



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday December 14, 2010, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
 - 2.1 September 14, 2010
 - 2.2 September 28, 2010
 - 2.3 October 12, 2010
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
- 6.0 Worksession Items**
 - 6.1 Johnson Creek Watershed Council informational briefing (30 min)
Guest: Robin Jenkins, JCWC
Summary: Land Use and Development Review Process Tune-up Project draft code
 - 6.2 check-in
Staff Person: Susan Shanks
- 7.0 Planning Department Other Business/Updates**
 - 7.1 PC Notebook Update pages
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - January 11, 2011
 - 1. Extension Request for FP-10-03 Howe St.
 - 2. Worksession: Natural Resources Overly project briefing
 - 3. Worksession: Residential Standards project
 - 4. Annual Election of Officers
 - January 25, 2011
 - 1. Public Hearing: Development Review Process Tune Up Amendments
 - 2. Worksession: Annual preparation of Commission work plan

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

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

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, September 14, 2010
6:30 PM

COMMISSIONERS PRESENT

Jeff Klein, Chair
 Lisa Batey
 Teresa Bresaw
 Chris Wilson
 Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
 Susan Shanks, Senior Planner

COMMISSIONERS ABSENT

Nick Harris, Vice Chair
 Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein 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 July 13, 2010

Commissioner Gamba moved to accept the July 13, 2010, Planning Commission meeting minutes as presented. Commissioner Bresaw seconded the motion, which passed 4 to 0 to 1 with Commissioner Batey abstaining. Chair Klein and Commissioner Wilson were not present at the July 13, 2010.

3.0 Information Items

Katie Mangle, Planning Director, said she was sad to receive the email about Commissioner Bresaw's resignation, but would enjoy Commissioner Bresaw's involvement on the Commission for the remainder of the month.

- She noted City Councilor Greg Chaimov's presence in the audience and explained she had invited Councilor Chaimov to listen in on the meeting following discussion at the last Commission training session about the disconnect between City Council and Planning Commission. Having a Councilor stop by from time to time could help improve the Commission's work program and communication between Council and the Commission.

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

43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

5.0 Public Hearings– None

6.0 Worksession Items

6.1 Summary: Land Use and Development Review Process Tune-Up: Continuation of discussion about variances and nonconforming uses and structures
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, presented the staff report with these additional comments:

- She assured that the proposed restructuring of the entire Code to make it more user-friendly did not involve any policy changes, but would change the chapter outline formats for the City’s existing Code so that all applications and overlay zones were consolidated in one place, and the zones themselves would follow a logical order.
- A draft version of the restructuring approach was included in the last meeting packet; a better draft would be available in the future.
- The chapter reorganization would allow the City to incorporate a new development review chapter, which was currently a missing piece in the Code.
- Restructuring would also make it easier for applicants to understand the process.
- Staff was still researching Commissioner Batey’s question about why the Amendments Chapter was in the middle of the Title.
- The draft Code would be presented in a hybrid version of draft codes showing a table outlining the chapter outline format relocation changes, along with underline and strikeouts for actual content changes to help avoid confusion.

Discussion by the Commission and staff regarding the Code amendment proposals for variances and nonconforming uses and structures was as follows:

Variances – Type III Applicability

The proposed Type II Variances would address those staff saw most frequently that allow people to maintain their existing home. The general approach was to allow for some very limited Type II variances that essentially do no harm; that have indiscernible impacts, such as to nearby natural resources areas and adjacent property owners. The first table on 6.1 Page 5 Attachment 2 demonstrated how 10% frontage variances would affect those living in an R-10 or C-L zone.

- According to the proposed Type II Approval Criteria, the Gary Michael and Carolyn Tomei

- 76 project, for example, would not have been eligible for a variance because it would have
77 interfered with future improvements. However, the argument could have been made that the
78 street would never have future improvements.
- 79 • **Ms. Shanks** did not believe they would have concluded that the project would have
80 interfered with future improvements because that right-of-way is 60-ft wide and the
81 maximum the City would ask for is 50 ft for right-of-way improvements. The City would
82 probably never design that as a reasonable improvement to that street.
- 83 • In this case, if that applicant had asked for that variance, staff would have agreed
84 that the project did not interfere with future plan improvements. Such improvements
85 must be in the Transportation System Plan (TSP) or Capital Improvement Plan (CIP)
86 or reflected in some kind of planned document.
- 87 • The 25% variation to the front setback was definitely a concern; the rear and side setbacks
88 were not problematic. The statement “will not preclude or interfere with future
89 improvements to any public transportation facility” was noted.
- 90 • Most people believe River Rd, for example, should have sidewalks, curbs, and places for
91 people to wait for buses, and that need would only increase with a light rail station and
92 people crossing to Riverfront Park. Many houses were built much closer to the right-of-way
93 and to the property line than would be allowed under current Code.
- 94 • While it may not preclude building a sidewalk, the fact that the sidewalk would be 5 or 7
95 feet from people’s front porch had all those neighbors agitated 4 or 5 years ago during the
96 conversation about sidewalks on River Rd.
- 97 • It was a mistake to allow future development to prolong that alteration of setback. Houses
98 should be moved further back so that the opposition to sidewalks would be less. This is
99 probably an issue in other neighborhoods.
- 100 • Not allowing people to vary their front yard setback is good public policy.
- 101 • The variance allows people to vary their setback, but then they complain about public
102 improvements being too close to their house. The homeowners knew where the right-of-
103 way was and still asked for a variance.
- 104 • The City’s approach should be to follow the Code, period. The City must stand firm and
105 continue with the improvements to achieve its goals for street design. Denying variance
106 requests was a necessity because the City’s goal is to do improvements to all these
107 streets.
- 108 • Most houses on River Rd are 50 years old, and the residents are not the original

- 109 owners. The City may not have had the setback standard when they were built, so
110 the structures may have been grandfathered.
- 111 • The right-of-way has always been there. However, many people are not savvy about
112 considering the actual property line dimensions when purchasing a house.
 - 113 • The 25% variance could be decreased a bit, though everything would play out in different
114 ways for different streets. Staff had considered what other codes allowed and included
115 those figures in the draft. Staff sought direction from the Commission about the variation
116 amount.
 - 117 • Was the Commission concerned that allowing a variance to a front yard setback would set
118 up a domino effect in terms of precluding sidewalk improvements in the future? Or was it
119 concerned that the City would not be tough enough to install the sidewalk even though it
120 was closer to the home due to the requested variance?
 - 121 • **Chair Klein** replied in part, adding if having a variance put a house too close to the right-of-
122 way or on a street that gives someone more of a voice to say that improvements should not
123 be done, the City should be adopting a plan stating that the City is going to make
124 pedestrian and bicycle access a priority on residential streets in the city. They might get the
125 variance, but showing applicants where a proposed house will sit, as well as the sidewalk's
126 location, would be an important future step to avoid issues.
 - 127 • Staff would not allow encroachments into the right-of-way through the variance process.
128 Through this process, staff would ensure an approved variance would not set up a future
129 scenario where the City could not make improvements or had to buy back property. All
130 setback standards occur on private property and all improvements should be in the public
131 right-of-way, so unless the right-of-way is not sufficient, there should not be a conflict.
 - 132 • Most front yard setback standards are either 15 ft or 20 ft, which would result in 11.25 ft
133 and 15 ft when calculated at 25%, respectfully. The 25% variation would not put the house
134 clear to the right-of-way, but would give the applicant a few feet to play with.
 - 135 • The provision for averaging for nonconformance was flawed and needed to be revisited.
 - 136 • While there is a relationship, the Variance chapter needed to stand on its own, and staff
137 needs to track such things in terms of how they relate to each other. When doing the
138 residential design standards project, the Commission would consider whether to still allow
139 averaging for nonconformance as an exception.
 - 140 • The front yard setback should be considered more strictly than the rear and side yards. As
141 discussed, if no opposition is received after notice to the neighbors, then the variance

- 142 should remain a Type II. Any opposition would result in a Type III Review, and then
143 neighbors who believe there is an impact could speak up.
- 144 • Those not as familiar with the issues as the Commission were less likely to perceive a harm
145 with the front yard setback because it would not extend onto any one person's property.
 - 146 • 'Front yard' could easily be removed from the 25% variation list in Attachment 1, if desired.
 - 147 • The front yard is really important. It is in the public realm and is really for everybody. A tiny
148 bit of variation might be acceptable on certain streets.
 - 149 • Setback variation requests are made for side, rear, and front yard setbacks, and apply to
150 new construction, additions, porches, etc. Most front yard setbacks are either 15 ft or 20 ft,
151 so a 10% variance would allow a 13.5-ft or 18-ft setback potentially. Applicants requesting
152 variances would still have to meet the approval criteria; approval would never be a rubber
153 stamp. Staff would evaluate the right-of-way width, whether an approved variance would
154 interfere with future public improvements, etc.
 - 155 • The front yard setback is measured from the property line to the face of the building or any
156 portion of the front façade that is 18 in high, such as steps, pillars, or the front of a porch.
157 Stairs should be outside the setback. Eaves are allowed to extend into a setback up to a
158 certain number of feet in the rear, front, and side yard setbacks.
 - 159 • **Ms. Mangle** advocated allowing for a small variation. Many variance applications come
160 from homeowners in the process of renovating who need to go a foot into the setback to
161 meet Building Code.
 - 162 • **Commissioner Gamba** believed the 25% setback variation was acceptable.
 - 163 • Examples and photos or drawings were requested to demonstrate where the City has
164 run into these issues in the past.
 - 165 • Variance approval is not a rubber stamp; the criteria must still be met. Other than the Type II
166 variances listed in the Applicability Section on 6.1 Page 3, all other variances would be a
167 Type III review.
 - 168 • If front yard setbacks were excluded, applicants would still be eligible to apply for a Type III
169 variance, which requires a hearing before the Commission. Type III variances cost from
170 \$1,500 to \$1,700 due to the amount of process involved. Type II variances cost \$900 and
171 still involve a process, including notification of neighbors.
 - 172 • A well-founded objection to a variance would go into staff's impact evaluation with regard to
173 surrounding properties and the right-of-way. Staff is protective of the right-of-way and

- 174 supportive of the TSP improvements. The approval criteria about not precluding future
175 improvements were added as a result of staff's concerns.
- 176 • Excluding front yard setbacks would not preclude a Type III variance for a 1-ft front yard
177 setback variance, but that would involve a lot of process; 10% seemed like a better
178 compromise.
 - 179 • Perhaps, the Neighborhood District Association (NDA) Land Use Committees (LUCs) could
180 review minor improvement projects that are in the best interest of beautifying the city. This
181 process would not be as expensive as the normal Type II process and could benefit
182 everybody. The \$900 fee could be eliminated or reduced to something more manageable for
183 smaller projects.
 - 184 • Type II is already designed for that level of process, focusing more on the neighbors.
185 Staff could consider how to involve the NDAs in the Type II process.
 - 186 • Having NDAs review projects raised concern about putting neighbors in the position of
187 judging their neighbors, creating an uncomfortable atmosphere.
 - 188 • **Ms. Mangle** stated that approach would be considered almost a Type I adjustment,
189 which would have to be very clear and objective for the NDA. She was not sure this
190 approach would fit with land use law. A Type I review would be the rubber stamp
191 approach, and based on the Commission's discussion that was not the direction they
192 wanted. If directed, staff would investigate the NDA, rubber-stamp approach.
 - 193 • The idea of NDA involvement was good; however, one concern was that the NDA LUCs
194 were not fully staffed, and member attendance was sporadic.
 - 195 • Bad feelings between neighbors could interfere with a project. Hopefully, staff would
196 be more objective. The NDA is always included in the process for both Type II and
197 Type III variances as far as getting a referral.
 - 198 • Essentially, the only criterion for a current Non-Conforming Structure Alteration is
199 that the project does not hurt one's neighbor. Staff encourages people to get support
200 from their NDA or neighbors to help their case, although staff may conclude the
201 project is not detrimental even without such support.
 - 202 • Making NDA review mandatory created unease because of human nature.
 - 203 • Though a proposed project might only exceed the setback by 6 in, the
204 project would not be allowed because of the current Code's objective standards.
205 Requiring a \$1,500 process for a \$1,500 project seemed ridiculous.

- 206 • The actual variation numbers or percentages that are implemented but found not to work
 207 can be adjusted through a series of Code amendments. The Commission decided to wait to
 208 determine a set number until they could see some visual examples of how certain variations
 209 might affect certain lots.
- 210 • Most city streets, even those unimproved, are wide enough that putting a structure 2 ft
 211 closer to the right-of-way would not be an issue for 75% of the houses in Milwaukie.
 - 212 • Seeing examples of sidewalks and street improvements superimposed on Stanley St,
 213 Lake Rd, and other streets was requested, as well as an example of a cul de sac.
- 214 • Nonconforming situations would be handled completely differently. The variances would not
 215 allow existing nonconforming structures to go any further out of conformance than the
 216 maximum tier. The 25% variance would not apply to what exists; it is 25% of the standard. If
 217 that standard has already been exceeded, the applicant goes to a Type III review.
- 218 • Staff wants to stop allowing nonconforming structures from being able to do more
 219 alterations than people with conforming structures. Nonconforming structures would be
 220 more limited by this Code in some ways.

221

222 Type II Variance Approval Criteria

223 Some language was taken from the existing Home Improvement Exception Code. Staff wants to
 224 remove some language so applicants get funneled through the same variance process as
 225 everyone else. Staff borrowed language from other cities' codes in terms of cumulative impact,
 226 which should be considered if applicants are asking for more than one variance to the objective
 227 standards. Staff wanted simple criteria that focused on the minimum necessary so staff could
 228 feel comfortable approving something that met all the criteria.

- 229 • In the absence of any objection from neighbors, it seemed it would be difficult for staff to
 230 deny such a request. It seemed variances would be granted 99% of the time.
- 231 • Staff wanted to make variances attainable, but reasonable and limited. The criteria were
 232 not quantifiable, but were fairly objective. Applicants were either near a natural resource
 233 or not. With a simple check, staff could determine whether to allow minimal variances.
- 234 • "Interfere" is a loose term as opposed to "preclude." When or where does public access of a
 235 sidewalk interfere with one's expectation of privacy for their front porch or windows?
- 236 • The actual Code would be drafted by consultants, and wordsmithing to address clarifying
 237 language would occur upon reviewing that draft. Problems will occur with the verbiage
 238 because of the flexibility desired. Staff ultimately wanted enough guidance to make good

239 professional judgments.

240 • Staff was comfortable making such decisions because it is done in other realms.

241 Minor modifications involving the Community Service Use (CSU) Code are similar,
242 and ask if the variance will intensify the use of the site or be potentially damaging to
243 natural resource areas or open space. While the proposed Code is not exactly black
244 and white, the criteria provide staff with enough guidance.

245 • The Director will sign all the variance decisions. Concern about one staff person making a
246 decision and not consulting other staff was a valid concern, but unlikely to occur.

247 • Was staff covering the right types of things in the criteria? When doing the analysis, would
248 the right things be controlled?

249 • Staff believed the currently proposed criteria were achievable. Any impacts could be
250 mitigated. Staff would have the opportunity to make conditions if needed. The variances
251 would be relatively minor and staff would be comfortable granting such variances, but
252 wanted the Commission to feel the same.

253

254 **Chair Klein** stated that his philosophy was to have Code that does not contradict itself and is
255 easier for an applicant to understand. He was not concerned about the final numbers, as long
256 as the Code was consistent and the Commission could make fixes along the way. After looking
257 at the examples of the front yard variances, there could be some tweaking, but overall the
258 provided framework was a positive direction.

259

260 Type II Variance - Applicability

261 • Concern was expressed about the height variances, which have been a sensitive item in
262 various settings. Massing was also an issue to address.

263 • Staff reminded that Phase II of this Code amendment project was to look at better
264 design standards that address compatibility issues, which is the next step.

265 • The new compatibility design standards may require a setback for structures built to
266 a certain height. The variance chapter would then allow someone to vary the setback
267 standards. It would not be based on the current standards. Height variance requests
268 would be applied to the additional set of design standards addressing larger issues.

269 • At present this Code still stands alone, but staff intends to work in conjunction with
270 the upcoming Residential Design Standards project.

271 • The Commission cited several examples of projects where height was an issue. Comments

- 272 included:
- 273 • The Immovable Foundation Church has a spire. Spires are allowed to be higher.
- 274 • Height is something that could be easily found to be detrimental to surrounding
- 275 properties.
- 276 • Most houses in Milwaukie were not built out to the height standards of 2½ stories or 25
- 277 ft. If so, Milwaukie would look completely different. The standard is always whichever is
- 278 less.
- 279 • The compatibility standards really needed to be addressed. The Commission consented to
- 280 remove the height variance from Type II, keeping it as a Type III review. This variance could
- 281 be added as a Type II review as a single line item once the compatibility standards were
- 282 determined.
- 283 • Height variance requests rarely occur in residential zones. They are mainly seen on
- 284 school projects.
- 285 • The standards were not just residential, but apply to the entire city including commercial
- 286 and manufacturing zones. No height variance requests have been submitted for those
- 287 zones either.

288

289 Type III Variance Approval Criteria

290 The City has economic hardship approval criteria, but not criteria for discretionary relief, which

291 would allow applicants requesting a variance to do an alternative analysis to show that a better

292 project could be built with the variance. This would provide more flexibility for the applicant,

293 Commission, and the community to get better projects.

- 294 • **Commissioner Batey** liked the idea generally, but expressed concern about creating code
- 295 that would essentially grant a variance because some public benefit is evident.
- 296 • Perhaps a cost benefit test is needed, similar to the public benefits test in the CSU.
- 297 Many projects have public benefits, but when is it enough to grant a variance?
- 298 • Could the Commission's decision to deny a variance application be overturned by LUBA
- 299 if the Commission has imposed a cost benefit test that is not in the Code?
- 300 • **Ms. Shanks** noted the language stating, "The proposed variance was determined to
- 301 be the best approach because it avoided and/or minimized impacts." The applicant
- 302 could not count entirely on public benefit for approval and not address impacts or
- 303 respond to the natural environment.
- 304 • The language provided the Commission discretion in considering Type III Variances.

305 Often the Commission ends up making bad decisions because they are so boxed in by
306 rules. The desire was to have the opportunity to use logic.

