



## PLANNING COMMISSION

Minutes of January 15, 2014

Members present: Christine Steel, Russell Axelrod, Lorie Griffith, Nancy King, Jesse Knight, Robert Martin and Ryerson Schwark

Members absent: None

Staff present: Chris Kerr, Planning Director; Peter Spir, Associate Planner; and Megan Thornton, Assistant City Attorney

### PREHEARING MEETING

Vice Chair Steel convened the meeting at 6:30 p.m. in the Rosemont Room of City Hall. Mr. Spir reported that about 150 people had contacted him to ask how the proposed WRA code would affect their particular property. He pointed out written testimony that had been received. He related staff had some additional minor changes to propose. Staff and the Commissioners discussed procedure. They anticipated if the hearing was continued they would continue it to February 5. The Commissioners anticipated they would defer the review of Planning Commission rules to a future work session.

[Summarizer's note: The opening portion of the regular meeting was not on the video. The video began at the time of the staff report. ]

### REGULAR MEETING - CALL TO ORDER

Not on video

Vice Chair Steel called the meeting to order in the Council Chambers of City Hall at 7:00 p.m.

### PUBLIC COMMENT

Not on video

### ELECTION OF OFFICERS

Not on video.

Commissioner Axelrod nominated Vice Chair Steel to serve as chair. Commissioner King seconded the motion and Chair Steel was elected in a 7:0 vote.

Commissioner Martin nominated Commissioner Axelrod to serve as vice chair. Commissioner Knight seconded the motion.

Commissioner Griffith nominated Commissioner King to serve as vice chair. Prior to a second nomination, a vote was taken on the original nomination.

Vice Chair Axelrod was elected in a 4:1 vote with two abstentions.

### APPROVAL OF MINUTES

**Not on video**

The Minutes of October 30, 2013 were approved with edits.

**PUBLIC HEARING**

**CDC-10-03 - Proposed Water Resource Area Protection Code Amendments**

The staff report and written testimony is available online at:

<http://westlinnoregon.gov/planning/planning-commission-meeting-1>

**Opening of hearing not on video**

**Staff Report**

Mr. Spir had distributed the January 15, 2014 Staff Memorandum. He reported that notice had been sent to almost 2,000 owners of property near a WRA. He had received many calls, emails and visits from people who had received the notice and wanted to know how it might reduce their property value. He advised he did not see anything in what was proposed that would decrease property values. Property owners who did not expand the footprint of their homes should not experience any change of property value. Those who added to the footprint of their house or developed a vacant lot might see a slight positive change in the value of their property because the development options would be increased.

Staff reported the City had 26 miles of streams, wetlands and riparian corridors, not counting the two rivers. A WRA boundary included the resources as well as a protective setback. WRAs should be protected to maintain water quality; flood mitigation; wildlife habitat; recreation; aesthetic value; to comply with Oregon Statewide Planning Goal 5, Natural Resources; and to comply with Metro Title 3 and Title 13. The City had WRA code since 1984 (last updated in 2007). The changes were proposed because the current code took a one-size-setback-fits-all approach no matter what the quality of the resource was; variance code was unsuited to address WRAs; there were poor definitions regarding terms such as 'disturbed lands'; there were poor explanations about things as basic as how to measure the water resource; and the City currently relied on the Public Works' Surface Water Management Plan Map, which included pipes and ditches, to identify WRAs. He reported the current code addressed hardship cases, where the property was partially or fully within a WRA, by limiting development to the minimum economically viable use of the land. It allowed the owner to develop up to a maximum of 5,000 s.f. in the WRA no matter what size the parcel was. He advised that was not particularly fair to owners of the few affected large parcels in town who were limited to only developing 12% to 15% of their property.

Mr. Spir advised the proposed code would encourage a lot of piped stream sections to be daylighted and restored. He had not seen one daylighted in West Linn in his 25 years with the City. A new map was proposed. The proposed code was streamlined and easier to understand. There would be more tables, illustrations, and definitions and more information about how to mitigate. He discussed the table, "Comparison of existing and proposed WRA width." He noted

it showed that the protection areas of wetlands, streams and ravines would be similar to what they were now. The setback from ephemeral stream sections that had no channels and no water in them except for surface water runoff during heavy downpours would be reduced from 65' to 15'. To incentivize daylighting of piped streams the setback was reduced from 57' to 15'. That area would have to be heavily vegetated to help re-establish a healthy stream. On significantly impacted disturbed sites where the quality of the resource was extremely poor the property owner could submit a recommendation from a qualified professional such as a biologist regarding appropriate boundaries for the resource area. They would have to provide significant mitigation as well. That concept was in the Metro model ordinance. This code encouraged use of Metro's Habitat Friendly Development Practices.

