She wanted to push a little further because several options were being considered, and ask Mr. Holm if there were any options he would not recommend.
 - **Mr. Williams** clarified that the applications went through the Corps and were reviewed by NMFS, who would render a biological assessment. Presenting an addition or revision to the design was not problematic, but had to be justified. If the change did more harm or presented a liability of exposure for NMFS, then a conditioned opinion would be rendered. The access could be included and defined with design drawing and an explanation for the need. Mishka Konine, the NMFS project manager, would render an opinion based on that material.

- He clarified that the goal of NMFS was to protect the fish.
- Verified that the project started in 1998 and asked if all versions up to 2007 had non-motorized boat access.
 - **Ms. Herrigel** clarified that the option shown tonight was from the 2007 open house, which was the only drawing she could find with a specifically dedicated non-motorized boat ramp.
 - **Mr. Williams** noted it was not actually identified as a non-motorized boat launch but as a secondary path to the water's edge.
- Asked if non-motorized boat access was addressed in preliminary discussions between 1998 and 2007.
 - **Mr. Williams** responded that the original 1998 plans did not have any launching facilities at all. The Downtown and Riverfront Land Use Framework Plan showed a scheme for the riverfront that did not have a boat ramp or any boat access. Limited pedestrian access was available for viewing using steps down to the bank.
- Confirmed that the 2007 version at 70% design included the boat ramp, but that was removed in the July 2008 version.

Chair Klein clarified the Applicant had testified that the boat ramp in the 70% plans was not necessarily designated as a non-motorized boat access, but was primarily a pedestrian access for viewing the water only.

Mr. Williams asked if it had been labeled as non-motorized boat access in prior versions of the plans.

Commissioner Churchill stated that he did not have a copy of previous plans, but he recalled discussions where that path was explained as the way to get kayaks down to the water. He wanted to understand the history of the project.

- **Mr. Williams** said there was this plan, but the ones that went out with the survey did not include the access.
- **Ms. Herrigel** agreed that non-motorized boat access needed to be accommodated. Kayak and canoe users in the community wanted to use the riverfront and she wanted to accommodate them whether or not a specific dedicated ramp was shown in the past. She emphasized that there was no intent to excise it from the plan and she believed it needed to be included again. Removing it had been an oversight while trying to juggle all the balls with the federal, state, and local regulators.

Commissioner Bresaw remembered that a past City Council wanted to remove the motorized boat ramp because there was no room for it.

Ms. Herrigel said she was interested in the Commission's opinions regarding the 4 proposed options.

Commissioner Churchill reiterated that he wanted to understand the history because what the Board did in the meantime was very helpful. He asked if the Board would go to the various kayak and river keeper groups for feedback.

- **Ms. Herrigel** replied that it would be good to check in with kayakers, canoe owners, and the Willamette Riverkeepers, etc., for input and suggestions about what they have seen elsewhere.

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

Gary Klein, 10795 SE Riverway Ln, stated that he researched the Riverfront Park project at the Ledding Library and found 72 newspaper articles about the project dating back to 1917. He read statements from the newspaper articles, commenting that they sounded similar to what was happening today. He hoped that the plan would move forward.

Mike Stacey, 2740 SE Kelvin St, had been on the Riverfront Board for 7 to 8 years. He was an avid boater and kayaker who had always just used boat ramps, if available, for river access. He suspected that the Marine Board would be licensing kayaks before too long, giving kayakers legal access to everything. The project needed to get going. Dual access at the boat ramp was the best option and close access with a low dock was perfect. He believed the ready lane was a good idea.

Commissioner Batey asked Mr. Stacey if he would have to wait at the top of the ramp with his motorboat while a kayaker was unloading on the ramp. He confirmed that he would.

The Commission took a brief recess and reconvened at 7:20 p.m.