307 • A more detailed discussion could occur after the actual draft Code language is received
308 from the consultants, and the lawyers have reviewed it to see if the approval criteria are
309 too broad and leave the Commission open for challenges.

310 • **Ms. Shanks** had reviewed a lot of other variances, especially from small California cities,
311 which were often cited by Commissioner Churchill. Some codes only had one kind of
312 variance for economic hardship; other codes included language saying they would consider
313 granting a variance if the applicant could prove that a better project could be built. The
314 proposed Code language reflected other cities' approaches.

315 • She would provide examples regarding front yard setbacks when she returns with the
316 actual chapter to review.

317

318 Chapter 19.800 Nonconforming Situations (August 24, 2010 6.2 Page 8 Attachment 1)

319 This chapter, created in 1946, allows someone to maintain and repair an existing
320 nonconforming use or structure, alter the structure and/or use, and rebuild a structure if
321 accidentally destroyed. Because Milwaukie was already somewhat developed, the City had to
322 find a way to allow pre-existing situations to continue to exist. The current Code allows people to
323 alter their nonconforming structures and/or uses if they go through a process.

324 • Staff proposed to not allow people to alter their nonconforming structures through the
325 nonconforming chapter, but use the variance chapter for equity reasons. Currently,
326 someone with a nonconforming structure can do more to that structure than someone
327 with a conforming structure.

328 • A nonconforming structure should not be allowed to be rebuilt even if it was an accidental
329 destruction. Some codes require conformance at that point.

330 • Milwaukie's Code was intentionally developed to allow people to rebuild as a policy
331 decision, though that particular policy could be changed. The approach was to give
332 people the right to rebuild what they had.

333 • Conformance should be required. Rebuilding a nonconforming structure should not be a
334 rubber stamp approval. Making such changes is the only way the City would be able to
335 move forward with trying to make things work as they should. Applicants should have to
336 build the new building to current Code.

337 • A nonconforming structure that encroaches into the right-of-way is different and could not be

- 338 rebuilt in the right-of-way. This falls outside the nonconforming chapter. The Engineering
339 Director steps in and identifies it as a safety issue.
- 340 • Nonconforming structures generally regard structures on one's property that do not meet
341 the setback(s).
 - 342 • Milwaukie has developed over time and has such a variety of lot and building shapes that
343 staff definitely does not understand all the nonconformities. If some people are not allowed
344 to rebuild in this way, they may not be able to rebuild at all because some lots are so funky
345 or narrow that they could not actually meet the standards. Examples were requested.
 - 346 • One could argue that is why the variance process exists; applicants can come in and ask
347 for a variance. There should not be a rubber stamp for them to rebuild some horrible
348 building just because it was there before.
 - 349 • The Code would allow them to rebuild the footprint and massing. They would still have to
350 build to the current Building Code. The structural aspects, the setbacks, and the physical
351 form the building occupies could be built the same as the nonconforming structure.
 - 352 • One application was discussed where the nonconforming house was completely destroyed
353 by fire, which is rare. The applicant wanted to make some slight changes but was not
354 allowed to extend the nonconformity. Ultimately, a new conforming structure was built on the
355 property, releasing their rights to the nonconformity.
 - 356 • No disadvantages seem to exist in not allowing someone to rebuild a nonconforming
357 building. Perhaps the variance process could be made less expensive.
 - 358 • Having to rebuild after a catastrophe is stressful enough and many people do not know
359 about their responsibility to notify the City about rebuilding a nonconforming structure.
360 They may just want to rebuild instead of trying to figure out a new house plan or how
361 they may do something differently.
 - 362 • The history of the Code reflects empathy toward someone who has truly lost their
363 structure accidentally and not intentionally. If the Commission believes this is something
364 they want to pull back on, it would just be a policy change.
 - 365 • Destruction is defined as 50% of the assessed value of the structure. While not an unusual
366 standard, it could be hard to implement. Staff has not seen anything better in terms of where
367 to draw the line for what is destroyed versus what is not.
 - 368 • Staff uses the assessors' records to determine the home's worth and compare to what
369 the property owner provides as cost of the damages.
 - 370 • Questions arose as to whether the amount of the damages was the cost to reconstruct

- 371 the structure. Rebuilding some houses, or portions of a home, would be more expensive
372 than the value of the house.
- 373 • The issue does not come up a lot with homes, but has come up more often with garages
374 and old sheds built right on the property line. The costs are less on simpler structures.
 - 375 • Staff has also struggled with the issue of 50% of the assessed value.
 - 376 • At this time, the Code does not address situations where applicants might want to recreate
377 the nonconformity to retain some historical value.
 - 378 • The Commission agreed that having the latitude for the Commission to make that
379 decision would be better than having a rubber stamp that says “if it was nonconforming
380 before, it can be nonconforming now.”
 - 381 • **Ms. Mangle** offered to develop 2 alternatives, because such a change would be a
382 significant policy shift. It would be worth probing and investing some specific examples in
383 light of 2 parallel options so everyone could really understand that change.
 - 384 • The nonconformity chapter dates back to 1946 and now, 70 years later, most of those
385 structures have fallen down.
 - 386 • Every time the Code is changed, more things become nonconforming. Buildings that
387 have not fallen down are now historic resources and structures. Almost every building in
388 the older pre-war neighborhoods is probably nonconforming.
 - 389 • If a structure is nonconforming to some standards that were probably developed for
390 Greenfield development on new sites, is that worth honoring some part of the existing
391 network of the community. This prompted hesitation by staff.
 - 392 • That argument could be made before a group of reasonable people. Just rubber
393 stamping it leaves openings for bad things to happen.
 - 394 • Many structures became nonconforming as recently as 2002, when the City changed its
395 accessory structure design standards. Nonconformities are not just from 1946, but have
396 been incremental over time. Each time the Code changes an objective standard,
397 nonconformities are created.
 - 398 • The Commission and staff agreed to explore different examples to compare.
 - 399 • The Code currently allows nonconforming uses to continue into perpetuity. One major
400 change staff would propose in the draft language is to evaluate whether or not that is
401 appropriate for some uses. The Code currently treats all uses and structures the same.
 - 402 • Staff purposely wrote standards to get rid of certain kinds of structures as well as uses.
403 One policy proposal would be to develop a process whereby the City could actually

- 404 determine whether or not a use is bad and then discontinue bad uses.
- 405 • Staff's proposal would provide the opportunity to go further by not necessarily having to
- 406 rely on a break in the use to get an obnoxious nonconforming use to go away. The
- 407 change would not require the City to go further in every situation.
- 408 • Staff felt strongly about making changes regarding nonconforming uses.
- 409 • Uses lapse if they are not maintained within a 6-month timeframe, such as Thomason Auto
- 410 Sales on McLoughlin Blvd that was finally redeveloped.
- 411 • People asked many times to open another car lot there and were denied because the
- 412 site was in a manufacturing zone. Because the use had lapsed, the rights to that
- 413 nonconforming use could not be carried over into perpetuity.
- 414 • One issue was how to measure or determine when a use has been abandoned. The church
- 415 next to the Sweet Pea Day Care was discussed as an example.
- 416 • A determination process currently exists where people have to show staff documentation
- 417 like utility bills to prove that the use did not lapse.
- 418 • Staff can only apply the Code when it comes to their attention through complaints,
- 419 concerns, or when someone doing their due diligence actually asks about reopening and
- 420 reestablishing a use.
- 421 • The main change staff proposed was to not allow alterations to nonconforming structures
- 422 through this chapter anymore but have those go through the variance chapter.
- 423 • Staff would now consider not allowing the rebuilding of nonconforming structures, and
- 424 possibly have that addressed through variances as well.
- 425 • Having the potential to amortize nonconforming uses is a good tool for the City. The
- 426 process would need to be carefully thought through. The Code needs to be written for
- 427 the worst case scenario.
- 428 • Staff's goal was to develop the procedures and identify that amortization would be
- 429 included, but not necessarily the criteria by which an unwanted nonconforming use
- 430 would be identified.
- 431 • Sometimes a conditional use may be the best use for the property. Staff is trying to identify
- 432 big nonconforming uses. When the draft chapter is presented, a map will be provided
- 433 identifying the City's nonconforming uses with 80% certainty. Mapping the nonconforming
- 434 structures would be nearly impossible. Creating rigid rules about something not understood
- 435 made no sense.
- 436 • Rebuilding a nonconforming use or structure would not trigger a transportation review or

437 parking standards unless square footage is added or the use is intensified.

438

439 **Ms. Shanks** reviewed the next steps of the Code project as follows:

- 440
- 441 • At the next meeting staff would discuss another piece of the Code project: conditional
442 uses, amendments, and development review. This mostly regarded refining the
443 chapters, rather than making big policy changes.
 - 444 • The big discussion would be a new Development Review Chapter that will attempt to
445 codify existing practices as well as fill the gap in the development review process.
 - 446 • Staff would then return with drafts of the variances in the nonconforming chapter as well
447 as the procedures chapter.
 - 448 • She welcomed questions from the Commission and invited Commissioners to speak with
449 her individually. She also requested that the subcommittee, Commissioners Batey and
450 Gamba, meet with her along with former Commissioner Mike Miller to review the draft.

451 **Chair Klein** believed having the Commissioners meet individually with staff might result in
452 better policy because while the Commission worked well as a group, they sometimes get into
453 one mind frame and fixate on one particular issue.

454

455 **7.0 Planning Department Other Business/Updates**

456 7.1 Metro COO Recommendation Overview

457 **Ms. Mangle** presented a brief overview of the Community Investment Strategy from Metro's
458 COO via PowerPoint, with the following key comments:

- 459
- 460 • The Executive Summary was provided in the meeting packet and the full version could be
461 accessed online.
 - 462 • The Strategy integrated the Urban Growth Boundary (UGB) decision, which would be
463 finalized in December, as well as a Regional Transportation Plan, Regional Transit Plan,
464 land use, community building, etc., all of which are related and vie for the same pools of
465 funding.
 - 466 • The City is fully responsible for implementing its decisions in terms of land use and
467 development, but must also reflect federal policy with the Clean Water Act and comply with
468 Statewide Planning Goals. Metro, TriMet, and other agencies work at a higher level. Though
469 the City is often focused on current local issues, it must work in and be aware of this bigger
470 context.

- 470 • The 2040 Vision was developed in Milwaukie around 1996 and very schematically set
471 out the vision for the region, which includes Clackamas Town Center, regional centers,
472 and green spaces, which involves the Nature in Neighborhoods Program.
- 473 • Metro is required by the State, and was created by the voters, to manage the growth of the
474 region and the UGB, as well as make UGB expansion decisions.
- 475 • Every several years, the State asks Metro to forecast how many people they expect to
476 move into the area and address how they will be accommodated. Metro uses a
477 sophisticated level of modeling, and historically their estimates have been pretty
478 accurate.
- 479 • How this population growth is accommodated is pertinent to Milwaukie because the city will
480 only grow out a little bit in controlled ways where the City can afford to build some
481 infrastructure.
- 482 • However, not growing out means investing inside the UGB to accommodate the growth.
483 The real conversation now is about investment, not intensification, because if the region
484 is allowed to sprawl out that means a lot of development, planning, and transportation
485 dollars would go out to the fringes.
- 486 • Milwaukie is the only city, except Maywood Park and maybe King City that does not
487 have to deal with the UGB.
- 488 • Much of the regional policy regards the importance of reinvestment in these existing
489 places and how regional cooperation, policy, and money can be used to strengthen
490 livability in these places.

491

492 **Chair Klein** stated that he does not consider Milwaukie being sensitive to the City's
493 intensification of use, or for bringing in more people. The reality is that reinvestment is needed in
494 these areas because as the city grows, Milwaukie's houses are going to be more in demand,
495 which means that the existing structure and infrastructure, and the services surrounding them, is
496 what will be needed and desired. He views it as investing in the neighborhoods, not
497 intensification.

498

499 **Ms. Mangle** noted special meetings were scheduled for September 29 and September 30 for
500 area planning commissioners and city councilors, and the Commissioners were invited to
501 attend. Other events, including an open house in Oregon City, would be held as well.

502

503 **8.0 Planning Commission Discussion Items**

504 **Councilor Chaimov** commented that it was nice to see the Commission working well together.

505

506 **9.0 Forecast for Future Meetings:**

507 September 28, 2010 1. Worksession: South Downtown Concept Plan

508 2. Natural Resource Overlay project update

509

510 October 12, 2010 1. Public Hearing: AP-10-01 Appeal of Director's Interpretation re:
511 LED signs in Downtown

512 2. Worksession: Land Use and Development Review Process

513 Tune-Up: Review of Draft Amendments for revised Variances

514 and Nonconforming Situations chapters and new Development

515 Review chapter

516 3. Worksession: Comp Plan – Thinking About, and Planning For,
517 the Future

518

519 **Ms. Mangle** reviewed the Forecast with these additional comments:

- 520 • Staff would be sharing the South Downtown Plan with City Council next week before
521 presenting the Plan to the Commission. As proposed, the Plan would not be allowed in the
522 City's current zoning, so additional work will be needed.
- 523 • The Plan was being presented to Council prior to the Commission at Council's request
524 and because South Downtown has been Council's project and they initiated the contract.
525 The questions for Council regard the program, future funding, and what it will take to
526 keep the project going, as well as the approval of the Plan at a programmatic level.
- 527 • If the City decides to move forward with the Plan, Council and the Commission must
528 agree to all the additional planning and work needed on the Code.
- 529 • The response from people at the farmers' market was very good. A few people were
530 skeptical, but staff talked with about 60 people and received a positive response. For
531 some, it was their first time really engaging with anything in downtown, and they were
532 just positive about downtown and light rail; some people got more engaged with the
533 material.
- 534 • She was able to talk with Matt McNealy about some of the issues and Carlotta Collette
535 was also able to attend. The farmers' market was a great place to have a public meeting.

- 536 • On October 12, 2010, the public hearing on the Director’s Interpretation regarded how LED
537 signs are addressed in the Code, specifically the McLoughlin Blvd 76 gas station illuminated
538 LED signs that change.
- 539 • She confirmed that September 28th would be Commissioner Bresaw’s last Planning
540 Commission meeting.

541
542 Meeting adjourned at 8:23 p.m.

543
544
545 Respectfully submitted,

546
547
548
549
550 Paula Pinyerd, ABC Transcription Services, Inc. for
551 Alicia Stoutenburg, Administrative Specialist II

552
553
554
555 _____
556 Jeff Klein, Chair
557

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, September 28, 2010
6:30 PM

COMMISSIONERS PRESENT

Jeff Klein, Chair
 Lisa Batey
 Scott Churchill
 Teresa Bresaw
 Chris Wilson
 Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
 Brett Kelper, Associate Planner
 Kenny Asher, Community Development
 & Public Works Director

COMMISSIONERS ABSENT

Nick Harris, Vice Chair

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

Katie Mangle, Planning Director, announced that this was Commissioner Bresaw's last meeting. She thanked her for serving the community as a Planning Commissioner for 8½ years.

Chair Klein said he had served with Commissioner Bresaw for 6 years, and would always remember Commissioner Bresaw stressing the importance of having green planting strips and sidewalks.

Commissioner Batey said she would recall Commissioner Bresaw's strong advocacy for green space and aesthetics.

Ms. Mangle sought input from the Commission about forming a subcommittee of the project for Residential Design Standards, similar to what was done with the Natural Resources Overlay project.

- The Residential Design Standards project, anticipated to begin in January, would review single-family and multi-family residential standards. Doing most of the work through a subcommittee could substantially reduce the number of Commission meetings needed.

- 43 • The subcommittee would consist of three or four Commissioners, one or two Design and
44 Landmarks Committee (DLC) members, at least four Neighborhood District Association
45 (NDA) representatives, and one or two property owners to ensure certain groups were
46 represented. Others could also be invited to participate.
- 47 • Those on the subcommittee and most involved with the project would be talking to
48 property owners and people in the neighborhood, allowing for more well-rounded
49 conversations as the standards were being developed. The project was more design-
50 oriented and visual than other projects so subcommittee members could talk easily
51 about it with neighbors and those who would be affected by the standards.
- 52 • The Residential Design Standards project mostly regarded aesthetics, but must be directed
53 by the Comprehensive Plan policies. The project would not involve rezoning or changing
54 uses. Milwaukie has the lowest standards in the region for single-family residential houses,
55 various standards for accessory dwelling units, and no standards for multi-family houses.
- 56 • The goal of the project was to tighten up important design issues. Rules regarding
57 height, massing, percentage of windows on the front façade, standards for manufactured
58 homes, etc., would all be addressed.
- 59 • Milwaukie was experiencing some quality residential development because developers
60 were exceeding the City's requirements.
- 61 • The subcommittee approach would only work if three or four Commissioners committed to
62 do that work in addition to their regular Commission duties. The subcommittee would work
63 through the details of the design standards, so the Commission could review them overall,
64 and not have to restart the whole process.
- 65 • If not enough Commissioners were interested in having a subcommittee, a community
66 group could be another option.
- 67 • Consultants and architects would be working with the subcommittee and generating
68 renderings, 3-D models, etc.
- 69 • Grant funding for those consultants and architects is only available through the end of June.
70 The standards did not have to be adopted by June; the City could keep working on them
71 after that point. However, being efficient and making the most of the consultants' time was
72 important as well as getting the standards to the right people in the community.

73

74 Comments from the Commission included:

- 75 • A minimum of four Commissioners should be on the subcommittee to ensure a majority
76 vote, though all Commissioners and anyone else would be welcome to attend.

- 77 • Including members from all the NDA Land Use Committees (LUCs) would provide them with
 78 some good training.
- 79 • A separate group whose members were interested in design could work together more
 80 efficiently than the whole Commission, especially with the Commission's time constraints.
- 81 • A lot of Commission meeting time would be saved. The Commission would know about the
 82 process that was followed since many were involved, and could hopefully review and move
 83 the design standards forward to City Council quickly.
- 84 • A subcommittee sounded more efficient and inclusive than the formalized Commission
 85 meetings and would allow for more conversation and an exchange of ideas.
- 86 • Commissioners not able to serve on the subcommittee would be informed of the progress
 87 being made. The intent was to prevent having to redo major portions of the standards when
 88 they came before the Commission.
- 89 • The Commission could use this opportunity to reach out to and do some training with the
 90 NDA LUCs. The Commission rarely received information or comments from them.
- 91 • The subcommittee might motivate the LUCs and provide some idea of what the
 92 Commission actual did. It might also be a way to get some new people on the LUCs.
- 93 • Subcommittee work would train citizens so that the City could tap into a pool of trained
 94 people to step into open board or Commission positions when needed.
- 95 • The Commissioners agreed a subcommittee was a good idea.