Staff discussed the hardship provisions language. Existing hardship language, 'minimum economically viable use of the property' was going to be replaced with 'reasonable use of the property' (meaning uses that were consistent with other uses on nearby properties or in that same zone). The current code allowed disturbed area up to 5,000 s.f. The proposed code allowed 5,000 s.f. or 30% of the WRA, whichever was greater. He offered the examples that 30% of a 20,000 s.f. lot that fully contained a WRA would be 6,000 s.f.; and on a one-acre parcel it would be about 12,000 s.f. Temporarily disturbed areas, such as the area where a new water line had been installed in a trench, backfilled, and then planted would be exempted. Staff advised the proposed changes complied with the CDC 98.110 and the applicable city, Metro and statewide planning goals and policies. Staff recommended approval of the new language for Chapter 32.

20:08

#### **Questions of Staff**

Mr. Spir clarified that his comparisons compared the current (December 11, 2013) draft with the 2007 WRA code. He had not compared it with the October 2013 draft but it was substantively the same.

Commissioner Martin noted what was proposed provided more flexibility for property owners because there was an alternative approach and because of how it addressed daylighting streams. He asked staff to summarize how it also increased environmental protection. Mr. Spir expected most of the cases would be in places that were significantly impacted and had very poor quality resources. One example was a property on Willamette Falls Drive which had remained undeveloped for decades. An old road previously ran through there. The WRA was cluttered with old rusted pipes and bits of road and culverts and overrun by invasive species. It did not function as a proper WRA. The proposed program would allow the owner to work with a consultant and propose restoration of the resource. In return for making those improvements the property owner would have reduced setbacks down to perhaps 40' in one area and they would be expected to make a commensurate increase in the size of the WRA elsewhere on their property. He said mitigation was a very important part of the program. He clarified this was the same concept as in the Metro model ordinance.

23:10

## Public Testimony

Written testimony can be read at: <http://westlinnoregon.gov/planning/planning-commission-meeting-1>

Peggy Watters, 1447 Holly St., had written a question on her Testimony Sheet which Mr. Kerr read aloud. She referred to the center image on page 18 of the staff report [see Figure 32-1: Additions to Non-Conforming Principal Structures within the WRA Boundary]. She asked staff to clarify why conditions/restrictions applied the same to the front of a building away from the stream where the improvements would have no direct impact on the WRA as would the other images.

Ann Miller, 1009 9<sup>th</sup> St., provided written testimony. She had purchased pastureland in 1986 with the intent of developing the 2.34 acre parcel to fund her retirement. There had been a preapplication conference regarding dividing her property into two lots in 2003. Subsequent code changes resulted in the property that she had owned and paid taxes on since 1986 becoming worthless. She supported the proposed changes to the hardship section. It would mean she could at least benefit from the flat 5,000 s.f. limit, and the 30% limit seemed even more equitable for owners of larger lots like hers because it was a more proportional approach. She indicated she favored the provision that temporarily disturbed areas would not count against the maximum amount of WRA that a property owner could develop. She was still concerned about 32.110(A), which clarified that, *"The right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor's office on or before January 1, 2006."* She explained that some affected property owners may not have subdivided and recorded lots because of the increased property taxes they would incur; because they lacked the time or the resources to take on property development; or, because they may have been confused about the code. She suggested ownership of their property by that date would be sufficient. She hoped the amendments would be moved forward so citizens like her could have some confidence they were being treated fairly and would be able to enjoy the financial benefit of the land they had cared for and paid taxes on without inflicting undue harm to the environment.

Cindy Kauffman, 3993 Mapleton Dr., related that Trillium Creek went through her back yard. She indicated she did not understand how the proposed changes would affect her property and her neighbors' property, but she was concerned that it would allow too much development. If a neighbor's property was divided she did not want two more houses back there. She noted it would impact wildlife habitat. She asked if the amendments would allow the people who had been required to fill in their illegal swimming pool to put it back. During the questioning period Commissioner Axelrod and Commissioner Schwark encouraged her to discuss how it would affect her with staff and then provide the Commission with her feedback.

