

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 08, 2008
6:30 PM**

COMMISSIONERS PRESENT

Dick Newman, Vice-Chair
Scott Churchill
Paulette Qutub
Teresa Bresaw

STAFF PRESENT

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

COMMISSIONERS ABSENT

Jeff Klein, Chair
Charmaine Coleman
Lisa Batey

1.0 CALL TO ORDER

Vice-Chair Newman called the meeting to order at 6:35 p.m. and read the conduct of meeting format into the record.

2.0 PROCEDURAL MATTERS

3.0 PLANNING COMMISSION MINUTES—None

Approved PC Minutes can be found on the City web site at www.cityofmilwaukie.org.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council Minutes can be found on the City web site at www.cityofmilwaukie.org.

5.0 PUBLIC COMMENT –There was no public comment.

6.0 PUBLIC HEARINGS

6.1 Continuation of June 24 appeal of denial of property line adjustment

Applicant/Owner: Philip Favorite

Address: 12293 SE 40th Ave.

File: AP-08-01

Staff Person: Susan Shanks

Vice-Chair Newman called the hearing to order.

Susan Shanks, Senior Planner announced the Applicant's representative requested a continuation to a date certain of August 26, 2008.

- She distributed slight revisions to the recommended findings and conditions to ensure the Commission had the most current information and described the two changes as follows:
 - * A section of Code was deleted in the recommendations so that it no longer appeared the City could reopen and re-review the matter upon submittal of the recording instrument for the property line adjustment (PLA). A corresponding

change was also made in the conditions for clarification as requested by the Applicant's representative and which staff fully supported.

- * Language was added to clarify the PLA was not intended to create a new unit of land for development purposes as suggested by Commissioner Bresaw.

Bill Monahan, City Attorney stated copies of the updated information would also be provided to the Applicant and their advisor, conjecturing that the request for a continuation indicated the Applicant might have more issues and stating the public hearing would provide the opportunity for a comprehensive response.

- * **Ms. Shanks** replied she was unaware of any actual issues on the Applicant's part or specifically why the continuation had been requested. The 120-day clock for the City's decision will expire on August 2, 2008, and the Applicant has agreed to provide a waiver before that date since they requested the continuance.
- * She confirmed that the Applicant's consultant had agreed to provide language in the waiver that allowed for any subsequent appeal that might be filed.

Vice-Chair Newman asked for clarification of Mr. Monahan's email about it being possible for two people who had been present at the first meeting... to approve or not approve revisions to the conditions of approval.

- **Mr. Monahan** replied there had been a question of whether a quorum would be present, explaining that as long as a majority of the Planning Commission was present to conduct business, the vote could be a majority of those present irrespective of their previous votes.
- * The vote was not on the action but on the adequacy of the findings and conditions. A Commissioner could approve the findings and conditions if they believed such findings and conditions reflected the action of the Commission regardless of any previous opposition to that action.

Commissioner Bresaw moved to continue the public hearing for AP-08-01 to a date certain of August 26, 2008. Commissioner Qutub seconded the motion, which passed unanimously.

Mr. Monahan requested to add, for consistency with the Commission's previous action, that the public hearing would be open for comments only by the Applicant or Applicant's representative concerning the conditions of approval and findings.

The Commission unanimously agreed that the public hearing would be open only for comments by the Applicant and their representative concerning the conditions of approval and the findings.

7.0 WORKSESSION ITEMS

7.1 Nature in Neighborhoods Project Briefing

Staff Member: Brett Kelter

Ms. Mangle stated that staff was working on several amendment projects simultaneously, including the Transportation Code and Parking Amendments as well as Residential Design Standards. The two projects to be reviewed this evening were rather minor as far as the Planning Commission's interest, but were very important to the City's regional status, as Nature in Neighborhoods is required by Metro, and to the City's planners because the illegal lots issue arose repeatedly.

Brett Kelter, Assistant Planner presented the Nature in Neighborhoods Project, aka Metro Title 13, which originated from statewide Land Use Planning Goal #5 for the protection and preservation of natural resources in a variety of ways, with the following discussion points and questions/comments from the Commission.