96

97 **4.0 Audience Participation** –This is an opportunity for the public to comment on any item
 98 not on the agenda. There was none.

99

100 **5.0 Public Hearings** – None

101

102 **6.0 Worksession Items**

103 The order of the agenda was changed. Item 6.2 Natural Resources Overlay briefing #7 was
 104 addressed at this time, prior to 6.1 South Downtown Concept Plan.

105

106 6.1 Summary: South Downtown Concept Plan Briefing

107 Staff Person(s): Kenny Asher, Katie Mangle

108 **Ms. Mangle** stated that staff was really excited about how this project has progressed. It had
 109 been on a long, very interesting path and developed in very unconventional ways. The project
 110 was headed for really good things, partly because of the light rail station coming to South

111 Downtown. The community members who had been involved in this project have had a lot to
112 say about what should and should not change.

113

114 **Kenny Asher, Community Development and Public Works Director**, presented the South
115 Downtown Concept Plan using several renderings shown on display boards. Key comments
116 included:

- 117 • Two key work products to understand South Downtown were:
 - 118 • A book titled, "Pattern Language for the South Downtown of Milwaukie, Oregon," which
119 included the best possible description of what the community wants to see for South
120 Downtown. The book contained 13 patterns or guidelines for a development that would
121 feel compatible with the rest of downtown and with Milwaukie; the development values
122 the City wanted to see embodied in downtown. Much of what staff understood to be their
123 mission for the South Downtown was contained in the Pattern Language book.
 - 124 • The other key deliverable was the Concept Plan poster. The book did not provide a
125 picture of development or of place that really made much sense to the community and to
126 City Council, so this last phase involved turning those ideas into something that could be
127 built and that staff could discuss with the community.
- 128 • Key features of South Downtown included a Plaza: a great public space that captured and
129 collected all the energy coming from light rail and the redevelopment around it; new
130 connections to Riverfront Park; the restoration of the lake; and the revitalization of Main St.
 - 131 • People were excited about the notion that the Plaza could be connected to Riverfront
132 Park.
- 133 • This phase of the project was really trying to decide where public spaces would be and how
134 private development could be supported, although what exact development there would be
135 was still unknown.
- 136 • The idea was to get ahead of development so the community could guide that development.
137 There were many different ways to do that, including tools the Commission used, such as
138 Codes, design guidelines and oversights, as well as his work in talking to developers and
139 property owners and coordinating their efforts.

140

141 *[Audio issues 14:30 – 16:07]*

142 **Commissioner Gamba** commented that he was still a fan of the project, but was less
143 enamored after the second process because the City lost the opportunity to develop something
144 for the key purpose of being inhabited by people. Instead, the City was building according to the

145 normal model of development for the sake of profit. He understood why the direction shifted, but
146 was disappointed.

147

148 **Commissioner Batey** agreed that was a loss and that the first process would not work.

149 However, most of the elements so important in the patterns were still present. They could not
150 know what might be in the grey squares representing private development on the display board,
151 and whether it would lose the feeling of patterns. That remained to be seen.

152

153 Feedback by and discussion amongst the Commission and staff continued as follows:

- 154 • A wider connection was needed along the south side of buildings in the northwest quadrant
155 to create potential areas for restaurant seating outside, for example. The pathway needed to
156 be a more obvious connection to Riverfront Park. The trees and narrow sidewalk made it too
157 hidden. The wider walkway should also be less angular and have a more flowing nature in
158 getting people out to the bridge and across McLoughlin Blvd.
- 159 • Certainly the next question was determining how development would look and work. The
160 City's current codes and design guidelines were not enough to allow or encourage what was
161 envisioned. Many details were really important, but how they would be accomplished was a
162 big part of the entire project.
- 163 • A key piece was amending the Code to allow the concept of live/work elements, as
164 opposed to having people make the most profit from the development. These ideas had
165 been proposed, but no one was advocating them during the process. With no one
166 shepherding that concept, the unusual would not happen; it would be back to business
167 as usual.
- 168 • Those ideas were identified throughout the Pattern Language and based on a
169 business model that was never described, which was why staff ended up going in
170 another direction. No business model that could make that sort of vision possible
171 was forthcoming.
- 172 • Staff spent the last 6 months discussing how to keep the spirit of these ideas alive. How
173 did the City, as a government entity, foster the good ideas in the Pattern Language,
174 which really had to do with the development of private property?
- 175 • The renderings reflected a more conventional approach, and not the armature of the
176 Pattern Language, which prompted imagery of wonderful funky spaces that would
177 come together beautifully. But most people did not understand that armature, and
178 questioned how it would be accomplished and whether it even fit.

- 179 • The current armature was a step forward, and now the City needed to see how creative
180 it could get in establishing whatever mechanisms were needed to get as close to these
181 concepts as possible. This was the hard part because now the City was dealing with
182 issues like property rights that the process has not yet addressed.
- 183 • The display board listing the top 5 aspirations should be reversed to read:
- 184 • Create a central gathering place for the city
- 185 • Encourage individuality and development
- 186 • Build incrementally
- 187 • Match scale and character of downtown
- 188 • Make the project affordable
- 189 • **Ms. Mangle** agreed the opposite order was a better way to express the project. The list
190 had been made by Walker Macy Consultants from their reading of the Pattern
191 Language, which included a lot about affordability. However, the project was not about
192 bringing affordable housing to the area, but creating an affordable place for real people
193 to build and open businesses in Milwaukie. The list reflected Walker Macy's shorthand
194 for that concept, not one of cheap development or the bottom line.
- 195 • Perhaps having such a notable designer during the first half of the project pushed the
196 project too far. But now the project had swung it too far back into "make the project
197 affordable." The earlier plan had creative gesture, although it may have been too
198 flamboyant, and lacked a business model to support it. There had to be balance between
199 affordability and creativity.
- 200 • The pedestrian crossing bridge was a nice little jewel.
- 201 • Closing Adams St was good, but maybe something more creative could be done. It tended
202 to flow from parking lot to parking lot with no real boundaries. Why not look at adjustability,
203 or was the goal to just make the project affordable?
- 204 • The depiction of the large scale Plaza lacked creativity and enthusiasm for the space. It was
205 not remarkable and could be Anywhere, USA. It was not that interesting.
- 206 • The pathway to the pedestrian bridge was pretty interesting and could respond to the
207 topography and unique character of that end of downtown.
- 208 • If the Plaza was the primary node, they could start to break the grid and pick up a
209 secondary node plaza by the Cash Spot point to help anchor the project, just as
210 Riverfront Park did on the west side of the pedestrian bridge. No urban façade was
211 needed at that corner of Washington St. Maybe there was enough room to create a
212 secondary node that tied one to the other.

- 213 • There were some decent bones to the proposed development, but it looked very developer
214 driven.
- 215 • Rather than saying, "Make the project more affordable," say, "Make the project happen,"
216 because "affordable" sounded cheap. "Make it happen" would mean that people would have
217 to have the money and there were different ways to do that.
- 218 • Having a clock on the light rail station was a really nice concept.
- 219 • Concern was expressed about the somewhat vacant area that was not in the actual triangle,
220 but across the street on 21st Ave, behind the high school. It was very utilitarian and
221 improving that area was important. The City had to consider what already existed.
- 222 • Having a Plaza was a good idea and the proposed location was very good, but it could be
223 tweaked a bit.
- 224 • The small square building to the left of the plaza could be fine if it was done well.
- 225 • Concerns were expressed about nebulous space and the nebulous use of the proposed
226 Water Resources Center across from the plaza. It seemed there would be spaces that did
227 not really have much purpose.
- 228 • **Mr. Asher** clarified the illustrations of the spaces might not be used at all for final design.
229 Walker Macy designs outdoor space, which was really what staff wanted to accomplish
230 here. The shapes of the Plaza and buildings, and even the buildings' uses were not
231 significant at this time. At this point, it was important to establish whether the bone
232 structure was right.
- 233 • This plan helped nail down how Main St and the Plaza interacted, the Plaza's
234 location and size, what was happening to Lake Rd, the relationship between the
235 platforms, and especially circulation which was the framework from which other
236 projects could stem. Such projects were years off and each would have its own
237 design process.
- 238 • He envisioned the little box building being done in conjunction with the restoration of the
239 creek and becoming an interpretative center. People would be drawn down to that
240 wonderful public space as they came down to the south end of downtown. The building
241 would look out over everything, and would have a relationship both with the downtown
242 and the natural area, which made this part of town so rich.
- 243 • It was really early to be talking about uses, and probably a bit early to be discussing
244 building forms themselves. Community uses and public buildings did not tend to pay the
245 highest rents and were harder to get done. Many more and different forces would be
246 weighing in on those processes.

- 247
- 248 • **Chair Klein** said that the City had hired CES, the Cadillac of designers, and spent a lot of
- 249 money to bring them in to provide this design. CES had people interested in doing a land
- 250 trust and creating that business model that the City needed to make this project happen.
- 251 That was the investment the City made. The City needed someone who could bring this
- 252 project to fruition, instead of just developing a concept.
- 253 • When things fell out with CES, he supported bringing in Walker Macy because he
- 254 worried that CES would not come through. His believed Walker Macy would pick up that
- 255 ball and find people to make this into a land trust, so affordable working/living spaces
- 256 would be available.
- 257 • He was disappointed that now the City had a bunch of drawings that could have been
- 258 done by any one of the City's planners. University of Oregon students created a concept
- 259 plan for the City's water treatment facility that had great ideas and did not cost anything.
- 260 The City had spent hundreds of thousands of dollars and received a run-of-the-mill
- 261 product.
- 262 • The City used money that could have otherwise been spent in the city on investments for
- 263 livability. This was just a development for development's sake, and went right back into
- 264 doing exactly what they said they would not do.
- 265 • Walker Macy said it would really be up to the person who ends up owning the property.
- 266 The City did not own any property there except for the triangle where the light rail station
- 267 was being built. The one thing that the City had any control over was the station, but
- 268 they were talking about designing places that the City does not own.
- 269 • The City had spent an extra couple hundred thousand dollars for this updated version,
- 270 but still had no means of implementing anything. Urban renewal, floating a bond, and
- 271 different options were discussed, but there was not anything concrete behind any of
- 272 those efforts. CES had promised a funding mechanism to get the project done that was
- 273 outside the normal means, something different.
- 274 • Both the Downtown Land Use Framework Plan and South Downtown Concept Plan were, at
- 275 this point, aspirations because the City did not own the property.
- 276 • **Commissioner Churchill** added that CES had offered a creative solution. He agreed with
- 277 Chair Klein that property rights were driving the South Downtown project. It was not like they
- 278 were doing a taking and modifying property rights.
- 279 • He understood that this Plan was how the City envisioned this space could be. Plenty of
- 280 opportunities exist for that vision to be challenged, modified, softened, or weakened

281 because the pressure would always be on the mighty dollar in development. But the City
282 had to strive for and attempt to create a great space. Creating a central gathering place
283 and encouraging individuality in development should be the top priorities.

- 284 • Perhaps this was how Walker Macy interpreted CES's Pattern Language manual.
- 285 • He agreed the City did not get the outside-the-box creative development model that they
286 could have from CES, but it was not too late. The money was not necessarily wasted.

287 Maybe this was a wake-up call to realize that they needed to go back and find a
288 compromise between property rights and some creative gesture in the design.

- 289 • About \$240,000 total had been spent over the last 4 years on the South Downtown Plan;
290 \$160,000 with CES and \$80,000 for Walker Macy.

- 291 • **Chair Klein** asserted that the City needed to stop spending money on and stop planning
292 this project. They should figure out how to acquire the land and then move forward. Find a
293 developer that wanted to spend the \$49 million to build this concept.

- 294 • **Ms. Mangle** explained that this was how planning happens. The City's planners had
295 worked very hard through several iterations of the Plan. While it contained a lot of gems,
296 much of the Pattern Language did not make any sense. As the Planning Director, she
297 was trying to figure out how the Code would need to be amended to achieve the
298 concepts of the South Downtown Plan. The priority was keeping and magnifying the
299 gems in the Pattern Language, and bringing it to a place where they could talk to others
300 in the community about the Concept, and identify key features, like how people would
301 walk from Main St to the light rail station. This was one step forward in a way that was
302 important for the community to understand. Private property owners were asking
303 questions and wanted to get involved and were thinking about what they would do. The
304 community is fortunate to have some property owners who were community minded.
305 There was a lot that would need to be done, but significantly short of buying up all the
306 property.

- 307 • This project was also important because it was where the light rail station would be
308 located. It was important to understand connections to the station in order to plan for the
309 future. This was a bold departure from almost any station area planning she had ever
310 seen, and left them with many more tools than just whole block redevelopment and the
311 formulas used at many other stations.

- 312 • The 10% federal funding loss on light rail could potentially result in a huge loss in quality for
313 the platform and station as light rail passed through Milwaukie. Could that loss be offset

- 314 through other means, perhaps looking at the Downtown Plan differently or using a phased
315 approach?
- 316 • **Ms. Mangle** noted staff was aware that instead of 2 platforms, there would now be one
317 center platform. It was a big change, but was very site specific. No other changes were
318 expected along the line, except maybe a little less bike parking and art. The single,
319 center platform did not change the conversation about all the different elements along
320 the line. However, it was important that they connected that center platform to the
321 triangle site. Staff had some ideas about that, assuming the City wanted to do
322 development on the site and wanted to move forward with planning the whole area.
- 323 • **Mr. Asher** believed the best thing the City could be doing was just what it was doing. More
324 people had shown interest in checking out and investing in Milwaukie since these drawings
325 were put out to the public than he had seen in years. It was not just because of this project;
326 light rail made people interested in Milwaukie. They would ask where the station was and
327 what the City was planning to do. This type of planning was galvanizing.
- 328 • The key thing staff always talked about was getting people down there, not wiping out
329 buildings. They would find ways to do so, by using the existing buildings, food carts, art
330 shows, etc. The worst thing the City could do was give up because light rail would be
331 down there. People were going to want to build or invest down there.
- 332 • This was the community's plan, including what went into the Pattern Language, and the
333 current material presented, which was a refinement of that plan. It was a very different
334 and difficult process because it does change. Making progress in any planning process
335 involved having to let go of things. At the start, everything was possible.
- 336 • The current Zoning Code and Downtown Plan were entirely inappropriate for this area,
337 given what everybody said in this process.
- 338 • The City did have means. It was not about finding \$48 million to buy up all of those
339 properties and form a land trust; it was an aged process. There were a lot of things that
340 the City could and should be doing to get to where the community wanted to go.
- 341 • City Council and the citizens demanded something they could understand, look at,
342 and discuss. They would not get everything they wanted, but they had to continue
343 trying to implement as much of this Plan as possible; it was a step forward for
344 Milwaukie.
- 345 • **Commissioner Batey** recalled that Mr. Asher and staff did a framework plan for a
346 triangular-shaped plaza that was totally different from this Plan. When the City determined
347 what would happen with the 2 grey areas on the east side of Main St, they would find out

348 whether they could keep the spirit of the patterns. If 2 big buildings were built as big as the
349 illustrated grey areas, they would have lost the vision; but she did not think they were there
350 yet; it was too early to throw in the towel; \$80,000 was not an outrageous amount of money
351 for this work.

352 • This was inspiration and there was a next step. As a community they had to continue that
353 inspiration, grow and nurture it, and seek out unique ways to approach the Pattern
354 Language. It was going to be a compromise. They were going to lose things, but they would
355 also get new, better things.

356 • The Commission needed to get City Council fired up about South Downtown and the
357 City needed to look for possibilities, see what they could do with that land trust concept.
358 They needed to create interest to start drawing people down there so people wanted to
359 be there and recognize that it was an important place.

360 • **Chair Klein** recalled a promise long ago that for every \$1 spent in downtown, \$2 would go
361 back out into the community. He was waiting for the \$500,000 to be turned back to the
362 NDAs. He was not saying this was a bad plan or that the City should not move forward with
363 it. The Commission just needed to be critical of the Plan. This thing needed to be beaten up.

364 • Milwaukie was a bedroom community. Nobody worked in Milwaukie and nobody came to
365 Milwaukie. People generally did not come to hang out in downtown Milwaukie. If they
366 made Milwaukie a place where people wanted come, the neighborhoods could be fixed.

367 • Less than 10% of the population was within walking distance of this site; more than 90%
368 of Milwaukie's population would not come down to this area. If they made the City
369 livable, these things would come, but right now they were not making the city livable.

370 • The City did not need to dump all its money where less than 10% of the population
371 spends their time. There was nothing there, and people could not get down there. The
372 livability issue was not there, so they were losing residents living out in the surrounding
373 areas because they did not have access to the downtown. The City was ignoring the
374 economic interests located north of Hwy 224, where 75% to 80% of the population lived.
375 The City was not doing anything for them.

376 • There was a strong fixation with downtown and trying to fix it. Other parts of the city should
377 also be nurtured more fairly and at an appropriate scale. Maybe focus on pedestrian access
378 across Hwy 224 and the train tracks. The Union Pacific mainline was both a barrier
379 physically for pedestrian traffic and an auditory barrier from downtown. The City needed to
380 look at links that pulled everything together and reinvest in other neighborhoods. Today,
381 \$240,000 could go a long way.

382

383 **Chair Klein** read several emails he sent to the City, with additional comments as follows:

- 384 • “February 1, 2010: Alex, hey is there any news on Logus Phase II?” No response.
- 385 • “March 30, 2010: Alex, is there any movement on having Phase II transition into shovel
- 386 ready?” No response.
- 387 • “June 11, 2010: Alex, where are we on Phase II? I believe I know the answer, but I still
- 388 need to ask. Where are we on the design phase of Phase II to make this thing shovel
- 389 ready? What I understand is projects that are shovel ready are more likely to find funding
- 390 (stimulus money).”
- 391 • June 21, 2010: “Hey” and forwarded February 1 email.
- 392 • Received from Alex: “I believe you do know the answer but I understand you still need to
- 393 ask. I’m not sure what to tell you beyond that, Jeff. I think that you’re right about the
- 394 design being the key step in advancing a project. However, given the scarcity of our
- 395 resources our practice has not been to do design until we actually have a grant funding
- 396 secured. Is this wise? Well, I’m sure we’re leaving money on the table, but on the other
- 397 hand we’re probably pushing our staff capacity with the number of projects we do have.”
- 398 • If the City was designing something before grant money or a funding mechanism was in
- 399 place, how come it was not good for another?