Scott Werner, 2591 Troy Ct., asked if the City required a disclosure document during the sale process to let someone who bought property in West Linn know that there was a water

resource area on their property that would restrict how they used it. He said a slope went up to the back door of his house and under a deck in back. He wanted to know if he could replace part of his existing deck with an addition to his house. During the questioning period, he clarified he might not have purchased his house if the restrictions on the property had been disclosed because the house was not large enough. Commissioner Knight advised that a seller was required to disclose something that would affect use of the property at time of purchase.

Ole Olsen, 3993 Kenthorpe Way, submitted written testimony, which he noted included a copy of the Planning Department's 3,071-person mailing list to those who would be affected by a proposed change in 2003. He did not have a copy of the current mailing list, but several neighbors and the Robinwood Neighborhood Association had told him they had not received notice. He indicated he had only been notified of one meeting. He held that violated public meetings law. He asked for more time so the neighbors and the Association could discuss the proposed amendments. He said he lived on Trillium Creek and he had an easement across it since 1973. He highlighted that his letter discussed the City's organization chart; separation of powers; what one had to do to partition; the difference between natural resources and protecting natural resources; that private property owners who lived on a creek owned the riparian rights and had a responsibility to take care of it; that only the state and federal governments – not cities and counties – could create protected natural resource areas; that cities and counties could not take away private property rights; a discussion of ORS 92.040 which related to application for approval of subdivision and a discussion of theft by extortion on the part of the City.

During the questioning period Commissioner Griffith recalled they had sent out 1,700 notices. Mr. Spir clarified notice had been sent to property owners who lived within 200' of a WRA. Mr. Olsen related neighbors on creeks had said they had no knowledge of the proposal. Chair Steel anticipated the hearing would be continued and they could ask staff to double check the mailing list. Commissioner Schwark noted this was the time for testimony and he encouraged the other neighbors to testify. Mr. Olsen indicated he had asked for more time because they did not know about it. Commissioner Axelrod anticipated that Mr. Spir would address Mr. Olsen's concerns during the time allotted in the hearing process for staff to address public comments.

Alice Richmond, 3939 Parker Rd., stated that she had not received notice. She questioned why it had not been sent to everyone in West Linn who paid property taxes. She advised the Commissioners should not argue with those who testified.

Audrey Lazar, 6555 Failing St., related she lived on the river and her property had three layers. She was aware that the Planning and Engineering Departments were considering opening up a disintegrating storm drain pipe that went down the hill and came out at the bottom to empty water into the river. If that happened she wanted to know if it would be considered a public waterway; what the setbacks would be; and how they would be measured.

Chair Steel and Commissioner Schwark related they planned to ask staff how things would be measured and about the setbacks after daylighting streams. They advised Ms. Lazar to contact staff to get answers to questions specific to her particular property.

Bill Perkins, 19740 Wildwood Dr., said he had a lot on a drainageway. He said he had not received any notification of the previous meetings so he had not had an opportunity to review the documents. He had called Planning staff several months ago with a question about building on a property. He related he had already been through the planning process twice to get a couple of variances. The first one had cost \$15,000. It had expired because they were not able to build at that time. Then they got an extension that cost \$20,000 because the rules had changed and they had to hire an engineering company to basically do everything over again. One of his concerns was that more rule changes would mean that they would have to pay another \$15,000 or whatever in fees to comply with the new rules. He said their property was on a slope and the entire house would have to be built in the drainageway. His questions were in regard to whether they could still build on their lot; and how far back from the top of the edge they had to be.

Sam Sabo, 18171 Waldow Rd., Oregon City, Oregon (97045), testified he had two pieces of property that had already gone through the PUD permitting process. He had been confused about exactly when the ten year period expired. After it expired they had tried to build on one property, but the code had changed. After a long period of aggravation and getting finances together they had received a permit to build on one of the properties. They still had the other lot, which was Lot 32 in the Rogerfield development. All of the utilities were in place. He said the only place he could build on it right now was essentially the area of the driveway. He indicated the property sloped down to a creek and then leveled off. He did not know how many square feet that area was. He acknowledged that he had not read the proposed amendments and he was not sure he would understand them if he did. He did not know exactly what pertained to his property. He explained he was presenting his situation because he was paying taxes on a buildable lot which was not buildable. He wanted to get some guidance so he knew what he would be able to do with it.