Mr. Marquardt noted that the materials gathered by Gary Klein were distributed to the Commissioners

- He explained that the staff report covered the first 3 options presented by Ms. Herrigel, but the current language would not accommodate reintegrating another access point because of other impacts to the Water Quality Resource (WQR) area that would require modified plans from the Applicant and another review.
- He clarified that staff did not know the range of options the Applicant was considering when the staff report was drafted, so it was drafted with a little flexibility to allow smaller changes in the park plans. However, the fourth option would not be covered under the proposal.

Ms. Mangle added that the findings were crafted to address the concerns raised by the Commissioners, but did not include the 4 proposals presented tonight. She clarified that the first 3 options could be accommodated through findings and conditions. The fourth option required further analysis because staff did not know what that option would look like, how much was impervious surface, what the disturbance would be, and what additional mitigation might be required.

Commissioner Batey confirmed if it was not possible to address the fourth proposal with the separate access point through a new condition, but word it so staff could review it without returning to the Commission.

Ms. Mangle expressed reservations about this approach.

Chair Klein read staff's recommended additional Condition of Approval 3 (5.1 page 3), and stated that he believed the Commission's questions were being addressed. He asked if any Commissioner had questions regarding clarification of testimony at this point.

Commissioner Churchill:

- Reiterated that one proposal did not match staff's language in their report, so the Commission could not effectively choose one of the 4 options.
 - **Mr. Marquardt** clarified that there were two parts to the analysis of the conditions. One part was that the Commission clearly expressed a concern about non-motorized boat launch access in the park. The findings in the Willamette Greenway (WG) section of the staff report clearly expressed that non-motorized boat access should be accommodated.

The second part was how non-motorized boat access should be accommodated. When the staff report was written, staff did not know if the Commission would find it adequate that small portions of the existing proposal could be modified to adequately address their concerns or whether a large change was needed to satisfy the Commission's concerns.

- **Ms. Mangle** believed that the WQR analysis asked applicants to avoid, minimize, and mitigate any impacts into the WQR area. Option 4 was a new access to the river and staff did not know what mitigation was required without analysis, and the Commission was always the final decision maker. The findings were crafted to guide approval of and substantial conformance with the submitted plan. Options 1, 2, and 3 were tweaks to the plan, while Option 4 was a new element that had not been analyzed yet. She did not believe that staff's recommended findings and conditions addressed Option 4 sufficiently.
- Appreciated Ms. Herrigel's effort to bring options to the Commission. Due to timing issues, the Commission was being asked to not consider Option 4 without a continuance of the hearing, but no one wanted to continue the hearing longer than necessary. He also heard that the Applicant wanted to review the options with the non-motorized boat community.
 - **Ms. Mangle** said that throughout the conditions many statements acknowledge that other agencies are involved in permitting the application and if any changes were required to react to the other agencies, then in many cases it would return to the Commission.
 - She clarified that the Applicant was still at 70% design with the plans submitted in 2009. Staff had been preparing for the hearing since, so the design was still at 70%. Any changes to the plans during the last 30% of the design had to be in substantial conformance with the subject plans. If substantially different, the plans would have to go through a WQR analysis and review by the various regulatory agencies, including the Commission.
 - She confirmed this was the last time the application would come to the Commission unless changes were required because of the Corps permit or other requirements.

Commissioner Churchill:

- Asked why the plans were at 70% before addressing the non-motorized boating community.
 - **Mr. Marquardt** replied that the WG criteria had to be considered regarding the types of accesses and users. The Applicant made the case that there was access for a variety of different users. The Commission had to decide if the 3 options were enough to accommodate non-motorized boat access. If a greater change was needed, it could return to the Commission.
- Pointed out that the options for non-motorized boats had not been vetted against the non-motorized boating community.

Chair Klein believed that the question had been answered that non-motorized boat access was included in the current set of plans under review. The Commission would determine if it was adequate or not during deliberations.

- **Ms. Mangle** commented that if the Commission believed Option 4 was the right one or very important to consider and fully develop, then it required further analysis that was not fully reflected in the findings to support approval tonight. More time was required if the Commission chose to develop Option 4.