400

401 **Mr. Asher** countered that was a completely unfair characterization. There were 5 projects or

402 programs right now that had only to do and everything to do with the kinds of issues that Chair

403 Klein was talking about.

404

405 **Commissioner Churchill** was especially pleased with the Monroe St bike boulevard, which

406 was starting to achieve some of the connections and things Chair Klein wanted to achieve.

407 There seemed to be a lot of gravity around downtown. Going back and fixing nodes in the

408 neighborhoods would be a better-balanced approach.

- 409 • He also appreciated the efforts on the Quiet Zone Project. Hopefully, the UP mainline would
- 410 be both a safe and a quiet crossing point.
- 411 • **Mr. Asher** confirmed that both the light rail and Tillamook train lines were involved in the
- 412 Quiet Zone Project.
- 413 • He appreciated everyone’s work and wished more resources were available. They were
- 414 doing great things, and it was important to be open, honest, and forthright about
- 415 everything and to hang in there and keep going.

416

417 **Mr. Asher** reviewed the next steps for the South Downtown Concept Plan as follows:

- 418 • The South Downtown Plan was presented to City Council last week. Council wanted a plan
419 that the community could agree on; however, they would not be ready to adopt it until the
420 new City Manager and new Councilors were in place. The Plan needed to be discussed in
421 the context of all the City's priorities because of the expenses required to continue planning
422 and then investing in the public realm and in the property the City owns. It would probably
423 be into 2011 before a more formal step was made.
- 424 • Meanwhile, he and Ms. Mangle continued to talk to TriMet about what was intended for the
425 area and what the City would give their design team when final design for light rail started in
426 January 2011.
- 427 • Some developer interests were showing up. Staff was talking to property owners about
428 whether they wanted to do something with the grey areas illustrated on the renderings and
429 how the City could help guide that.
- 430 • Staff was looking at the City planning work programs to see if any regulatory items should
431 be adjusted.
- 432 • The food carts, art projects, adding a second farmers' market, and other guerrilla marketing
433 ideas had been discussed already as staff was trying to be creative and see how they could
434 keep the Plan moving along. The energy was going to increase and if they had a clear vision
435 of what they wanted, he believed they could get there.

436

437 **Commissioner Churchill:**

- 438 • Hoped staff and Councilor Loomis would take forward the Commission's concern about this
439 latest plan. He would hate to have the Plan shelved, and no progress made over the next
440 year. He hoped that this and the previous plan could be blended together. The graphic
441 representation might not represent the golden nuggets buried in the CES Pattern Language.
442 He worried that people would look back a year and half from now and miss the real creativity
443 that was in the base plan, because people look to graphics as a final word.
- 444 • **Mr. Asher** replied that staff was counting on the Group of Nine who understood what
445 was in the Pattern Language to help them develop, articulate, and hold true to its
446 principles.
- 447 • Said that would have a lot to do with how the station and the platform worked out.
- 448 • **Mr. Asher** explained that the central platform was one of the cuts, but it could come
449 back. While the light rail budget funding sources were fixed, the uses could change

450 because many costs were unknown. He reviewed the configuration of the proposed light
451 rail tracks and platform, adding the City could consider designing a light rail waiting area
452 to accommodate the change.

453

454 The Commission continued to Item 7.0 Planning Department Other Business/Updates.

455

456 **6.2 Summary: Natural Resources Overlay Briefing #7**

457 **Staff Person: Brett Kelper**

458

459 This agenda item was addressed after 3.0 Information Items.

460

461 **Ms. Mangle** introduced that Mr. Kelper would present three items to the Commission for
462 discussion. She asked the Commission to keep in mind the broader perspective of this project:
463 expanding the City's protection in the Natural Resource Overlay areas but in the spirit of Metro's
464 Title13 policy. This meant the Commission needed to figure out how to incentivize people to
465 stay out of those areas instead of just requiring them to stay out. Staff would present and
466 discuss some incentives for the Commission's consideration.

467

468 **Brett Kelper, Associate Planner**, presented the staff report, highlighting staff's
469 recommendations for the three key discussion items and addressing clarifying questions from
470 the Commission as follows:

- 471 • Adjustments and Allowances – 6.2 Page 5 Attachment 1 in the packet was an excerpt from
472 the Draft Code Section 19.322.16, which he briefly reviewed. In the spirit of Metro's model
473 Code, staff wanted to build in some flexibility to allow people to use a few adjustments
474 without having to bump their application to a higher level of review.
- 475 • He clarified that setbacks, not height, were the only base zone standard staff was
476 currently asking that applicants be allowed to adjust outright.
- 477 • Averaging would be considered part of the base zone in cases where averaging
478 could be used for a front yard setback.
- 479 • Staff would start by applying the existing rules and then the proposed 10%
480 adjustment. This adjustment would not apply to Conditional Uses or Community
481 Service Uses, which have special setbacks, and because the average would be
482 similar to a base zoning standard.

- 483 • 19.322.16(B) Adjustments to Lot Design Standards would only apply when a lot was
484 being created, such as a partition or replat, allowing an adjustment of up to 10% for lot
485 area, lot width, or lot depth, as well as reducing the required public street frontage up to
486 10%.
- 487 • Striking 19.322.16(B)(3) regarding compound lot lines was recommended. If the City
488 was going to require people to put a resource in a separate tract, those lines would often
489 be jagged if they followed the wetland area or the edge of a creek. The current Land
490 Division Code stated that tracts or parcels created especially for natural resources were
491 not subject to compound lot line standards, since they would follow a natural boundary.
492 The City would still want parcels to be fairly rectilinear where the parcels touch each
493 other.
- 494 • Clustered Development – Onsite density transfer, 19.322.16(B)(4), would generally apply to
495 specific situations in the city. The density allowed onsite would be maintained, but clustering
496 would provide options and flexibility for the Commission and applicant, and prevent such
497 small changes from requiring a variance application.
- 498 • This adjustment only related to Water Quality Resource (WQR) properties or properties
499 that have a designated WQR or Habitat Conservation Area (HCA).
- 500 • Trigger Distance – The distance from a designated resource that would trigger City action to
501 protect that resource. Staff proposed changing the 50-ft trigger distance in the staff report
502 back to 100 ft.
- 503 • Current Code applied only to properties that actually touch the resource, but adjacent
504 properties could negatively impact natural resources as well. The Commission needed to
505 think about how resources could be impacted regardless of whether the resource was on
506 the property.
- 507 • Secondly, trigger distances would indicate when applicants would need to show staff a
508 plan for managing their construction in such a way that erosion control, tree protection,
509 and other measures are addressed appropriately when a project is close enough to a
510 designated resource.
- 511 • Staff decided that slope was hard to administer and difficult to get into the Code in a
512 workable manner.

513

514 Discussion by the Commission and staff regarding the 3 issues continued as follows:

515 Trigger Distance:

- 516 • How trigger distance would be measured in sloped areas needed to be clarified because
517 slope could be measured along the ground or the true horizontal. How distance is measured
518 with regard to slope was dependent on the definition of terms.
- 519 • Presently, staff would measure the trigger distance along the ground 50 ft or 100 ft back
520 from the edge of the resource. However, if there was a 25% slope, perhaps other
521 measurements should be considered.
- 522 • The issue was whether or not slope would impact a natural resource, not just how far
523 away a project is from the resource.
- 524 • Currently, the proposed Code only addressed development activities.
- 525 • Some exemptions already exist related to everyday landscaping as well as prohibitions
526 on storing uncontained hazardous materials, such as herbicides and pesticides, within
527 WQR areas. Adding a list of pesticides that should not be used within the resource areas
528 had been proposed, referencing or linking the language to existing regulations, but not
529 redundant.
- 530 • The use of hazardous materials is where slope becomes an issue.
- 531 • Currently, the City requires erosion control permits for certain projects with a main threshold
532 of 500 sq ft of disturbance. Staff wanted the Commission's input about extending that
533 distance, which would require erosion control for projects on the exempt list, thereby
534 increasing resource protection.
- 535 • The trigger distance would be measured from the actual activity or project to the resource,
536 not from the property line. The determining factor was the location of the project itself within
537 that resource area or the 100-ft trigger distance, not the property as a whole.
- 538 • Staff also sought direction about an allowing an exception for projects separated from a
539 resource by a paved roadway. This exception would provide staff some discretionary power
540 to make reasonable allowances about erosion concerns if a paved road would reduce those
541 factors.
- 542 • The exception applied to properties across the street from a resource, not properties that
543 contained a resource. A driveway separating a project from a resource that was on the
544 same property would not be included in this exception.
- 545 • Bigger projects would have erosion control measures in place.
- 546 • Different levels of concern existed regarding erosion control issues. WQR areas have the
547 highest level of protection and protecting water quality would most often be impacted by
548 water-based erosion, not by wind blowing soil into water resources, for example.

- 549 • The Building Department requires an erosion control plan for most construction projects,
550 so erosion control measures like fences and bales would be appropriately placed.
- 551 • Would a demolition project, perhaps involving lead-based paint, be covered by this Code?
552 Would staff be empowered to ask further questions to see whether it qualified for further
553 review?
- 554 • This specific part of the Code regarded a construction management plan. The trigger
555 distance would not trigger the whole Code, but would require doing a construction
556 management plan once the map was verified to be accurate, or corrected if needed.
- 557 • The Code was set up to apply rules for doing things inside the resource area. The trigger
558 distance involved determining how close an activity could be without impacting a
559 resource, even if that activity was outside the actual resource boundary.
- 560 • The trigger distance would help the City identify and be clear about the boundary's
561 location, and the applicant's construction management plan to address how not to
562 disturb the natural resource.
- 563 • The process should be fairly easy because most of the boundary verification work would
564 come from staff evaluating maps and information. The construction management plan
565 was mostly an erosion control plan with a few added factors, such as tree protection.
- 566 • The proposed Code followed best construction practices. Most contactors were familiar
567 with erosion control measures, so this was not an unreasonable request of applicants
568 whose projects might impact WQR areas.
- 569 • The Code provisions were aimed not just at professionals, but at do-it-yourselfers.
570 Hopefully, the City would be educating the average population about these practices.
- 571 • Enforcement of these regulations would be similar to other parts of the Zoning Code wherein
572 the City might not know about violations until after the fact or as a result of complaints. The
573 City needed to establish rules so the standard was very clear.
- 574 • Staff believed using a 100-ft instead of 50-ft trigger would be sufficient, so a slope
575 calculation would not be used. When submitting a construction management plan, an
576 applicant would show slope and how they would prevent damage to the resource.
- 577 • Some errors on the maps needed to be corrected, including 2 wetland areas that did not
578 show any water resource.
- 579
- 580 • **Commissioner Gamba** believed it was a mistake not to account for slope when setting
581 trigger distances. When trying to control material flowing with gravity, slope could not be
582 ignored. Everything would go into the creek if there was a big enough rainstorm.

- 583 • **Mr. Kelper** stated that he grouped slope with other issues like ground permeability,
584 which were too complex to administer. This revision targeted activities that were too
585 small to require an erosion control permit. He would agree with Commissioner Gamba if
586 a big project was involved, but in that circumstance, an erosion control permit would be
587 required.
- 588 • The question was whether the proposed trigger distance would capture projects under
589 that 500 sq ft disturbance threshold and allow staff to determine, based on the distance,
590 if a project would impact the resource
- 591 • The Commission could identify a slope percentage or grade that would be a concern.
592 For example, if an applicant was 100 ft away with a slope less than “x” they would not
593 have to go through the process.
- 594 • The trigger distance could be 100 ft unless slope was involved, and then the
595 maximum distance could be 120 ft, whichever distance was greater. The Code
596 should address slope, perhaps pushing the project back another 10 or 15 ft,
597 according to the grade percentage.
- 598 • Making the process too complicated would prohibit people from pursuing projects;
599 people needed a solid number to work with. The City was trying to simplify the process
600 so people would not be fearful of taking on projects.
- 601 • The City was not denying projects or creating further requirements. This was an
602 opportunity for the City to watch more closely and pay attention to land use. Applicants
603 would have to show how they were mitigating potential issues.
- 604 • Changing the trigger from 50 ft to 100 ft would compensate for a lot of slope, and the
605 regulation would be combined with education about erosion control best practices from
606 the Building and Planning Departments. If signs of erosion existed, simple, inexpensive
607 erosion control measures could be put in place.
- 608 • If the water table was going to be impacted, it would happen whether projects were 50 ft
609 back or 150 ft back from the resource. This was about the risk of erosion on the surface.
- 610 • Staff had done a good job in capturing the highest risks; if the water table was being
611 impacted then further investigation could be done.
- 612 • As far as the roadway exemption, complications existed given the various types of roads in
613 the city.
- 614 • A road did not act as a buffer or help prevent erosion. Roads are not permeable, so
615 contaminants could easily run into the creek faster.

- 616 • Some restrictions already exist regarding runoff and pollutants in the right-of-way; it must
617 be dealt with on one's own property. If there was a problem, staff would want to see the
618 construction management plan.
- 619 • A trigger enabled the City to err on the side of caution and consider erosion control
620 measures.
- 621 • This part of the Code triggers the applicant to take additional steps like boundary
622 verification with staff, and a construction management plan if any part of a project fell
623 within the trigger area.

624 The Commission consented to retain the 100-ft trigger distance. Providing a sample
625 construction management plan was also suggested for applicants to see they were not that
626 complicated.

627

628 Clustering Development:

- 629 • **Commissioner Gamba** felt clustering should absolutely be allowed, not only for WQR
630 functions, but as a general zoning concept across the city.
- 631 • Concern was expressed about the policy implying that simple projects would be approvable,
632 and then after applicants invested in planning and design, the project might not actually be
633 approved.
- 634 • **Commissioner Churchill** agreed in principle and liked the idea of flexibility, but questioned
635 how sophisticated the clustering plan would need to be; he liked that it would come before
636 the Commission.
- 637 • Staff wanted to be clear that the Commission consented to the clustering concept before
638 developing language about the required criteria and documentation.
- 639 • The standards for clustering development would be considered as part of the Residential
640 Design Standards project.
- 641 • Staff sought input now because this concept supported the goal of offering incentives as
642 well as regulations. As the City applied new regulations to lands with natural resources, this
643 was one way to say they were not just taking away development rights. Applicants willing to
644 exceed Code requirements could be given a little more flexibility, which was an important
645 part of this Code project.

646 Staff would work on some items and return to the Commission about clustering development.

647

648 Adjustments and Allowances

- 649 • Staff suggested deleting base zone items (b) and (c) under 19.322.16(A)(1) so that the only

- 650 allowed adjustment would be reduced yard setback standards of up to 10%. Any yard
651 setback adjustment greater than 10% would come before the Planning Director or
652 Commission as a Type II application.
- 653 • Concerns were expressed about adding the averaging concept on top of this allowed
654 reduction. The averaging concept was just bad and needed to be addressed
 - 655 • For now, staff could specify that this change did not apply to the averaging, just as
656 conditional uses and community service uses were excluded from this allowance.
 - 657 • Having a jagged boundary line based on a resource that might shift over time rather than on
658 a surveyable permanent property line was a concern. If a property changed hands, the new
659 owner would not know where the jagged line was located.
 - 660 • Some jurisdictions require fencing to be placed along the boundary, which was a
661 concern for wildlife.
 - 662 • The City does not know about projects or modifications on private property unless a
663 complaint is issued or an application is submitted.
 - 664 • The boundary line is based on the WQR, so it could always be measured. If the water table
665 rose by 5 ft in the next 25 years, the measurement would be taken from the bank at that
666 time out to that distance.
 - 667 • When a lot was partitioned, that tract was created based on the resource boundary line.
668 If an applicant wanted to do a future addition, and if the resource had shifted, the
669 applicant would need to establish another tract on top of that one.
 - 670 • **Mr. Kelper** agreed good questions that they should look at included some Code
671 language so that when the tract was being created, there would be able to find some
672 way to delineate it.

673

674 The Commission agreed with the proposed reductions and deletions.

675

676 **Ms. Mangle** distributed her notes responding to a prior request for information about what the
677 City was doing to eliminate pollutants in the City water.

678

679 The Commission took a brief recess and reconvened at 8:03 p.m. after which the 6.1 South
680 Downtown Concept Plan was addressed.

681

682 **7.0 Planning Department Other Business/Updates**

683 The Commission addressed this Agenda Item following 6.1 South Downtown Concept Plan.

684 7.1 New City Website preview/introduction

685 **Ms. Mangle** highlighted key features of the City's new website, which should go live in a week,
686 noting that the Planning Department page would have a many items for the Commissioners.

- 687 • The new "Submitted Applications" link would show all the applications staff were currently
688 reviewing; all Type II and Type III applications. Even items that were not ready to come to
689 the Commission would be posted there.
- 690 • Some supporting documents would be available to access as well. Such documents
691 would be limited at first, because staff seldom receives submittal information
692 electronically, but basic information would be posted and whatever staff could quickly
693 scan in.
- 694 • The site included a map, although the City did not have a very good online mapping system
695 yet. Right now, the maps would all be PDFs, which staff believed they could keep updated.
- 696 • RSS feeds and Twitter would also be available so people could keep updated about
697 what was going on in the City. No capability existed for Facebook at this time.
- 698 • Each department would maintain its own part of the website. Alicia Stoutenburg would be
699 the Planning Department webmaster. Information Coordinator Grady Wheeler would be the
700 webmaster for the entire site and would maintain the home page.
- 701 • An NDA resources page could be found under "Development Review" for the LUC chairs
702 and would hopefully provide some training.
- 703 • She confirmed that the entire application is sent to NDA LUC members. The applicant
704 was asked to provide 20 copies of their application, sometimes of everything. Once
705 things got online it would be better because more people would have access to
706 information.

707
708 **Chair Klein** said he recently read an article about cities that were changing to iPads so that
709 their Councils did not receive paper packets. The City was spending hundreds of thousands of
710 dollars a year on copying services. A number of Commissioners have laptops and with WiFi
711 network cables at City Hall, the Commission could go paperless.