During the questioning period Mr. Sabo confirmed that he would provide staff with a copy of his testimony. Vice Chair Axelrod encouraged him to discuss his particular situation with Mr. Spir. He thought Mr. Spir might address it during the time staff responded to public testimony that night. He added that overall the changes would not make the code more restrictive than it was now and it would provide opportunities for development that could be done while still maintaining protection of the resource. Chair Steel observed staff was handing out business cards. They had offered to discuss how the code applied on a case-by-case basis with the property owners. Mr. Sabo confirmed he had a card.

Laura Sabo, 3232 Sabo Ln., related they lived two lots away from Sam Sabo. She indicated that she had looked at the proposed changes and she agreed they were improvements that would have helped them when they built their house. She had some additional recommendations

based on actual experience. She explained that before they built on their lot, theirs and Sam Sabo's lots were the remaining two undeveloped lots in the Rogerfield PUD. They were already disturbed in that they had already been graded and compacted to make them ready for building. It had taken a long time to get to the point of building on them and the period to build had expired. When they applied to build on them the fact they were already disturbed had not been taken into consideration. She asked the Commission to consider an exemption for previous disturbance in cases of small infill lots in existing PUDs. It would make it easier for the owner and the City and it would match the neighborhood, without having environmental impact. She noted the City was not being asked to restore a city-owned previously-disturbed property on Tanner Creek.

Steve Simmons, 19677 Sun Circle, asked if the new rules would mean that he and others who had gutters that drained runoff onto their property that eventually ran out an outlet that was within 65' of a stream would have to build some sort of pipe or expensive filtration system on a very steep slope just to let the water run off their roofs.

Chair Steel anticipated that staff would address questions posed during public testimony during the time for staff response to public testimony, which would be after the break. She anticipated the Commission would continue the hearing because they had received a lot of oral and written testimony they needed time to evaluate.

Commissioner Martin **moved** to continue CDC-10-03 to 7:00 p.m. on February 5, 2014 and leave the record open for oral and written testimony. Commissioner Schwark **seconded** the motion and discussion followed. Mr. Spir asked the Commission to wait until the next hearing for the staff response so he could follow up on the many site-specific questions and concerns of those who had testified by discussing it with them individually. He asked for more time to answer the questions about notice and gutters. The answer to the gutters question might require involvement by Building Department staff. The vote was conducted and **the motion passed 7:0**.

Mr. Spir offered to meet with people in the lobby downstairs. Chair Steel announced a ten-minute recess and thereafter reconvened the meeting.

1:41

Commissioners Martin and Schwark suggested that staff respond to the issue raised in testimony related to being unable to create a new lot after a certain ownership date. Ms. Thornton anticipated that staff would respond to all of the questions posed in public testimony that night, including the grandfathering issue, and report at the next hearing. Then the Commissioners could ask questions of staff. Then the Commission could direct staff to make any revisions to the draft code.

## REVIEW PLANNING COMMISSION RULES

The Commissioners had decided to defer this review to a future work session during the prehearing meeting.

#### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

See CCI discussion below related to dialogue during public testimony.

#### **ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT**

Chair Steel asked if the Planning Commission was still also the CCI. Mr. Kerr said he thought there were technically still the CCI.

Commissioner Martin suggested the Commission use a work session to talk about a smoother procedure related to dialogue during public testimony between the Commissioners and those who testified. He noted it seemed awkward to let the questions accumulate until the next meeting. Commissioner King suggested the Commission should anticipate there would be personal questions related to specific properties and announce prior to public testimony that if a question had to do with a specific property that was better answered by the staff and not in that forum. Commissioner Martin agreed that would handle those types of specific questions well, but he recalled there had been a few that were general questions and they needed a good way to handle them.