Commissioner Bresaw asked if Option 4 could be considered in the future. The Commission could approve tonight to get it going, and if there was a conflict between motorized and non-motorized boats, it could be addressed in the future.

- **Chair Klein** noted that the added Condition 3 allowed for that potential.

- **Ms. Mangle** added that as a new element in the park, it would come back to the Commission in the future.

Mr. Monahan commented that if the application could be approved with one of the first 3 alternatives, a modification and new application could come back at a later time if the Applicant found that the approval authorities could grant Option 4, which the Commission could then review. This was the only way to get Option 4.

Ms. Mangle clarified that the Applicant had waived the 120-day clock, but there was a final 1-year deadline from submittal of application, at which point the application would have to start over.

Mr. Marquardt added that September 11, 2010, was the 1-year deadline for the application cycle. The absolute last timeframe for Planning Commission approval was late July/early August to allow appeal time to City Council.

Chair Klein asked what the Commission hoped to find by extending the review process.

Commissioner Churchill hoped that the non-motorized boat community received notice and had the opportunity to provide input into the process. Non-motorized boat access was removed July 2008 with little notification, although not intentionally. The Commission determined there was a lot of missing detail about consideration of non-motorized boat access and the Applicant had apologized for removing it from the plans.

Ms. Herrigel clarified that while there were 4 options, the Applicant requested that the Commission consider the 3 options that did not modify the original application.

Chair Klein asked how many people from the non-motorized boating community had come forward to look at the plans during the past 12 years.

- **Ms. Herrigel** said that in reviewing some of the survey results, the predominant comments were from people that wanted to drive to the park to look at the water from their car in the parking lot, put their motorized boats in the water, and that were advocates for parking lots. There were no kayaker comments, but that question was not directly addressed necessarily. The conversation she had with the Board and interested persons predominantly regarded open space and motorized boat access. People have asked if they could launch kayaks, but it was not the predominant discussion.
- After non-motorized boat access was removed from the plans, no one had commented about it until the Commission meeting. Since the prior Commission meeting, Mr. Zumwalt only made comments to her and the 2 Commissioners. He asked her if non-motorized boats could be accommodated with the facilities currently in the plan and if some other access had, in fact, been removed at some point.
- The existing boat launch was currently used for non-motorized boat launching. People walked all the way up and down the side of the river and put in where they wanted to. The proposed boat launch could also be used by both motorized and non-motorized boaters. She hoped that the boat launch, dock, and transient dock would prevent people from making goat trails by walking up and down the edge of the water to launch non-motorized boats.

Commissioner Churchill:

- Noted that the Applicant's consultant mentioned he had contacted the Riverkeepers.
 - **Ms. Herrigel** replied she was not aware of that contact, so the consultant would have to speak about it.

- Believed the Riverkeepers group was a very important non-motorized boat community. He believed that was the kind of community the Board needed to contact.
- Asked how recently they had been contacted because they were active in discussions with all applications regarding access to the water. He appreciated the larger effort to make contact with them, because they represented a large number of people who have access to the Willamette River.
- Understood that currently non-motorized boat access was done via the boat ramp or the waterfront edge, but asked what was used mostly now, because he had a feeling it might not be the boat ramp.
 - **Ms. Herrigel** stated that she had never seen anyone launch a non-motorized boat there, adding that Mr. Stacey did say he used the boat ramp.

Commissioner Bresaw asked if any grant deadlines were coming up for funding the project. Even if approved tonight, it would be years before the project started.

- **Ms. Herrigel** replied she planned to submit grant applications in April 2011, and though optimistic, construction could begin in Summer 2011.

Commissioner Churchill asked if the Board was contacting other non-motorized boat communities for input to the next 30% of design.

- **Ms. Herrigel** clarified that specifically, she would take the options presented as access alternatives to the non-motorized boat community for their feedback. She understood that 70% designs were basically in pencil and had not been hardened in pen. Pretty much everything was set down on the ground and dimensions were known at 70% design. Generally things were not necessarily moved around when going from 70% to 100%, but details were confirmed and materials specified. The process tonight and also at the Corps would establish what would be hard lined in before the next 30% design was completed.