- 712 • **Ms Mangle** commented that the Design and Landmarks Committee (DLC) had gone
713 paperless. She noted applications came directly from applicants and would not be scanned
714 in; perhaps the City would require electronic submittal in the future.
- 715 • The fact that some of the submitted plans were full-sized plans was also an issue.

- 716 • The website would help the NDAs in accessing application information. Staff sends LUC
717 members what is sent to the Commission. Not everything could be sent, but more could be
718 made available online, allowing more access to information for more people.

719

720 7.2 Pond House Deck modifications

721 **Ms. Mangle** read an email from Paul Shirey, City Operations Director and Applicant for the
722 Pond House project approved by the Commission, as follows:

723 “Shortly after PC approval, facility staff began work on the deck and soon
724 discovered that the dimensions of stairway posts and railing were such that a
725 minimum width for the stairs themselves, 36 in, could not be met. There would only
726 be 28 in available for the stair treads. As a result, we decided that it made sense
727 not to build the stairs and to leave the south end open for emergency egress from
728 the deck. This location is not immediately adjacent to the edge of the resource, as
729 it would have been on the north end. Also, because of the grading, no stairs are
730 needed for the egress to the south. It allows an at-grade exit from the deck to the
731 landscaped yard area and then to the front edge sidewalk very quickly.”

- 732 • She noted that construction had paused, so the south end was just open. On the south end
733 the pond curves away from the deck, so the area where people would walk in an emergency
734 was not next to the creek.
- 735 • The Applicant had asked if the project still met approval since this was a change from what
736 was approved. Because the result of the change was somewhat less in terms of impacts
737 and activities than what was approved by the Commission, she believed the project still met
738 approval. However, she just wanted to run it by the Commissioners for their input.

739

740 The Commission agreed with Ms. Mangle’s decision.

741

742 **8.0 Planning Commission Discussion Items**

743 **Commissioner Churchill** asked for more information about the 50% and 60% federal funding
744 associated with light rail and when the funds would come in. It would be great for the
745 Commission to be updated on items like the platform change. There seemed to be more going
746 on behind the scenes that would be helpful for the Commission to understand. He wanted to
747 understand what items were on the menu so the City’s portion did not get lost.

- 748 • **Ms. Mangle** said staff was planning a Downtown Light Rail workshop in November.
749 Currently, she was pulling together all the visual materials about what was being planned,

- 750 and the choices the City would be able to make. The City would not have control over some
751 features. She would update the Commission when a final workshop schedule was set.
- 752 • There was no relationship between the federal funding change and what Milwaukie
753 expected from the project. The City still cared about all the things that had been discussed
754 with TriMet about the quality of design and would still hold their feet to the fire on those
755 issues. Whole pieces of the project, like the pedestrian bridge, were not being cut, but
756 parking garages were smaller, for example.
 - 757 • The funding assumptions changed only about 6 weeks ago. She agreed to follow up with the
758 facts and would send information to the Commissioners via email to discuss at the next
759 meeting.

760

761 **Commissioner Batey:**

- 762 • Inquired whether somebody else was planning to annex on Harmony Rd behind the
763 apartments. Some construction was occurring behind there and she hoped it was not in
764 violation of the agreements the City had with the County.
 - 765 • **Ms. Mangle** clarified that half the apartments were in Milwaukie and half were on County
766 land. She would check into the matter.
 - 767 • Asked if staff was planning to cancel the second meeting in November, which was the
768 Tuesday before Thanksgiving. She would not be able to attend.
 - 769 • **Ms. Mangle** replied she did not know yet, and asked the Commissioners to let her know
770 if they would be unable to attend that meeting.

771

772 **Commissioner Churchill** stated that he would likely be gone as well.

773

774 **Chair Klein** stated that a neighbor in his Llewellyn neighborhood contacted him about the
775 fiberglass business located on Johnson Creek Blvd on the south side by the bike path. They
776 claimed that the fumes coming from that business were excessive. The NDA co-chair also
777 noticed that the fumes were very excessive. The business was going through some sort of
778 permitting process and the neighbors planned to go and raise awareness about this because
779 the fumes were so bad.

- 780 • **Ms. Mangle** said that she biked by that business every day and had noticed a lot of different
781 strange smells in that corridor. She asked that Chair Klein follow up with her.

782

783 **Chair Klein** thanked Councilor Loomis for attending.

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, October 12, 2010
6:30 PM

COMMISSIONERS PRESENT

Jeff Klein, Chair
 Nick Harris, Vice Chair
 Scott Churchill
 Lisa Batey
 Chris Wilson
 Mark Gamba (arrived during 3.0 Information Items)

STAFF PRESENT

Katie Mangle, Planning Director
 Susan Shanks, Senior Planner
 Ryan Marquardt, Associate Planner
 Bill Monahan, City Attorney
 Damien Hall, City Attorney

COMMISSIONERS ABSENT

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:39 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 July 27, 2010

Commissioner Batey amended the last sentence in Line 1094 to state, “This *separate plan limited to the north side* was exactly what she expected, right or wrong, better or worse.”

Vice Chair Harris moved to approve the July 27, 2010, Planning Commission meeting minutes as corrected. **Commissioner Batey** seconded the motion, which passed unanimously.

2.2 August 10, 2010

Commissioner Wilson moved to approve the August 10, 2010, Planning Commission meeting minutes as presented. **Vice Chair Harris** seconded the motion, which passed 4 to 0 with Commissioners Churchill and Batey abstaining.

3.0 Information Items

Katie Mangle, Planning Director, announced this was Bill Monahan’s last meeting as City Attorney Liaison to the Planning Commission because he was selected to be the new City Manager starting October 18. She added it was great working with Mr. Monahan in this capacity and she believed he would continue to serve the City well in his new position.

42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

Bill Monahan, City Attorney, introduced Damien Hall, an associate in his firm. Mr. Hall holds an undergraduate degree from USC in land use planning and has proven to be a valuable asset to the firm, having done a lot of land use work. He hoped the Commission enjoyed working with him as much as his firm.

Commissioner Gamba arrived at this time.

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: Appeal of Director's Interpretation DI-10-01 on LED signs in Downtown District
- Applicant/Owner: Nabil Kanso
- Address: 10966 SE McLoughlin Blvd
- File: AP-10-01
- Staff Person: Ryan Marquardt

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

Ryan Marquardt, Associate Planner, cited the applicable approval criteria of the Milwaukie Municipal Code as found in 5.1 Page 5 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

All Commissioners declared for the record that they had visited the site.

Chair Klein asked if any Commissioners had any bias or conflict of interest to declare.

Commissioner Churchill declared that he had potential bias, but not a conflict of interest. He had done some consulting work for the Applicant several years ago, but did not have a current business relationship with the applicant.

76 **Commissioner Batey** stated she had lunch with Dion Shepard, Historic Milwaukie
77 Neighborhood District Association (NDA) Chair. Ms. Shepard had mentioned that the sign in
78 question was not an appropriate choice to complement the Downtown Design Guidelines. Their
79 discussion was more related to general Sign Code issues than this specific application.

80
81 No Commissioners abstained and no Commissioner's participation was challenged by any
82 member of the audience.

83
84 **Bill Monahan, City Attorney**, explained that this was an appeal of an interpretation. It is the
85 Planning Director's responsibility to interpret the Development Code as it is written and to apply
86 it fairly to each applicant. If the Code language is found to be outdated or in need of
87 modification, any citizen has the right to suggest to City Council that the Code language be
88 changed and then applied. The obligation under Oregon land use law is that applications are
89 reviewed under the Code provisions that exist at that time. If Code language is changed, a new
90 application could then take advantage of that Code language.

91
92 **Mr. Marquardt** presented the staff report via PowerPoint and addressed comments and
93 questions from the Commission as follows:

- 94 • The Applicant could speak to whether the top part of the sign was just a refacing and that
95 only the LED portion was new. He believed the refacing was permitted. The sign poles were
96 not changed, and the sign was a bit smaller because a section on top was removed.
- 97 • The Applicant was paying an extra fee of \$100 for the Director's Interpretation and \$500 for
98 the Appeal fee.
- 99 • "Not recommended" was a vague term used in Milwaukie Design Guidelines, which is why
100 the Development Code specifies the need for extra review.
 - 101 • The Design Guidelines is an ancillary policy document to the Comprehensive Plan that
102 does not carry as much force as the language of the Code. When there is lack of clarity
103 in the Sign Code's language, staff is forced to turn to such policy-type documents for
104 guidance as to the overall intent of the sign regulations.
 - 105 • The portion of the Sign Code staff believed disallowed LED signage stated, "No sign
106 shall be installed or maintained in the DC, DS, DO, DR, and DOS zones, except as
107 allowed under Section 14.12.010 Exempted Signs or otherwise noted in this section."
108 He summarized that Section 14.12.010 allows for signs small enough not to require a
109 sign permit to be installed, such as small window and real estate signs.

- 110 • He would not classify the bulk of signs in downtown as not meeting Code; however, many
111 nonconforming signs exist in downtown. Current downtown signage should not be
112 considered a reflection of what Code was seeking.
- 113 • The initial application for an internally lit cabinet sign was approved, because it existed from
114 the previous owner. When refacing was proposed, the internally lit component was allowed
115 to continue as a grandfathered-in type of condition.
- 116 • The sign height limit on McLoughlin Blvd is higher than on Main St because signs oriented
117 for vehicular traffic are larger than signs that are pedestrian oriented. This sign is 20-ft high
118 and was a grandfathered allowance. A new business could only get a 15-ft sign.
- 119 • **Chair Klein** commented that “nonconforming” was a better word than “grandfathered.”
- 120 • Current code, last reviewed in 2006, states that sign illumination should be directed away
121 from and not reflected upon adjacent premises; that stipulation still applies.
- 122 • The Applicant was cited and a court date had been set in municipal court, but the Code
123 Compliance Department asked the judge to set back that date to allow the Applicant time to
124 pursue this course.
- 125 • In the proposed light rail station areas, screens are more likely than reader boards because
126 of updated technology. The Sign Code applies to property, not right-of-way, so potentially
127 that issue would have to be addressed. Light rail stations would not have a blanket
128 exception; a Code change might be required.

129

130 **Mr. Monahan** explained this hearing was being held because the Director’s Interpretation
131 protects the City by applying the Code language as written to each application. Land use
132 applicants still have the opportunity to challenge that interpretation if they believe there is some
133 ambiguity or room for another interpretation within Code.

134

135 **Mr. Marquardt** confirmed that no other correspondence had been received on this matter other
136 than those included in the agenda material.

137

138 **Chair Klein** called for the Applicant’s testimony.

139

140 **James Crawford, 12620 SW Foothill Dr, Portland, OR, 97225**, thanked the Commission for
141 the opportunity to address them and read a statement into the record as follows:

142 “This question really comes down to whether the sign ordinance prohibits LED illumination.

143 Staff believes it does. We believe that the Code is unclear and ambiguous with regard to the

144 use of LED lighting. In our appeal documents, which I hope everyone had an opportunity to
145 read from the staff report, we have argued that the downtown Sign Code does not provide
146 for signage applicable to a gas station, since the zoning code has zoned out gas stations in
147 the downtown district. Therefore, the gas station is now a nonconforming use.
148 Further, the downtown district has captured the properties along McLoughlin Blvd and
149 lumped them into the Downtown Zoning District. Section 19.312.1 under the purpose of the
150 downtown district states that the purpose of the downtown zoning is to focus pedestrian-
151 oriented retail uses to the traditional downtown core along Main St, with the emphasis on
152 Main St. The Code ignores the different character, other than the height of the sign, of
153 McLoughlin Blvd, with its high traffic volumes and higher speeds than Main St, making it
154 auto-oriented, which does not support pedestrian-oriented retail. Signage that works on
155 Main St cannot work on McLoughlin Blvd. None of the Main St requirements regarding
156 buildings tight to the sidewalk, store front windows, etc., apply to any of the properties along
157 McLoughlin Blvd, only the side streets and main streets. That is substantiated in the Code
158 Maps, Figures 312.2, 312.4, and 312.5. The Downtown Guidelines are pedestrian oriented.
159 It is a vision and not a regulation.

160 Within the introduction, it states that “the guidelines do not prescribe specific design
161 solutions, nor are they rigid requirements without flexibility.” The guidelines do not speak
162 directly to LED lighting or illumination. The intent was to enhance Main St and the side
163 streets into an urban village. It was described by the planners as kind of the Pearl District
164 look. McLoughlin Blvd does not have that village feel or flavor, nor will it probably ever have
165 it.

166 The City Code and downtown Sign Code are ambiguous with regard to LED illumination. It
167 neither said that LED lighting is allowed nor that it is prohibited.

168 [A photo of the original Arco sign was displayed.] The upper portion of the original Arco sign
169 was removed, reducing the overall height of the sign by about 5 ft or less. The new 76 logo
170 is located at the top of the pricing part of the cabinet, and then the pricing part is below that.
171 Some confusion comes from our sign application and the City’s response. [Diagram #1
172 submitted with the application was displayed.] The application clearly shows a sign with
173 digital or LED lighting displaying the pricing. The drawing of the sign is stamped “Approved,
174 City of Milwaukie” with no mention of conditions being applied. The memo dated March 31,
175 2009, that accompanied it did have conditions. The last sentence in the memo is the one
176 that indicates that it shall not be converted to digital or LED displays. However, changing it
177 to a non-LED display would have materially altered the appearance of the sign. By not

178 rejecting the digital sign as proposed and requiring a resubmission, the permit lacked the
179 clarity it perhaps could have had, and led to confusion on the part of the sign company
180 regarding what was indeed approved.

181 [Diagram #2 showing the sign as installed was displayed.] A review of Section 14.12.02
182 Prohibited Signs finds no reference to digital display or LED light sources as being
183 prohibited in any zone. Similar gas stations in the city have utilized LED lighting in their price
184 portion of the sign, just as we have here. Paragraph (O) of that section prohibits pole signs
185 in the Downtown Zone. If LED illumination is allowed in all districts except for the Downtown
186 Zone, it should have been listed here also as a prohibited sign type in the Downtown Zone.
187 By not being included, we had to conclude that LED lighting was not a prohibited sign type
188 in the Downtown Zone.

189 Section 14.16.02 Residential-Office-Commercial Zone does not specifically allow LED type
190 illumination, but Section 14.12.02 does not specifically prohibit it. Likewise, Section
191 14.24.02(A) Sign Lighting, addresses exposed lamps and bulbs. Nothing in this section,
192 however, addresses LED lighting, which is technically a diode. That is confusing, and leads
193 us further to believe that LED lighting is not prohibited.

194 The Downtown District Sign Code does allow internally illuminated cabinet signs under
195 14.16.060(H). Section 14.04.030 Definitions of the Sign Code provides the following
196 definition of an internally illuminated sign: “Internally illuminated sign” means a sign which is
197 wholly or partially illuminated by an internal light source, from which source light passes
198 through the display surface to the exterior of the sign.” It does not say that the light source
199 cannot be visible. The LED light source is internal and the light passes through a clear
200 surface to the exterior. It sounds like the sign meets the definition of an internally illuminated
201 cabinet sign. Likewise, the definition of a cabinet sign, in Section 14.04.030 does not say
202 that the display face is required to be obscure. Again, it meets the definition of cabinet sign,
203 but adds confusion to the issue, because we are behind a clear vs. opaque cover, but staff
204 feels that it needs to be not visible.

205 There is a lack of evidence that the City specifically has prohibited the use of LED lighting in
206 the Downtown District. It allows internally illuminated cabinet signs. By definition, the
207 exposure of the light source through the display surface is not prohibited. It otherwise meets
208 the requirements of Section 14.16.060(H), which is the Downtown Sign ordinance. It is, for
209 these reasons and those elaborated in our narrative, that we respectfully disagree with the
210 Planning Director’s Interpretation, and argue that the Code is ambiguous with regard to
211 whether LED lighting displays are specifically prohibited as asserted by staff.

212 In conclusion, approval of this sign as installed with LED displays for the gas pricing would
213 not be detrimental to the public health, safety, or welfare. It is not detrimental to the
214 surrounding properties. The sign is more attractive, more durable, more energy efficient and
215 less bright overall compared to a traditional fluorescent-lit cabinet sign that would replace it.
216 It uses new LED technology and presents a cleaner, neater appearance, and meets the
217 intent of the Sign Code as stated in Section 14.04.020 under the definitions of purpose of
218 the Sign Ordinance. “

219
220 **Commissioner Batey** believed the Applicant made a good point about there being a disconnect
221 between the graphic stamp “approved” and conditions within the text of the letter. She asked
222 why they did not ask staff for clarification rather than proceeding with the installation.

- 223 • **Mr. Crawford** replied it was a comedy of errors. Someone at the sign company saw that
224 what they had submitted was stamped “approved” and that was ordered and installed.
- 225 • It was not an intentional slight of the planners’ intended approval, but strictly an accident.
226 Mr. Kanso was surprised when it was brought to his attention because he believed that
227 what had been applied for had been approved.
- 228 • He could not guarantee that nobody read the letter, but it was missed, especially since it
229 was the very last sentence in the memorandum.

230
231 **Chair Klein** asked what would have been installed if the sign company had read the permit
232 properly.

- 233 • **Mr. Crawford** said he could not reply for the Applicant, but noted it was confusing when
234 one applies for and provides drawings for a sign with digital pricing and is told they can
235 have that sign but not digital pricing. The City did not know what it had approved visually.

236
237 **Commissioner Churchill** questioned the assertion that the sign drawing showed LED lighting
238 conclusively. The application did not state “digital” or indicate LED. The numerals could be
239 painted on a card that could be slipped into the space.

- 240 • **Mr. Crawford** showed comparable signs using stick-on letters instead of LED, noting
241 that they had a different look without black background behind the letters.

242
243 **Commissioner Batey** said she had seen slide-in plastic cards that looked similar. She was not
244 sure she agreed with the argument that it was an internally illuminated cabinet sign. If so, she

245 understood it would have come to the Commission anyway. Even if that was what the Applicant
246 wanted, they still had a different process to go through.