Vice Chair Axelrod asked if the Planning Commission had any say in who was the CCI. He recalled during the joint session with the Council he had heard a councilor say there was an interest in the City Council taking on the CCI. Yet, there had really been no discussion of the issue. He said he was really interested in the CCI. He had some concerns about where it went; how it took shape; and how it worked. If there was any opportunity to have some discussion or dialogue about either the Planning Commission involvement or continuing their role he would be open to that if there was an opportunity rather than just letting the CCI disappear, because he had some concerns about its effectiveness. He wanted to make sure it was effective and that people felt represented in all things that were going on. He said he did not know what ground they stood on or where it was at. He had gone online and looked for information on the website on policy about the CCI and how it was designated or how it was to be managed, but could not find that information.

Commissioner Martin said from what he observed that day, and in conversations when they heard about that in the previous meeting, he talked to three different councilors about it after the meeting and lobbied pretty heavily against it. His impression was it was a done deal. There was no question about them doing that. He said he did not see that as necessarily a negative because he applauded their enthusiasm to re-engage at the City Council level with people. He thought if they followed through on it it could be a very positive thing. So he thought they needed to let that happen – not that they had anything to do about it, but – he thought they could support it. He said the one thing that disturbed him about it (and he hoped they were listening, because nobody had asked for his advice, but this was his only chance to give it) was

they seemed to be enamored with social media and the web as a way to engage people. He said he would just like to offer his personal feeling that with CCI it was not about how many people you contact. And, it was not about how many people you got to make a response. It was about how much reasoned, seasoned dialogue you have between thoughtful parties. If you read any bulletin board, or any comments, whether in the Tidings or anything online, that was the last thing you generally find in there. The social media and that kind of interaction encouraged the kind of destructive dialogue because people felt anonymous. So there was something to be said for having a forum where people came and stood up in front of their peers and spoke and thought ahead of time about what they were going to say, and generally were very nice about what they said, although there were some exceptions. So he just hoped that they would consider that with a different alternative.

Chair Steel requested that Commissioner Martin's comments be transcribed verbatim in the minutes rather than summarized because that was very articulate and very wise.

Commissioner Griffith said the reason they were looking at social media was because of the data capture they did in their opinion poll. Her take on it was that they were just trying to go with the trends. That was how they could engage the newer generations. She said she had looked across the floor that day and everybody had gray hair except two people (and she counted herself as one of those gray-haired people). She said they did need to engage the younger populations. She said she had appreciated the lecture that day when he said that if they were not complaining then they were happy. Well, she wanted to engage people who were the future of West Linn. She wanted to see what the younger people wanted. Was it outreach to churches; or to the Rotary or Lion's clubs? She said she saw citizen involvement going beyond just the halls of City Hall.

Commissioner Martin said he certainly wanted to engage everyone. That was a good point. He was just concerned about the quality of the engagement. Maybe they could have both. He hoped they were looking for both. Commissioner Griffith said she was hoping maybe they could do something cute, like have a raffle or have lunch with the Mayor – fun little things that got people more involved. She added that might sound silly, but why not have lunch with a councilor?

Vice Chair Axelrod said he agreed with both of them. He would just add to Commissioner Martin's points about the transition that may be considered. He said he had heard that the Council was planning, or already had planned, or had made a statement about, reducing the opportunity to receive public comment at Council meetings. He said it would be nice if the Council would correct that. He had heard people complain to him that they heard they were only going to allow maybe a once a month opportunity for people to speak to the Council. Hearing that and hearing the CCI idea concerned him, so it was made available to them.

Commissioner Knight said he was not exactly sure if this was exactly the appropriate place to have the conversation, but in general he was in favor of anything they could do within reason

that gave more access to the community. He said he thought there might be ways to mitigate some of the questions [Commissioner Martin] had about social media. He said he completely agreed with a lot of what [Commissioner Martin] had to say. But he did think there might be ways to mitigate that and still get very high level conversations and communication while still embracing new media and other ways to get out and about. He said his larger point was that he was in favor of anything they would do to involve more people.

#### ITEMS OF INTEREST FROM STAFF

Mr. Kerr recalled from the training session that afternoon that the Commissioners wanted to have a joint work session in late February or early March. He said he would work with the City Council to arrange a date for it. He updated the Commission on the Lake Oswego-Tigard water treatment plant decision that had been remanded to the City Council. The Council had just held the hearing and approved alternative findings for their final decision.

#### ADJOURNMENT

There being no other business, Chair Steel adjourned the meeting at 9:30 p.m.

APPROVED:

Christine M Steel  
Christine Steel, Chair

4-2-14  
Date