Chair Klein closed the public hearing at 7:44 p.m.

Planning Commission Discussion

Vice Chair Harris believed that river access was important and non-motorized access was as equally important as motorized access. The existing access provided for both, but could probably be improved. Staff's recommendations clearly required the Applicant to seek ways to improve the access. He saw no reason to not approve the application.

Commissioner Bresaw said she basically agreed and wanted to see construction begin. There could be some conflict between types of boats with the current design, but it could be changed in the future. She agreed there could be goat trails to the river. She wanted the project to move forward.

Commissioner Batey stated that the Board had done a lovely job and the plan was beautiful. She liked the cars all on one end and that the road did not go through the whole park. She loved the fountain and the amphitheater. She did not want the Board to think that the focus on the non-motorized boat access was criticism of the overall plan, but it was a huge mistake to not include it in the application.

- It would have been better to document the goat trail phenomenon that existed now because people would find a way to get their canoe in the water whether access was built or not. She was concerned that the alternatives appeared like an afterthought and were not documented as something that the community wanted from square one. If it had been in the plans from the first with NOAA and the Corps, it would be easier for the City to push for it now.

- She did not own a canoe, but Ms. Herrigel's suggestion to consult with the non-motorized boat community was the right way to go. However, they may consider Option 4 best, so she was concerned that the Commission could not craft findings and conclusions tonight to allow pursuing of Option 4. Although removing non-motorized boat access was a mistake, she would vote to approve the application with the changed conditions drafted by staff.

Commissioner Churchill appreciated the Board's presentation of alternatives and the effort required in developing it. He seconded Commissioner Batey's comments, stating it was a beautiful riverfront plan with great lawn experience, great amphitheater space, and many good attributes. The motorboat access was appropriately located to the south, out of the way of the main thrust of the park.

- Options 1, 2, and 3 had various strengths and weaknesses, but as a kayak user, he would choose Option 4. Concrete or gravel on boulders was hard on boat hulls and not good for launching nice boats. The best surface was a small gravel beach, similar to the current launch south of the boat ramp.
- He understood the challenges with the regulatory agencies that did not want to allow access to the waterfront. A small population would use Option 1, the transient dock, but that may not survive the final design, in which case gravel on boulders or the motorized ramp were the only options.
- Sharing non-motorized boat access with motorboats was not safe because non-motorized boats were very low in the water and motorboats on trailers were very high off the ground, with near misses happening often. Very few people launch non-motorized boats at the boat ramp in Willamette Park, which was a 6-lane ramp. A non-motorized boat could tuck off to one side to launch, but there was fast activity back and forth loading motorboats in and out of the water.
- He liked Option 4 to avoid goat trails that destroyed the native vegetation. He did not believe people would share the ramp and the transient dock was a long distance from parking, so they would come through the native vegetation to access the river.

Commissioner Wilson agreed with Commissioner Churchill regarding access issues.

Chair Klein said he favored the application and complimented the Board for doing a great job.

Vice Chair Harris moved to approve DR-09-01, TPR-09-03, WG-09-01, WQR-09-01, VR-09-03 including the findings and conditions in the staff reports dated May 11, 2010 and May 25, 2010. **Commissioner Bresaw** seconded the motion.

Commissioner Batey asked if Option 4 was removed from the motion.

- **Ms. Mangle** responded that Option 4 was conceptually part of the project, but was a new element, so when designed and built, it had to return to the Commission for approval as a modification to the approved plan.

Chair Klein clarified that Ms. Herrigel was pursuing the 4 options and other regulatory agencies would review the project. If needed, it would return to the Commission for approval or denial of the 70% reintegration launch proposed design.

Commissioner Churchill asked if the Commission would receive feedback from the Applicant regarding discussions with the non-motorized boat community.

- **Ms. Mangle** responded that the Applicant would be happy to update the Commission at the right time.
- **Mr. Monahan** advised it would not be appropriate as a condition, but was something

between the Commission and Applicant.