- 247 • **Mr. Marquardt** explained the pre-existing internal illumination was already
248 nonconforming, so the alternative graphic the Applicant displayed would have been
249 approvable without having to come before the Commission.
- 250 • Mr. Crawford stated the issue was the ambiguity of the cabinet sign definition; it did not
251 say the light source could not be visible and that caused confusion. If the Code were
252 clear and concise on the matter, the Applicant would not have to ask the Planning
253 Director for an interpretation.

254

255 **Chair Klein** asked what led to the decision to appeal the Director's interpretation versus using
256 other available options.

- 257 • **Mr. Crawford** said that the Applicant had three options: pursue this avenue of
258 questioning the interpretation and perhaps appeal; ask for a waiver, but staff was not
259 confident the application met the criteria to allow one; or incur the \$3,500 cost of a Sign
260 Code rewrite.
- 261 • The Applicant chose what they hoped to be the most expedient way. The Commission
262 as decision makers had the flexibility to interpret Code where it was not clear, as they
263 believed was the case. Hopefully, the Commission would see that the ambiguity
264 provided opportunity to approve their request. If the Code needed to be fixed after this
265 was approved, the City could pursue that amendment as they updated the Sign Code.

266

267 **Commissioner Batey** asked whether Lake Oswego would allow this sign on Hwy 43.

- 268 • **Mr. Crawford** replied he had not dealt with commercial signs in Lake Oswego, only
269 some land use matters related to residential properties.

270

271 **Commissioner Gamba** inquired whether Mr. Crawford was aware of the electrical savings
272 provided by this sign versus a conventional backlit sign.

- 273 • **Mr. Crawford** replied he was not certain of the exact difference, but knew it was
274 significant enough that the Applicant had received a nice letter from PGE and the Energy
275 Trust for converting from fluorescent to LED, which is incredibly more efficient.

276

277 **Nabil Kansa, Owner, 76 Station, 10966 SE McLoughlin Blvd**, explained that he has been on
278 the McLoughlin property for 26 years. It was owned by BP/Arco and he was a franchisee. In

- 279 2009, he bought the property and wanted to convert from AM/PM Arco into a '76 Station. He
280 saw the potential of improving the property to compete better with other gas stations in the
281 market. Arco had not improved that property for the last 10 years.
- 282 • He referred to a letter in the file in which Mr. Marquardt talked about modern lighting and
283 stated that fixtures would all convert to LED light within 5 to 10 years. His particular LED sign
284 was not offensive. LED converts energy and lasts much longer than incandescent lights.
285 The usage of LED signs should be encouraged.
 - 286 • His business is very competitive, and he has to change prices as his costs fluctuate. Going
287 back to the old sign type, similar to the old Arco sign, would require the use of magnetic
288 letters. They were heavy, and to change them one had to climb a ladder or use a suction
289 cup. Weather and traffic can make this task treacherous. They have experienced near
290 misses with numbers almost hitting a vehicle or cars almost hitting employees changing the
291 sign. In the winter or when weather is cold or windy, numbers can fly around. He was
292 concerned about the safety of his employees.
 - 293 • He needed a sign that was lit, and he intended to comply with State law. He assured the
294 Commissioners that he had not violated Code intentionally. The comment in the memo was
295 missed. He did not read the permit, because it had to go through the contractor who
296 supplies gasoline, and then it went to the sign people who read it.
 - 297 • As a matter of fact, he had not wanted an LED sign because the cost was so high. A
298 normal sign would not have looked as good, but would have been cheaper. He was
299 convinced to purchase the LED sign because it was the future, especially with Fred
300 Meyer coming in half a mile away with a huge LED sign that might put him out of
301 business anyway.
 - 302 • Everyone on McLoughlin Blvd would have an LED sign eventually. The Chevron in
303 Beaverton switched to LED signs on Walker Rd. and 58th Ave.
 - 304 • When Ms. Mangle and Mr. Marquardt came to him 6 or 8 months later, he really did not
305 know that the sign was not allowed. He agreed to work with the City to see what he could
306 do. This has already cost him a lot of money, and if everyone was going to convert to LED
307 signage in the future, why go through this mess of changing and costing more money?
 - 308 • He is a small businessman and did everything requested of him. They took the traffic light
309 from Jefferson St and put it down the street. They added a median. They charge him \$.02
310 per gallon for the City to fix the streets. And now they want to take away the LED sign.
 - 311 • He asserted that he wants to stay at this location. Eight families plus his own depend on this
312 business. He needs to be able to compete. He needs people to look at his sign.

- 313 • Besides the cost of getting a loan and buying the property for almost \$500,000, he has
314 invested \$200,000 in improvements to make the property look nice, so McLoughlin Blvd
315 could look nice.
- 316 • He is not a boutique shop or retail store on Main St. He is on McLoughlin Blvd, facing the
317 water and facing the traffic. He is not downtown; 90% of his traffic comes from
318 McLoughlin. He has loyal customers in Milwaukie who still come and fill up at his station.
- 319 • He has watched the Walgreen's sign on Hwy 224 blinking, telling the time and prices.
320 Everything is allowed on Hwy 224, but not on McLoughlin Blvd. He could not comprehend
321 that.
- 322 • When Mr. Crawford told him they could challenge the Code, he decided to pursue it. He
323 would like to keep the sign. It does not blink or move, and it takes him a second to change
324 the prices on the sign without the hassles of changing the numbers, using a suction pole or
325 climbing a ladder.

326

327 **Commissioner Churchill** asked if Mr. Kanso had seen the shorter '76 Station signs that were
328 lower than 8 ft tall, or signs that use LED lighting as an internal illuminating source rather than
329 exposed lamps.

- 330 • **Mr. Kanso** replied that he had seen lower sign heights in Beaverton, but not on
331 McLoughlin Blvd, adding if his sign were 8 ft high, it would not be visible. The guy next
332 door had a sign as big as his. He had not seen LED used for internal illumination.

333

334 **Chair Klein** called for public testimony in favor, opposed, or neutral to the application.

335

336 **Ed Parecki, 10600 SE McLoughlin Blvd, Milwaukie**, became aware of this application and
337 appeal last week. Previously, he had appealed an interpretation of the Code at the Commission
338 and City Council and was denied both appeals. Within 6 months the Code changed and met
339 almost exactly the arguments they presented to the Commission. He felt sorry for Mr. Kanso
340 because one could not challenge an interpretation, as it was merely an opinion, and there is no
341 way someone's opinion can be changed.

- 342 • The Code is very clear as far as not prohibiting an LED light, so there was nothing to
343 interpret. If the Code is ambiguous, then the Commission should vote in favor of the
344 Applicant, not uphold the interpretation.
- 345 • This statement was based on legal authority. Contract law states that if a contract is
346 ambiguous it goes against the person who wrote the contract. The Code is a contract

347 and everyone must abide by that contract. They made an application, it is a contract. He
348 was not a legal expert, but this was his interpretation of the law, since the law is easily
349 interpreted.

350
351 **Commissioner Batey** noted some areas of law state that anything not prohibited is permitted.
352 She asked if he believed the City Code stated that somewhere.

353 • **Mr. Parecki** stated he had heard it from Mr. Marquardt's presentation.

354
355 **Mr. Parecki** continued that he wanted to see a change in how the City treats business people
356 and be pro-business instead of anti-business. The Applicant was doing nothing that would
357 damage anything the City had been trying to improve. The city was changing for the better;
358 downtown was getting better every day. Milwaukie was a diamond in the rough and people were
359 starting to notice it.

- 360 • There was nothing wrong with the sign Mr. Kanso was providing. He was spending easily in
361 excess of \$10,000 for the sign. The option was to have him do an internally illuminated sign,
362 which would be quite ugly and approved without coming before the Commission.
- 363 • He did not understand why Mr. Kanso had to ask for a reinterpretation of the Code when the
364 Commission had the authority to just change the Code to make it right so no question
365 existed about what applicants could or could not do. They all want to abide by the Code
366 because that is the right thing to do, but when the Code is not clear, either they ignore it or
367 they try to interpret it.
- 368 • The Code should be changed so that it was clear. One should not have to be an attorney to
369 try to figure out what the Code means.
- 370 • The purpose of a sign is to attract people to a business. The City was trying to attract people
371 to their downtown area and that was all this sign was doing. It was not detracting. It was a
372 very attractive sign, much nicer than what was there before and what could be there if they
373 denied the Appeal.
- 374 • He asked that the Commission not let this cost the Applicant another \$15,000 for the next
375 level of appeal.

376
377 **Commissioner Wilson** expressed that changing the Code was a pretty big request, but option
378 three, approving the appeal, seemed a little easier. He asked what Mr. Parecki would suggest
379 as the alternative findings.

- 380 • **Mr. Parecki** suggested as the finding, “We find the proposed sign as built is much more
381 attractive than a sign that could have been built strictly according to the Code, another 5 ft
382 higher and glaring with internal illumination.”
- 383 • If built according to the current Code, the sign could be another 5 feet higher and the
384 Commission would have no choice but to approve it.

385

386 **Chair Klein** noted that an alternate interpretation could be found on 5.1 Page 4. He called for
387 additional comments from staff.

388

389 **Mr. Marquardt** made the following comments:

- 390 • He clarified that staff had prepared findings for denial of the appeal. If the Commission
391 wanted to uphold the appeal, then that discussion and the rationale being used for doing so
392 would need to be captured.
- 393 • Staff agreed the sign was not aesthetically unpleasant and that it was odd that an internally
394 illuminated cabinet sign could have been allowed, whereas a nicer looking LED sign with
395 gas prices was not allowed. However, this appeal was really about how the Sign Code was
396 interpreted downtown-wide, and how all signs within the downtown district are treated.
- 397 • If LED or reader board-style signage was allowed, it could be anywhere within the
398 downtown zone. It was a broader issue than this one particular sign.
- 399 • As far as the internal illumination of cabinet signage and Mr. Crawford's point about light
400 passing through a display surface, staff would not consider the clear casing or even a
401 transparent surface in front of an LED or a diode or any incandescent light to be a display
402 surface as much as just a covering. Reader board signage with clear plastic would not be
403 categorized as an internally illuminated sign.

404

405 **Commissioner Batey** recalled that the Applicant had testified that the Code is different as it
406 relates to McLoughlin Blvd and asked if new construction in a block fronting McLoughlin Blvd
407 today would have different setbacks and other rules than if built on Main St.

- 408 • **Mr. Marquardt** stated that current zoning on the property would apply. He displayed a
409 map showing downtown zoning and noted the setbacks vary from 0 to 10 ft in the
410 downtown zones for storefronts and offices. Those setbacks were the same whether
411 along McLoughlin Blvd or 21st Ave. Main St was a bit different because everything is
412 supposed to be at the “build-to” line.

413

414 **Chair Klein** called for the Applicant's rebuttal. There being none, he closed the public testimony
415 for AP-10-01 at 7:52 p.m.

416

417 **Chair Klein** understood that the City could not control the content of a sign, but asked if any
418 difference existed between LED signs where the content was stagnant, flashing, scrolling, or
419 one showing a graphic.

420 • **Mr. Monahan** understood the question was if the Commission approved this LED sign,
421 would that open the door for any type of graphic display of LED downtown and deferred to
422 the Code.

423 • **Mr. Marquardt** explained that there is a general prohibition on signs that change more than
424 once every 10 seconds.

425 • **Ms. Mangle** added that changing content was a separate provision from the lighting issue.

426

427 **Planning Commission Discussion**

428

429 **Commissioner Churchill** explained that LEDs, or diodes, and light bulbs are filaments encased
430 in a glass shroud, adding that new sources of light will be created as technology advances. The
431 City was trying to avoid exposed lamp sources, whether LED or otherwise, and see only the
432 effect of the illumination but not the source. Other municipalities were trying to control the effect
433 of LED lighting because some believe it is offensive as a bare lamp or bare source of
434 illumination. LEDs were now being used inside of light fixtures and getting shielded so they
435 glow, and that could be called cathode or neon or other sources.

436 • He saw Mr. Marquardt's stamp of approval on the drawing, but did not see "LED source"
437 stated anywhere. Just because the numbers' font appeared to be a certain typeface did not
438 indicate it was approved to use an LED source, which would have been pretty specific in his
439 approval.

440 • He appreciated the scale of the sign being reduced, and he believed solutions existed for
441 lower signs that seem to function well enough for downtown areas that care about not
442 having a lot of very high signs.

443

444 **Commissioner Gamba:**

445 • Asked if staff typically approved the light source within a sign, such as specifically approving
446 that the sign be lit by fluorescent tubes, incandescent bulbs, or other means.

- 447 • **Mr. Marquardt** answered yes, adding that generally an applicant includes electrical
448 diagrams with their application so staff could see the source of the illumination and they
449 default to what applicants propose. In this case, it was not exactly clear what was
450 proposed, which is why the condition was placed on the approval to make it clear that
451 the LED or digital was not the sort of change being approved.
- 452 • As far as the sign permit, staff assumed that the existing internal illumination was being
453 used and that the sign was being refaced. Staff was not looking at a new sign with
454 regard to the electrical portion.
- 455 • Asked if the language of staff's approval would specifically state, "We hereby approve this
456 internally lit sign, which is being internally lit by a fluorescent tube."
- 457 • **Ms. Mangle** explained staff is not concerned about which technologies are used as the
458 light source for internally illuminated cabinet signs.
- 459 • Concluded the fact that the specific type of illumination was not stated on the application in
460 question and was no different than any other permit.

461

462 **Chair Klein** noted many different ways exist to light something. The interpretation regarded the
463 desired outcome staff wanted to see, regardless of how the sign was lit.

- 464 • **Mr. Marquardt** further explained if a new sign with an internal illumination was
465 proposed, the applicant would include wiring or some electrical permit. If it met the
466 standards, staff would approve the sign as proposed.
- 467 • It was the applicant who determined the light source. Whether LED or a fluorescent
468 light source was proposed on the inside, staff would approve the application if it met
469 the illumination standards in the Code.
- 470 • Conditions are imposed on the application if staff determines modifications are
471 needed to make the sign comply with the standards.
- 472 • In this case, the idea was that Applicant was just refacing the sign and using the existing
473 internal illumination.

474

475 **Commissioner Gamba:**

- 476 • Stated that McLoughlin Blvd was not Main St or part of the walkable downtown. The sign
477 that was approved was an internally lit cabinet sign, so there was no argument there. The
478 only problem was that the lighting being used was the best, newest, most efficient, most
479 sustainable, and the future form of lighting on the market. It did not matter that LED lighting

- 480 could be used internally to illuminate. The Commission was making a point of disapproving
481 the future.
- 482 • Supported LED lighting, but believed it was a matter of how it was applied. The intent of the
483 Code was to not have a harsh source of bare illumination. The sign directly across the street
484 was an internally lit cabinet sign and more glaring and harsh than the sign in question.
 - 485 • **Mr. Monahan** interjected that the issue was not about the sign, but the interpretation of
486 the Code being properly applied to the request.
 - 487 • Stated the Code was wrong. Secondly, staff did a beautiful job writing how the Code could
488 have been interpreted differently and still have been correct, thus allowing the sign.
 - 489 • **Mr. Monahan** agreed that could be the Commission's determination if it disagreed with
490 the Director's interpretation.
 - 491 • Said if the Commission agreed that LED is a more beneficial lighting source than anything
492 else available, and all that was left was interpreting this particular bit of Code, which was a
493 bad piece of Code, then it seemed clear that staff did not interpret it correctly. There was no
494 downside to deciding that the alternate interpretation was appropriate. It would keep a man
495 from paying to replace a superior sign with one that was inferior and it would reduce the
496 electrical usage.
- 497
- 498 **Commissioner Batey** agreed the Sign Code needs work. Some aspects that Mr. Parecki
499 wanted revised should be, but others might not achieve what he wanted. The Sign Code has
500 been on the work plan since the 2006 revisions were done to address content issues regarding
501 an Oregon Supreme Court decision. That process allowed no opportunity to have community
502 dialogue about the signage citizens wanted in downtown or the Sign Code language. Given that
503 dialogue, perhaps this kind of sign would be acceptable. She would advocate for no pole signs
504 and have only low monument-style signs.
- 505 • The Commission had to interpret the Code under which the application was made.
506 McLoughlin Blvd was certainly different than Main St, but to think that McLoughlin Blvd
507 would always be the McLoughlin Blvd it was now would really short change the Riverfront
508 Plan. The Commission had to consider and strive for McLoughlin Blvd becoming a more
509 pedestrian-friendly, pedestrian-oriented street, and again, the monument signs come into
510 play there. The City should be looking at Lake Oswego and Beaverton where they have
511 more restrictive sign codes.
 - 512 • They did not want to drive out Mr. Kanson or other gas stations in the area. She was sorry the
513 Applicant went to this expense, but she did not see rewarding somebody who ignored the

514 terms of their approval, and she was concerned about the impact the decision would have
515 on other downtown signs.

- 516 • Many nonconforming signs were in downtown, but there were actually an increasing number
517 of conforming signs, which she reviewed. She believed it would be wrong to go in the
518 opposite direction of the changes made in 2006, although the Code text was, admittedly,
519 incomplete. Some things did need more attention, but this was wrong.
- 520 • Of the three signs in a row, Mr. Kanso's was the most attractive. It was better than the gas
521 station next to it and the bank, but that was not the test, and not what the Code required.

522

523 **Chair Klein** interjected that he did not believe the terms of the approval were ignored by the
524 Applicant.

525

526 **Commissioner Gamba** noted that Commissioner Batey admitted the sign was far better looking
527 than the other two signs nearby. If the Applicant was forced to replace the subject sign with
528 what was approved, the city would get a sign much more like the one next door.

529

530 **Commissioner Wilson** believed the subject sign was pedestrian-friendly because fewer
531 lumens shined off the sign. Ten or fifteen years from now, Milwaukie would have such an
532 improved downtown where people would be walking. The new '76 Station sign put off so little
533 light and gets the job done. One could walk right by and not have any bright light shining in their
534 face.

- 535 • It did not look like the pedestal-type signs from Irvine, CA, but he did not know the City
536 intended to go in that direction.

537

538 **Chair Klein** noted the question was whether digital was LED or reader board.

539

540 Discussion amongst the Commission and staff continued, including these key comments:

- 541 • The fact that the Code limited blinking content to every 10 seconds showed the City does
542 not want lights that are nuisances; this was not a nuisance type of a light.
- 543 • If Chopsticks across from City Hall installed an LED reader board that changed and
544 showed menu options that would be a tough call, even if the changing content met the
545 timing required by Code. Being able to review the design or have static text might make
546 a difference.

- 547 • **Mr. Monahan** clarified that the Commission was making a Code interpretation that would
548 direct staff in the future when applying this same Code. Future application of the Code by
549 staff would be based on this decision. The decision would not be setting precedent, so much
550 as giving the Planning Director an interpretation as to the meaning of the Code and how to
551 apply it.
- 552 • A Code decision was made favoring Mr. Parecki's argument 6 months later. Would this
553 argument be revisited as they continued to revamp Code, but also with regard to the light
554 rail station coming in?
- 555 • While the Code changed 6 months after Mr. Parecki's appeal, the proposed Sign Code
556 changes were not expected in the near future because staff was working on so many
557 other Code projects. Mr. Kanso would not likely be in that same situation.
- 558 • The Commission could not get hung up on the fact that the source was LED. Using an LED
559 diode as a wall wash would light a sign without any of the objectionable direct sources of
560 illumination. An LED source could be used to internally illuminate a sign. If a series of small
561 incandescent light bulbs were in the shape of a letter or number, rather than LEDs, they
562 would be talking about an exposed lamp source. The Sign Code was prohibiting exposed
563 sources of illumination. Considering the intent of the Code, Ms. Mangle's interpretation was
564 correct.
- 565 • Directing the Planning Director toward LED lighting was a positive thing. The Applicant's
566 sign would not set precedent toward the rest of the signs in downtown. The property was
567 already a nonconforming use and the sign was nonconforming, taller than currently allowed.
- 568 • **Ms. Mangle** explained that although the sign was nonconforming, if any nonconforming
569 or conforming sign proposed to have exposed LED added, the same piece of Code
570 applied. The fact that the existing sign was nonconforming in one avenue did not mean it
571 could be nonconforming in all avenues.
- 572 • She clarified this was not a hearing on the sign, use, application, or how staff handled
573 the application. The hearing was only about how the Code was applied to this situation.
574 If the Commission decided to use an alternate interpretation, then staff would continue to
575 apply that interpretation throughout downtown any time someone asked this question.
- 576 • As far as the glaring of the exposed bulbs, the existing '76 Station sign was far less glaring
577 than the sign across the street that was internally lit with no visible bulbs. Given what was
578 approved, the sign that would be allowed to be built was more glaring.

- 579 • There was no foot-candle limit for the illumination source inside an internally lit cabinet
580 sign. Although no foot-candle limit existed for the outside of an illuminated cabinet sign,
581 a nuisance provision limited light trespass at not more than half a foot-candle.
- 582 • **Vice Chair Harris** agreed that this was a difficult situation and suggested framing this with a
583 condition of approval. He agreed the current sign was more attractive and energy efficient,
584 but he did not believe it complied with the current Code. The Commission was here to
585 validate whether or not the Planning Director had interpreted the Code correctly. They could
586 not make a decision that was going to remap what would happen all over downtown.
- 587 • This decision would not impact other cases because it was already nonconforming.
- 588 • It would lead the interpretation by staff of similar applications with exposed LED light signs
589 on Main St.
- 590 • Would this drive the Design and Landmarks Committee and maybe the Commission in the
591 future to start looking more carefully at what kind of LEDs were used?
- 592 • Could findings be written to limit the interpretation to McLoughlin Blvd because the Code
593 language applied to all of downtown?
- 594 • There was already a separation because signs could be 15 ft high on McLoughlin Blvd,
595 and only 10 ft high on Main St.
- 596 • **Chair Klein** noted this hearing had many similarities to Mr. Parecki's case. He believed that
597 a Code amendment should have been done, not an Appeal to the Director's Interpretation;
598 however, \$3,500 was considerably more than \$600. If this were a Code amendment, they
599 might find in favor of this moving forward
- 600 • **Mr. Monahan** offered to help the Commission craft findings if they could indicate a
601 preference one way or the other. The direction of the Commission was unclear at this point
602 and counsel did not want to steer the Commission.
- 603 • The difficulty with a Director's Interpretation was figuring out where staff went wrong. The
604 existing '76 Station sign was better than other signs downtown, but that did not necessarily
605 make it right.
- 606 • **Mr. Monahan** explained the point of an appeal to either the Commission or City Council was
607 because an applicant disagreed with staff interpretation. The burden was on the applicant to
608 provide convincing information for disagreement with staff's decision.
- 609 • **Commissioner Gamba** believed the Applicant provided convincing information. The point
610 was that the Commission was to render an opinion. Should the Commission do the wrong
611 thing because bad Code was written 15 years ago?

- 612 • It was not an opinion on one sign. The only question was whether staff interpreted Code
613 correctly. The Commission was not crafting Code at this time, but had to abide by the
614 Code that currently existed.
- 615 • They should be changing the Code; the point was that LEDs were not specifically
616 disallowed.
- 617 • The Code basically sets out what is allowed. One could not disallow every possible
618 situation or foresee every lighting source.
- 619 • Mr. Kanso's arguments explained the reality of being a business owner. Mr. Kanso had
620 participated in beautification projects and wanted to do business in Milwaukie. He had
621 already spent a great deal of money on the existing sign.
- 622 • **Chair Klein** said that although he sided with Mr. Kanso, he believed Ms. Mangle interpreted
623 the existing Code correctly.
- 624 • A majority of the Commission believed the existing sign was better than what would be
625 approved and the right thing was to look for some legal loophole to find that Ms. Mangle's
626 interpretation was not correct.

627

628 **Mr. Monahan** reminded the core issue was to determine if the Director's interpretation was the
629 correct reading of the Code language. If not, the Commission could go in a different direction.

- 630 • The Commission could determine that the Code language needed to be amended, but that
631 would be a different process. The initiation of a Code amendment could be done by the
632 Applicant or by the City and were independent determinations.
- 633 • The decision before the Commission tonight was not whether to initiate a Code amendment
634 or change the Code, but to address the question at hand about whether the interpretation
635 was correct.

636

637 **Chair Klein** called the straw poll asking whether the Commissioners believed Ms. Mangle
638 interpreted the Code correctly. Chair Klein, Vice Chair Harris, Commissioners Batey and
639 Churchill voted to uphold the interpretation. Commissioners Gamba and Wilson voted no.

640

641 The Commission took a brief recess and reconvened at 8:47 p.m.

642

643 **Chair Klein:**

- 644 • Stated that while the majority of the Commission agreed Ms. Mangle made the correct
645 interpretation, the sign application should be considered again. City Council had the option

- 646 to look at this on a broader scale and to place more emphasis on the possibility of doing a
647 Code amendment.
- 648 • **Mr. Monahan** explained Council could initiate a Code amendment and change staff's
649 work plan to suggest that a Sign Code review be given priority and added to the list. The
650 Commission could phrase a letter requesting that Council give priority to the Sign Code
651 amendment and consider the difficulty the Commission had deliberating this issue along
652 with any concerns the Commission might have.
 - 653 • Noted the Applicant was working through Code Compliance and had an ongoing Code
654 violation before the Municipal Court, which seemed to be in limbo at this point.
 - 655 • **Mr. Monahan** stated the judge would determine whether to decide the case or put it on
656 hold. Information could be provided to the judge, also. Council could initiate a Code
657 amendment and make the judge aware of its concern for this particular application.
 - 658 • If the Commission made a determination that supported staff, the Applicant had the right
659 to appeal to Council, and it was possible that parallel tracks could be pursued regarding
660 an alternative solution for the sign.
 - 661 • The Applicant could appeal to Council, but also request that Council consider a Code
662 amendment. If the Applicant believed the process to change Code was actually going to
663 occur, they could determine whether or not to follow through with an appeal to Council.
 - 664 • He clarified that he was not suggesting tabling the application while the Commission
665 sent a letter to Council.

666

667 Further discussion continued as follows:

- 668 • The sign would be approved in the General Commercial Zone. The only place it was not
669 specifically approved was in the pedestrian-oriented downtown section of central Milwaukie.
670 McLoughlin Blvd was not part of the pedestrian-oriented downtown and was not comfortable
671 for pedestrians.
- 672 • What McLoughlin Blvd is and what they wanted it to become were two different things.
 - 673 • If it was to become part of that walkable, quiet, comfortable zone, the City should be
674 making the changes needed for it to be a completely different place. All they were
675 deciding now was whether a particular bulb was allowed to light a sign from the inside
676 because someone made that area part of downtown versus a General Commercial
677 Zone.
- 678 • There were plenty of nonconforming uses downtown and as those uses change ownership
679 or function, the nonconformity would go away.

- 680 • During the Sign Code revisions in 2006, having sign permits expire had been discussed.
681 The Commission had wanted all nonconforming signs to be gone by 2020 and that was still
682 in the Sign Code.

683

684 **Chair Klein** stated the provided scenario was not an easy one, but it was something the
685 Applicant could find support for and he believed the Commission could give some direction on
686 their vote as it moved forward.

687

688 **Commissioner Wilson** noted the Commission was also presented with an alternative
689 interpretation, which was a reasonable look at the Code. If the Commission determined the
690 alternative was correct, did not that also mean that staff was correct since they wrote it?

- 691 • **Mr. Marquardt** acknowledged staff had written the alternative interpretation. When
692 people asked about whether an LED reader board sign could be approved downtown,
693 staff's initial interpretation of the Code was that unless LED was specifically listed, it was
694 not something that was allowed, which was how staff has applied the Code.
- 695 • Staff could see both sides, so in fairness of trying to present an option before the
696 Commission, the alternative interpretation was viable. It was not the one they had been
697 using or one they favored, but it was an alternative that staff wrote.

698

699 **Commissioner Gamba** confirmed that using the alternative was entirely up to the discretion of
700 the Commission.

701

702 **Commissioner Churchill moved to deny the appeal AP-10-01 and uphold the Planning**
703 **Director's Interpretation of File DI-10-01 of the Sign Ordinance. Vice Chair Harris**
704 **seconded the motion. The motion passed 4 to 0 to 2 with Commissioners Wilson and**
705 **Gamba opposed.**

706

707 **Chair Klein:**

- 708 • Believed the Commission should give direction to staff at this point.
- 709 • **Mr. Monahan** advised that based on this discussion and the Commission's opinions
710 about the Code and its application to such situations, the Commission suggest that
711 Council initiate a review of the Sign Code to determine the appropriateness of allowing
712 some range of LED or other similarly lit signs.

- 713 • He added the City should make this information available to anyone considering a sign
714 alteration. If Council did initiate a Sign Code amendment, it would be an opportune time
715 for them to participate in that process and wait for a decision to be made.
- 716 • Clarified the Commission would suggest Council specifically consider what an LED sign is
717 and what the interpretation should be on the McLoughlin Blvd Corridor. In theory, Council
718 would consider the bigger picture, but would likely redirect the Commission to address that
719 issue in light of the entire Sign Code. An argument had been made here that there be a
720 broader public input.
- 721 • Noted that Council might not find in favor of the Applicant and decide the rules set out for
722 McLoughlin Blvd should be the same as for Main St.

723

724 **Commissioner Churchill** said he had understood the Commission was asking Council to
725 accelerate looking at the Sign Code. He was concerned about the vote and then the add-on
726 direction to Council. He preferred not to look at individual cases. He wanted to have Council
727 direct staff to accelerate their look and bring Sign Code forward in the work plan so it could
728 address exactly these kinds of issues.

729

730 **Chair Klein** agreed the Code needed to be addressed, but the Applicant also needed to find
731 resolution.

732

733 **Commissioner Churchill** stated appealing to Council would give the Applicant another body
734 from which to get an interpretation.

- 735 • **Mr. Monahan** agreed that the Applicant could appeal to Council to overturn the
736 interpretation. Council would consider both the Director's and Commission's interpretations
737 and determine whether the Commission had made the best decision. It would add another
738 layer of authenticity to the interpretation.

739

740 **Chair Klein** added that Council could also expedite a Code amendment for McLoughlin Blvd.

- 741 • **Mr. Monahan** said it would make sense to limit the request to Council, because Council
742 might be concerned about a long process, and the judge might also be concerned about
743 putting a citation into abeyance for a long period of time.

744

745 **Commissioner Batey** noted the Applicant only had a limited amount of time to appeal to
746 Council and whether or not a Code amendment would yield any fruit before the time they had to
747 make a decision to appeal was uncertain.

748 • **Mr. Monahan** agreed Council might decide not to take action on any recommendation
749 by the Commission until after the quasi-judicial process on the appeal is completed. He
750 clarified they were just discussing scenarios; there was no way to determine what
751 direction Council might go.

752

753 **Commissioner Churchill** stated the Commission needed to decide what direction or comments
754 they should pass onto Council.

755

756 **Chair Klein** reiterated that he was hoping to give the Applicant an opportunity to find resolution.
757 The McLoughlin Blvd issue was a good question to be asked.

758

759 **Ms. Mangle** noted that the decision on the application had been made, and offered that the
760 Commission could ask the Applicant to return with a proposed Code change as a suggestion,
761 not an application. Then, the Commission would actually have something more specific in hand
762 to address the LED issue and could decide whether to recommend that Council initiate that
763 change. Addressing this one issue would be a 4-month process, but it might be easier to deal
764 with something that was more specific.

765

766 **Chair Klein** interjected that he hated writing Code for one issue and that was what they would
767 be doing.

768

769 **Commissioner Batey** believed that even if the Commission limited this to signage on
770 McLoughlin Blvd, there were other issues besides LED or no LED. She did not know how to
771 look at it, even if it were limited geographically.

772

773 **Chair Klein** added there was no guarantee the Applicant would be able to continue the sign as
774 it existed, but addressing the Code issue would bring in a broader discussion.

775 • **Mr. Monahan** advised that staff could restate the recommendation, and the Commission
776 could write a letter asking the judge to consider the potential Code amendment and to delay
777 the court process, if that was what the Applicant wanted. The Applicant might want a
778 decision.

779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812

Ms. Mangle restated the recommendation that the Commission invite the Applicant to return with a suggested Code amendment and that the City could then decide if it wanted to initiate through a legislative process. It was a suggestion by the Applicant, not a formal application or proposal so the \$3,500 charge would not apply.

- Secondly, the Commission would direct staff to prepare a letter for the Commission to send to the judge advising him that though the Commission believed the citation was based on a correct interpretation of Code, the Commission was questioning whether the Code was appropriate for the city, which would just provide background information for the judge.
- If Council initiated the Code amendment, it would then return to the Commission as a worksession and begin the legislative process, which would include public hearings. However, it was unclear whether that was something Council would do.

The Commission consented to proceed with Ms. Mangle's recommendation.

Chair Klein read the rules of appeal into the record.

The Commission took a brief recess and reconvened at 9:18 p.m.

6.0 Worksession Items

- 6.1 Summary: Land Use and Development Review Process Tune-Up briefing #5:
Review Conditional Uses, Amendments, and Development Review draft chapters
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, stated all the changes being proposing were in the meeting packet. The proposed changes to the Conditional Use and Amendments Chapters were very straightforward and had no major policy changes. Staff was comfortable enough with these chapters to continue unless the Commission had concerns.

- She reminded that the project was on a fairly tight timeline due to the grant funding involved. The City also wanted to be able to do as much as possible with the Residential Design Standards.
- Drafts would be presented to the Commission on November 9, 2010, and staff would create a third draft following the Commission's direction at that meeting, so there was still time for input.

- 813 • She suggested the Commission review the material on the Conditional Use and
814 Amendments Chapters and contact her with any questions or concerns they had on those
815 two chapters in particular.

816

817 Discussion about the draft Conditional Uses Chapter was as follows:

- 818 • 3 or more years seemed too long before a Conditional Use approval expired.
- 819 • 6 months was the time period for the loss of a legal and nonconforming use, so perhaps
820 middle ground could be found. Maybe how long the conditional use has been in effect
821 should be a factor, although that might be too complicated for the Code to distinguish.
- 822 • One year sounded appropriate.
- 823 • Harmony Mini-Storage was an example of a recently approved conditional use, but the
824 proposed Code addressed conditional uses that had already been operating and the
825 time period allowed for that conditional use to continue once operations stopped.
- 826 • Two large sheets in the packet include the list of currently identified conditional uses
827 in Milwaukie, which can be found in Commercial zones and Historic Resource zones,
828 such as a bed & breakfast. Many duplexes are conditionally allowed in certain
829 residential zones, and outright allowed in others.
- 830 • In some ways, the structure defines the use; the structure and use are often intermingled.
- 831 • With this amendment, a duplex vacant longer than the time period would no longer be
832 allowed to be used as 2 separate dwelling units. It would have to be modified into a
833 single-family house or the owner would have to come before the Commission to get
834 reestablished as a conditional use.
- 835 • Separately metered units might have to return to a single-metered unit. This limit
836 could be a way to control multi-family use in a single-family dwelling.
- 837 • How could they distinguish between uses where the structure is so integral?
- 838 • Many other jurisdictions' codes have a 3-year time limit provision for conditional uses.
- 839 • If something goes away, should the City have this in place to protect the neighborhood
840 from a commercial use that was conditionally allowed in residential zone? Identifying
841 every scenario would be difficult to do and a lot of great adaptive reuses can occur.
842 Many things can change that cannot be anticipated that are not necessarily bad.
- 843 • Picking the right timeframe seemed like the key. A year was not enough, but 3 years might
844 be too long.

- 845 • Shortening the time period to less than 3 years was uncomfortable. The duplex was a
846 perfect example. If the renters moved out, and the owner was unable to find a new tenant
847 within a year, they would not own a duplex anymore.
- 848 • The City probably would not see a lot of conditional uses expire. More obvious cases
849 would be when a business moves back in to a long vacant building, for example. The
850 risk of having duplexes negatively affected was pretty low.
- 851 • A 3-year timeframe was more business friendly.
- 852 • If a conditional use is a good use for a neighborhood as a whole, citizens would support
853 reinstating a conditional use if the time limit lapses so 3 years would be fine, although a
854 shorter time frame was preferred.
- 855 • Neighborhoods can change enough that the Commission should review these cases to add
856 different mitigations. A lot can change in 3 or 5 years and tolerances might change.
- 857 • With economic fluctuations, they would want to protect businesses that are forced to stop
858 due to lack of business, but then want to start up again. The City would not want to put them
859 through more hoops.
- 860 • Though a business is not actively operating, certain things would indicate the use is still
861 active, like maintaining a business license.
- 862 • The Commission needed to decide whether they were comfortable with this clause; if the
863 timeframe of the clause needed to be changed, or if more analysis was needed due to
864 concern about how it might affect existing conditional uses.