Motion passed 4 to 2, with Commissioners Wilson and Churchill opposing.

Commissioner Churchill noted for the record that his vote against the application was not for the work done by the Board, but was due to the lack of community input with the non-motorized boating community.

Chair Klein read the rules of appeal into the record.

The Commission took a brief recess and reconvened at approximately 8:05 p.m.

6.0 Worksession Items

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

Katie Mangle, Planning Director, stated that the Review Procedures Code project resulted from the Smart Development Code Audit project completed over the past year, which addressed Milwaukie Municipal Code (MMC) Residential Standards and Procedures updates. This worksession would address changes to the structural part of the MCC. The City had not done a good job addressing some of the foundational processes of the MMC, which had not been updated since the 1960s.

- Areas of the Code are not fully compliant with the Oregon Revised Statutes (ORS), are not efficient in terms of using City and public resources, and not as effective, which in many ways is more important than efficiency.
- Commissioner Batey had acted as a sounding board for specific Code issues. Other Commissioners interested in being more involved with the Code project were invited to contact staff. The issues needed to be thought through because they involved processes and choices that underpin the work done by Planning staff.

Susan Shanks, Senior Planner, presented the staff report, which included these key comments:

- The Code project addresses structural problems and gaps in the basic structure of the Code and land use process, including noncompliance with the ORS, and rendering certain Code provisions unenforceable. Review procedures regard the structure for how land use and development review are done in the City, such as who the appropriate decision-making person or body is, who is to be notified, the timeframe within which decisions are made, and time limits on land use approvals, including conditional uses.
 - Having clear direction and process for land use procedures is critical for staff, the City, and applicants.
- Specific goals of the Review Procedures project are:
 - Make the review procedures section consistent with the ORS.
 - Consolidate procedures into one place.
 - Develop a new Development Review Chapter that would be a repository for land use procedures and applications and would also outline the procedure for development review.
 - Currently, applicants have to read the whole Code to determine what applications are required, which is not an effective way to do business for staff or applicants.
 - At present, a review process existed that was just associated with building permits, but the line was blurred between the two. Staff wanted to be very clear where the line was and whether a land use review or building permit review was required, which should just be based on objective criteria.

- The goal was to make it easier for staff to apply and for the public to use and understand.
- Address approval criteria for Conditional Uses, Variances, and nonconforming uses and structures, which make up three chapters of the current Code.
 - Along with looking at review procedures in general, the project would consider whether the level of review was appropriate. For example, were more levels of review needed for Conditional Use, or should just one type of Conditional Use always come before the Planning Commission; were more than two types of variances needed for a level of review, and did the approval criteria make sense for the level of review applied.
- Time limits for Conditional Use and Variances would also be reviewed. Currently substantial construction had a 6-month time limitation. Generally, applications did not have a time limit, but other cities did so staff wanted to review what made sense for Milwaukie.
- This is a technical Code update as opposed to a policy update.
 - While some policy aspects were involved, it was much more limited relative to other Code projects like the Parking or Transportation Chapter projects.
 - Staff was not doing a lot of public outreach, but instead relying on ORS requirements, the City's consultant, other cities' practices, staff's knowledge of the Code, as well as the Planning Commission's experience. Some targeted outreach would be done, but not like with other Code projects in the past because staff believed this to be mostly a technical, legal update with some key questions about some key policy issues.
- She briefly reviewed the timeline for the Review Procedures project, noting that three rounds of draft Codes were expected for the different sections being edited. Two worksessions were planned with the Planning Commission, on July 13th with the consultant, and then again in late August. The adoption process would start in September.
- She explained that staff identified the work as two separate projects, not by the grant, which was for both Code update projects. This Review Procedures project would overlap with and be followed by the Residential Design Standards project in August.
- She highlighted the staff report's attachments, which went beyond this particular project and briefing, but she encouraged the Commission to read them.
 - Attachment 1 Overview and Assessment of Planning Code
 - Originally developed as an overview and staff's assessment of the Code, staff hoped to use the table during the Code update projects to track progress. The table indicated bigger problems, such as legal or best practices issues where the Code was not kept current or structural problems, not Code maintenance work. The table also enabled staff to highlight what the Code included to determine if certain provisions were still needed; some were quite outdated.
 - Though changes may be needed at the Comprehensive Plan level that would need to be reflected in the Zoning Code, the table also indicated staff's assessment of how well the Code implements the current Comprehensive Plan.
 - Attachment 2 Chapter 4 from *A Better Way to Zone* by Donald Elliott
 - The book talked about the best way to govern from a zoning perspective. The chapter was applicable to the Code projects and work done by the Planning Commission. The author listed very specific things that made for a good Zoning Code, such as effectiveness, responsiveness, fairness, efficiency, understandability, and predictable flexibility. Staff had used these terms when discussing the goals of the Code update projects, so it was interesting to see similar language in the author's discussion. The terms related to words in the Zoning Code but especially to the practices undertaken during land use review.
 - Attachment 3 Code History Memo by Li Alligood