865

866 **Ms. Shanks** provided a brief overview of the City's experiences and challenges of not having a
867 defined process for development review, and described the objectives and proposed changes of
868 the new Development Review Chapter.

869

870 Discussion regarding the Development Review Chapter was as follows:

- 871 • The Procedures Chapter included provisions about building height and when a requirement
872 for showing a ridgeline or eave line on a structure, perhaps by using story poles, should
873 apply.
- 874 • Drawings and illustrations often do not accurately relay the scale or mass of a structure.
875 Contractors would erect poles on the site to show the proposed finished height and give
876 the Commission a better image of the finished project before approving height or mass.
- 877 **Commissioner Churchill** agreed to provide codes to staff from other cities that include
878 that requirement.

- 879 • Staff sometimes needs to push applicants to provide materials that give enough
880 information to understand the project, but it could be a battle. The City's submittal
881 requirements checklist was recently updated to be clear that submitting just a narrative
882 or even minimal elevation drawings was not enough. The applicant is responsible for
883 providing enough information to convey their project to the review authority. Staff would
884 have no issues codifying that.
- 885 • A Type I Director's Decision could also require story poles if there were any
886 ambiguities about the project.
- 887 • Staff intended to coordinate the Development Review Chapter with Downtown Design
888 Review to avoid overlap. Staff would review the Procedures Chapter to see where
889 requiring story poles could fit, because a section already existed on submission
890 requirements.
- 891 • Staff had already talked at length with the subcommittee about the Code amendments. Staff
892 wanted to spare the Commission the minutia, but also ensure the Commission knew the
893 direction staff was headed, especially with this project. Eventually, the Commissioners would
894 be getting a lot of material at once, and staff wanted them to feel comfortable and not
895 overwhelmed.
- 896
- 897 **Ms. Mangle** asked Mr. Monahan to respond to the Commission's clear direction about
898 nonconforming uses and limiting the ability of nonconforming structures to rebuild in the case of
899 a fire. After researching this item, imposing such limits was found not to be a good idea.
900
- 901 **Mr. Monahan** reminded that the suggestion was if a nonconforming structure was totally
902 destroyed by fire, the City could prohibit the structure from being rebuilt. Staff talked to
903 consultants and looked at what other communities do. Typically, codes allow property owners to
904 rebuild as long as a fire was accidental, not caused by the property owner.
- 905 • The City is concerned because that ability to rebuild has existed over the years and people
906 have been relying on those nonconforming uses. They might have refinanced their
907 development and that bank might have an expectation that the nonconforming structure
908 would continue to be in place. Fire insurance might specify that the structure be rebuilt to
909 certain specifications.
- 910 • The issue becomes a public policy question. Once the Code is changed such that a total
911 loss due to fire negates the ability of someone to rebuild a nonconforming structure, it would

912 definitely be challenged and be something that they would hear a lot of input on. Every
913 conceivable nonconforming structure would be discussed during the process.

- 914 • The idea was also contrary to what neighboring jurisdictions had. A property owner or
915 developer within the city of Portland would have an expectation that the same type of code
916 would spill out into the suburbs.
- 917 • There are exceptions in other parts of the country, where if more than 50% of a structure is
918 lost, some codes do not allow rebuilding. The prevailing code in this area was to allow
919 someone who has full destruction due to a fire to rebuild a nonconforming structure. The
920 City of Tigard had the 50% rule.

921

922 Discussion regarding the destruction of nonconforming uses included the following comments:

- 923 • The 50% rule was used in areas outside of Portland, such as in parts of Washington, Idaho,
924 and California. One reason was to restore view corridors or solar access for adjacent parcel
925 owners that might be blocked by a nonconforming structure's mass.
 - 926 • That might be why the Portland Code language talked about allowing the footprint to be
927 rebuilt. It might not allow the same height, but one could take advantage of the same
928 criteria such as setbacks, off-street parking, etc., that exist within an established
929 neighborhood. A significant amount of footprint might be lost if the owner had to comply
930 with the current standards.
- 931 • Retaining the footprint would be more tolerable than bulk and mass and height.
- 932 • Most nonconforming structures in Milwaukie involve setbacks, not nonconforming heights.
933 The vast majority of nonconforming structures in Milwaukie involves how close buildings are
934 to front, side, or rear property lines.
- 935 • Staff often gets calls from appraisers and title insurance companies asking whether a
936 structure destroyed by fire could be rebuilt; currently the answer is yes. There is a
937 connection between being able to obtain and maintain insurance and many owners might
938 not be able to be covered if this policy were changed.
- 939 • **Damien Hall, City Attorney**, raised the possibility of differentiating between damage to and
940 the complete destruction of a nonconforming structure. Most cities' codes specify that
941 nonconforming structures cannot be rebuilt after a total loss with the idea of phasing them
942 out over time.
 - 943 • However, as mentioned, the use becomes a concern not just the structure. Rebuilding a
944 single-family residence in place of a destroyed corner store in a residential zone would
945 not enable the owner to recoup their investment into the property as anticipated. The

946 issue would become a policy shift. From a legal aspect, it was really a City policy
 947 decision and would likely result in some outcry from property owners should rebuilding
 948 be prohibited.

- 949 • If the condition of nonconformity was usually pertaining to setback, how hampered would an
 950 owner be to rebuild within Code setback limitations?
- 951 • Many lots in Milwaukie have odd shapes and configurations on which it might be difficult
 952 to meet the current standards and still have a buildable lot.
- 953 • The locations of all nonconforming structures are unknown. Staff could only map
 954 nonconforming uses with about 80% certainty, but not nonconforming structures.
- 955 • It would be a large policy shift, which could be done if the Commission felt strongly about
 956 it, but the full implications would not be understood, because they did not know all the
 957 situations or all the people who would be put at risk.
- 958 • Could a provision be drafted that provides an exemption for true hardship cases? So many
 959 nonconforming structures could easily be phased out. Many bigger lots existed where
 960 setback would not be an issue.
- 961 • If the insurer was rebuilding a structure, and Code required it to be rebuilt differently, the
 962 insurer could deny payment. The same concerns would apply to third party financing.
- 963 • From the setback aspect, if the structure burned to the ground and it was reasonably
 964 possible to build the same footprint within the setback requirements, they might be able
 965 to require that for simple cases.
- 966 • Multiple situations might apply to cases that seemed simple at first, such as height
 967 limitations, floor area ratio, parking, or environmental zones.

968
 969 **Ms. Mangle** assured that staff would be bringing a draft and would try to find the sweet spot in
 970 terms of policy direction. They could talk more on this issue when they had the draft.

971

972 **7.0 Planning Department Other Business/Updates**

973 7.1 Information requested about light rail project status and funding.

974 **Ms. Mangle** said she would email access to information online about the project's status,
 975 adding that Community Development and Public Works Director Kenny Asher could be
 976 contacted with questions.

977

978 **8.0 Planning Commission Discussion Items**

979 There were none.

980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010

9.0 Forecast for Future Meetings:

- October 26, 2010 1. Worksession: Comprehensive Plan discussion

- November 9, 2010 1. Worksession: Wastewater Master Plan *tentative*
- 2. Worksession: Land Use and Development Review Process Tune-Up (Briefing #6) Review Draft Chapters (conditional uses, variances, nonconforming uses & development, map and text amendments, review procedures and development review)

Ms. Mangle said she would send an email about two upcoming projects she wanted to discuss. At the October 26 meeting, she wanted to begin discussion about the Residential Design Standards project, adding that architect Marcy McInelly of SERA Architects/Urbworks would be present. The other project, called Commercial Core Enhancement Program, which regarded planning and implementation work throughout Milwaukie.

Meeting adjourned at 10:04 p.m.

Respectfully submitted,

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

Jeff Klein, Chair



To: Planning Commission
Through: Katie Mangle, Planning Director *KM*
From: Brett Kolver, Associate Planner
Date: December 7, 2010, for December 14, 2010, Worksession
Subject: Johnson Creek Watershed Council Projects

ACTION REQUESTED

None. This is a briefing for discussion only.

BACKGROUND INFORMATION

The northern half of Milwaukie lies within the Johnson Creek watershed, and the confluence of Johnson Creek with the Willamette River occurs at the northern edge of Milwaukie's Riverfront Park. Since 1994, the Johnson Creek Watershed Council (JCWC) has been working to protect the area's natural resources, with a number of projects currently underway to restore and enhance critical habitat from one end of the watershed to the other.

The City is partnering with JCWC on the major restoration and enhancement work that will take place at the confluence starting in 2011. Robin Jenkinson, JCWC's Restoration Coordinator, will discuss the larger context of JCWC's ongoing restoration efforts and will share more information about the upcoming confluence project.

Because the confluence project area is covered by the City's Water Quality Resource (WQR) overlay zone, JCWC will be submitting a WQR application for approval of a natural resource management plan early in 2011. This worksession briefing will provide the Commission with background information relevant to the consideration of this impending application.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Johnson Creek Watershed Council brochure
2. Johnson Creek and Willamette Confluence project flyer (attached)

Johnson Creek and Willamette Confluence Salmon Habitat Enhancement

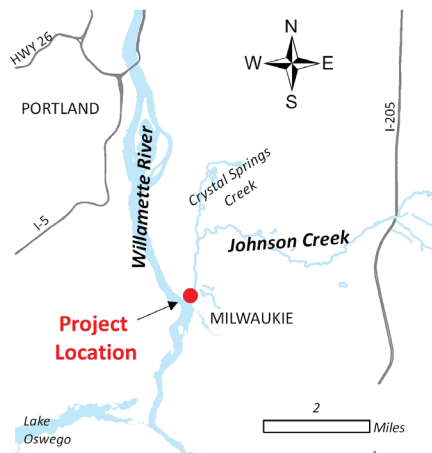
Art by Gary Michael

Better Salmon Habitat in Johnson Creek

The Johnson Creek Watershed Council and partners plan to enhance instream habitat and restore streamside forests at the mouth of Johnson Creek, from where it flows under SE 17th Avenue to its confluence with the Willamette River. The goals of the project are to provide refuge areas for salmon and trout, restore six acres of riparian forest, and provide opportunities for the public to participate in and learn about wildlife habitat conservation. To enhance fish habitat, we plan to construct sixteen engineered log jams throughout the quarter-mile-long reach and place boulders and logs in two areas of exposed bedrock in the creek.

Confluence Rest Stops for Willamette River Salmon

Confluences are “ecological hotspots” because they are dynamic mixing areas of different water temperatures, chemistries, and flow regimes. By enhancing this confluence area, this project will provide a much-needed refuge for Willamette River salmon just upstream of Portland’s “downtown gauntlet,” where dense industrial development and cement sea walls have left few resting areas and little protective cover for migrating fish. Oregon Department of Fish and Wildlife biologists highlight how all the threatened Coho and Chinook salmon and Steelhead trout in the middle and upper Willamette Basin—an area with over 11,000 miles of rivers and streams—pass by the mouth of Johnson Creek, and will benefit from this project.



A Ribbon of Green

Johnson Creek is one of few Portland streams with active runs of threatened Coho, Chinook, and Steelhead. The creek is a 26-mile-long green corridor for birds and wildlife that is fed by 52 square miles of tributaries and hillslopes. This project complements the over 400 restoration projects that have been implemented throughout the Johnson Creek Basin over the past twenty years.

For more information or to make
a donation to the project, contact



**Johnson Creek
Watershed Council**
1900 SE Milport Road
Suite B
Milwaukie, OR 97222
503-652-7477
robin@jwc.org

Construction Begins Summer 2011

We’ve already secured over \$200,000 for project implementation—about 70% of the total funding needed. We are actively pursuing additional funding opportunities, and we are confident that the funding gap can be filled in time to build the project in July and August, 2011. Native plantings will occur in winter, 2012.

Public Participation in Salmon Recovery

This highly visible project is an opportunity for local citizens to engage in environmental restoration and salmon recovery in Johnson Creek and the Lower Willamette River. For example, high school groups are already monitoring the site so we can document habitat improvements before and after the project is implemented. Plus, at the north end of Milwaukie Riverfront Park, an interpretive overlook and trail is planned for construction. The overlook will provide information about salmon and other wildlife that use the site and benefit from the project.

Partners

Oregon Dental Services (ODS)
Gary and Sharon Klein
City of Milwaukie
Oregon Watershed Enhancement
Board (OWEB)
PGE Salmon Fund
FishAmerica Foundation
City of Portland

The goals of the project are

to provide refuge areas for salmon and trout, restore six acres of riparian forest, and provide opportunities for the public to participate in and learn about wildlife habitat conservation

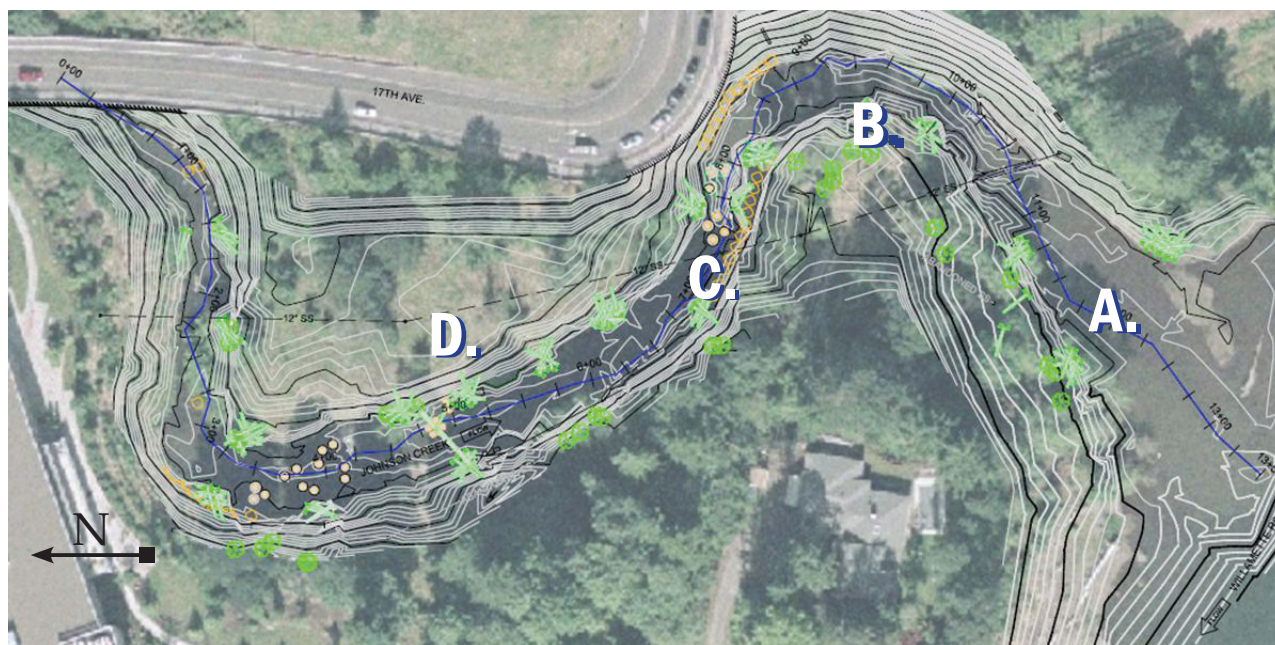
A. Johnson Creek enters the Willamette River in downtown Milwaukie.



B. Engineered log jams will provide shelter for migrating fish.



C. Vegetated soil wraps will help stabilize new stream banks.



D. Volunteer participation includes planting native trees and shrubs.



Invasive weeds will be cleared and replaced with native seedlings.



Regular project effectiveness monitoring will document habitat improvements.



To: Planning Commission

From: Katie Mangle, Planning Director *KM*
 Susan P. Shanks, Senior Planner
 Ryan Marquardt, Associate Planner

Date: December 7, 2010 for December 14, 2010 Worksession

Subject: Land Use and Development Review Process Tune-Up
 Code Amendment Project Briefing #7

ACTION REQUESTED

None. This is an update on the status of the project.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **November 2010:** Briefing #6 on Land Use and Development Review Process Tune-Up Project was an overview of all proposed procedural improvements and policy changes, with a focus on amortization of nonconforming uses and expiration of land use approvals.
- **October 2010:** Briefing #5 focused on conditional uses, amendments to maps and ordinances, and development review.
- **September 2010:** Briefing #4 focused on variances and nonconforming situations.
- **August 2010:** Briefing #3 focused on variances and nonconforming situations.
- **July 2010:** Briefing #2 focused on time limits and extensions of land use approvals.
- **May 2010:** Briefing #1 focused on project goals and the City's code history and current review procedures.
- **March 2010:** The Commission reviewed the intergovernmental agreement between the City and the State of Oregon.
- **October 2009:** Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.
- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 Smart Growth Code Assessment Final Report.

B. Update

Staff has prepared draft code amendments to the City's land use and development review code sections based on feedback provided by the Planning Commission, City Attorney, Design and Landmarks Committee, and City staff over the past six months. The draft chapters – both those proposed to be replaced and those proposed to be reorganized – will be available on the project website on December 10th. The website address is:

<http://www.cityofmilwaukie.org/planning/land-use-and-development-review-code-tune-project>

For those who requested a paper copy of the proposal, staff will deliver them at the meeting on the 14th.

Commissioners are encouraged to review the draft amendments in their entirety prior to the first scheduled hearing in January 2011. Any and all comments are welcome; however, at this point in the code writing process, specific suggestions would be more helpful than general feedback as the project heads into the adoption phase. Should the Commission find it necessary or helpful, staff could facilitate an optional study session during the week of December 28 or meet with Commissioners on an individual basis to further Commissioners' familiarity with the draft amendments.

C. Next Steps

- On December 9, staff will notify the Department of Land Conservation and Development that the City intends to hold a public hearing on the proposed amendments on January 25, 2011.
- On December 21, staff will brief City Council on this project, highlighting for them the proposed changes to their role in the land use process.
- Over the next two months, staff will inform and seek comment from the Neighborhood Association Land Use Committees, interested agencies, and active developers. Notification of the first public hearing will be widely advertised.
- If the Commission recommends approval in January, the earliest meeting at which staff could request approval from the City Council is March 1, 2011.

ATTACHMENTS

None.