- When undertaking Code update projects, staff reviews the history of the Code sections being updated to understand what previous issues were addressed and the goals of previous updates/revisions. The memo summarized the history of the particular sections under review for the Code update project. It showed how little these Code sections were touched over time, which was why the review needed to occur.

Discussion from the Commission about the project and Code issues to address was as follows:

- The purpose of Conditional Uses (CU) was questioned because anything should be able to be on a site; desirable uses could overlap. CUs and Community Service Uses (CSUs) had to be ratcheted down, particularly CSUs, because open-ended time limits did not work.
- Projects should have sunsets, requiring the applicant to go through the process again if a project is not built within a certain time.
 - Sunsets on CUs have caused issues. Timelines were needed, as well as a clear definition of percentage of completed building and the process for returning to the Commission.
 - Putting a sunset on the SweetPea Daycare, a CSU, was a very good decision.
 - The relationship between CUs and CSUs and how they are treated differently was one issue staff would address to determine if both were really needed, what overlaps existed, etc.
- More time limits were also needed on projects because after so many years, the area is completely different.
 - An applicant could not have 2 years to build a mini-storage, but an infinite time period was allowed to build the high school sign.
 - Other jurisdictions have time limits associated with certain kinds of applications.
- Having no time limit is also problematic for many reasons.
 - Staff also suffers the consequences of no time limits on projects. Building permits were recently finished on the Ukrainian Bible Church, which was a land use hearing years ago.
 - If an approved project was dragged out over a long period of time, the applicant could deal with new staff with no previous knowledge about how to implement the wishes of the Commission or City Council.
- Residential properties were addressed differently. Staff had no jurisdiction over them and as long as they were properly boarded up according to the Building Code, the project could continue.
- Solar access protection was marked for deletion because the chapter was written for large subdivisions. The chapter consisted of a model code that was very long, technical, and confusing. Milwaukie did not have large subdivisions, so that chapter was not relevant for the City.
 - A more practical tool could be found to address Milwaukie's issues.
 - Perhaps solar access was better related to the massing standards.
 - Solar access regarded small single-family conditions where a 30-ft height limit might exist, but block solar access for passive and active design. There was a need for the protection.
 - While the chapter was proposed for deletion, staff was not necessarily proposing to eliminate that kind of design consideration altogether. Staff hoped to put what was salvageable from the chapter into Title 17 Land Division as it was more appropriate during division of property and considering lot configuration to maximize solar access for individual properties.
- The aircraft landing facility section was in the Code because 42nd Ave used to be a landing strip.

- If proposed, a helipad at Providence Milwaukie Hospital would be a use; the aircraft landing facilities section would not apply because it was about a zone. The Zoning Map did not show an Aircraft Landing Zone, although it was part of the Code. A helipad would be a CSU permit and staff could come up with an appropriate tool for addressing it. The City would not be likely rezoned for an Aircraft Landing Zone.

Ms. Mangle said that as done with the Parking Code updates, a website would be created for this project providing another way to track the project's progress.

7.0 Planning Department Other Business/Updates – None

8.0 Planning Commission Discussion Items

Chair Klein reported that 150 people attended the Milwaukie Run for Daze last weekend, including several Commissioners and Ms. Mangle. The breakfast went well, and the Chief of Police was very well received. Approximately \$2,000 to \$2,500 was raised for the Milwaukie Daze Festival.

Commissioner Bresaw said that she met the owners of the big house on the corner of Verne Ave, who said they were fully occupied and that the adults living there had mental disabilities. They received funds from the State for caring for people, but not specifically for elderly citizens. The owners had another house in Happy Valley.

Commissioner Batey asked if the school district was coming back regarding the Lake Rd mobile building application.

- **Ms. Mangle** responded that staff did not know, but heard the school district was not planning to return, although the district had not withdrawn the application. The Commission did not like the mobile units, so the school district returned with stick-built buildings. The hearing was then continued due to grading, height, and some questions from the Commission. Then the district had budget problems, which likely related more to the delay than the project itself. She did tell the applicant that they could finish the permitting process and then decide whether to build it or not.
- The Northside Clackamas Park Master Plan application was in and would be coming to the Commission and City Council this summer. The Master Plan would be proposed for adoption by the City into the Comprehensive Plan.

Ms. Shanks reported that two, very well attended open houses were recently held in the Northeast Sewer Extension project area. Staff had already received 3 annexation applications because people needed to annex before they connect to City sewer. The project had definitely turned a corner and a much more positive response was being heard about connecting to sewer and going through annexation.

- Upon learning how quickly neighbors received a notice of annexation, she explained that an applicant did a pre-application conference months ago. It was a vacant lot and the owner wanted to build a house but could not do so without sewer. The property butted up against Johnson Creek so a new septic system was not allowed. He was in process of doing the expedited annexation process and hoped to build a house over the summer and be ready to connect to sewer in November.
- Staff created an assisted annexation program to make it easier for people to go through the process. All were considered expedited annexations, which would go to City Council for approval. The Commission might see some non-expedited annexations because there were some non-conforming uses and zoning change requests.

Ms. Mangle clarified that staff had not heard anything about the annexation at the south end of Island Station.

- She updated that the Lake Road Improvement Project was in the right-of-way acquisition phase. She did not know when construction would start, but properties along Lake Rd had been notified. She was uncertain whether contracting had been done yet, but she would look into it.

9.0 Forecast for Future Meetings:

- | | |
|---------------|---|
| June 8, 2010 | 1. Joint Session with Advisory Group: Natural Resources Project |
| June 22, 2010 | 1. Public Hearing: WG-10-01 19 th Ave replat & duplex <i>tentative</i> |

Ms. Mangle reviewed the upcoming future meetings with these added comments:

- She would remind the Commission by email that the June 8th meeting would be at the Public Safety Building with the Natural Resources Overlay Advisory Group. The meeting was designed as the handoff between the two groups. She hoped to have a casual, facilitated conversation where the Commission and Advisory Group could exchange ideas and ask and respond to questions. Commission worksessions for the Natural Resources Overlay project maps and Code would begin soon. The Commissioners would receive a staff report before the meeting and possibly the new draft of the Code. However, the meeting was about the bigger issues, not the Code itself.
- She asked if the Commission had any points they wished addressed in particular.

Commissioner Bresaw said it would be nice to encourage the owners along Spring Creek to remove the concrete to return it to its natural state. Maybe there was a way to make it easier or provide some funding to help them.

- **Ms. Mangle** agreed that could be discussed. One big issue for Milwaukie's version of the project was being very clear about how restoration projects were handled. The Natural Resources Code was not the only tool available and was not how the City encouraged people to do certain things, but regarded what else the City should be doing.

Meeting adjourned at 8:50 p.m.

Respectfully submitted,

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



Jeff Klein, Chair