- He explained how the effort fit into Metro's Code.
 - * Title 3 protected water quality, addressed flooding hazards, and helped identify the City's Water Quality Resource areas. Existing regulations focus on prevention/restriction of pollution, erosion, and what is allowable in a designated water quality resource area.
 - * Title 13 focuses more on allowing or clarifying what people could do to enhance the environment and is not as restrictive. Title 13 will be addressed in three parts as follows:
 - Adoption of a new map with new habitat conservation areas, very similar to areas identified as water quality resources, i.e. mainly riparian areas, streams and stream bank areas.
 - Staff will review Milwaukie's Municipal Code and Comprehensive Plan with respect to key parts Metro had flagged for consideration and revision and formulate proposed revisions.
 - As a legislative process, the Planning Commission will have a formal hearing to make an official recommendation to send to the City Council.
 - * He discussed the process and tentative schedule to meet Metro's deadline of January 2009, with a more specific worksession planned for September. He noted the project provides the opportunity to efficiently update regulations dovetailing with staff's current Code revision projects.

Staff responded to questions and comments from the Commission as follows:

- When should Commissioners recuse themselves when an identified habitat area might affect them personally?
 - * **Ms. Mangle** understood that no need existed to declare a conflict of interest with legislative applications, adding that such proximity could make the Commissioners great stakeholders for the possible implications of the changes.
 - Mailing notices would be sent to all affected property owners.
 - * **Mr. Monahan** clarified that actual and potential conflict of interest should be a concern. He noted that in another city, a City Council member had a property, which was originally thought to be in a class exception as he was 1 of about 500 owners that received notification that their property could be affected by a water quality versus habitat decision.
 - The Ethics Commission advised that how an individual's property might be differently affected than the others in the class had to be considered, e.g. if more or less development opportunity might be created, then a potential conflict of interest existed.
 - * **Ms. Mangle** stated that merely being touched by the zone is not enough and each Commissioner will need to decide whether an actual or potential conflict existed once the amendments are known because it might not be an issue. She added that water quality resource restrictions are already in place.
 - * **Mr. Monahan** agreed restrictions are already in place that apply to some Commissioners' properties; therefore, what they encounter will be habitat-related opportunities for specific development.

- Will the Commission's ability to debate and discuss unduly influence people?
 - * **Mr. Monahan** replied that an actual conflict of interest would prohibit any participation. However, a Commissioner with a potential conflict of interest could be involved in the deliberations but needs to be carefully objective and not consider their individual properties. If a potential conflict of interest becomes actual, then recusal will be needed.
- A more effective ethics discussion could be held once the actual amendments are determined. Staff understood Commissioners' concerns about potential and actual conflicts and will inform them should any such situations come about.
- The amendments will apply only to new development or remodels. Some amendments will be as minor as encouraging people to use pervious pavement on a driveway. Some amendments will apply in a new overlay zone, some possibly to all residential properties, and some to parking lots and streets.
- The Title 13 map included in the meeting packet (Attachment 1) was a zoomed in portion of Milwaukie, taken from the larger Metro map. Staff could zoom in closer to see individual tax lots.
 - * Attachment 1 was the original inventory map that showed the high-, medium-, and low-quality conservation areas that did not need to be differentiated at a local level. Staff was comparing how the map differs from the City's Water Quality Resources map, which might be expanded to cover both issues but would probably not differentiate between high-, medium-, and low quality because it was not required and the City lacked the manpower.
 - Staff had noted obvious differences such as some areas along Riverfront Park, Kellogg Creek, and North Clackamas Park being visibly wider.
- Because some of these amendments overlap with parking and/or transportation planning section amendments, some habitat-related amendments will be included as part of these other amendment projects.
 - * Staff will present all the amendments as one unified package to Metro when notifying them of the City's compliance, rather than presenting the Code changes in pieces.
- **Ms. Shanks** noted that staff did not want to expand the regulatory aspect of existing water quality areas but might consider expanding areas, such as open space areas, that would then impact development but not necessarily private property.
 - * Nature in Neighborhoods appears to be more about granting permission rather than restricting development and expanding the regulations.
- What outreach was being done to educate and encourage people living near wetland/creek areas to preserve those areas other than a public hearing?
 - * Staff had recently discussed educating the public because issues existed with people not complying with the Water Quality Resource regulations, especially on Kellogg Creek. People needed to know whether their properties were affected by Water Quality Resource regulations and what that involved.
 - * Staff would consider how to better inform and communicate with the community in general. Informative, educational mailings might be an option.

7.2 Illegal Lot Briefing

Staff Member: Susan Shanks

Ms. Shanks presented the Illegal Lot briefing with the following comments:

- Staff had been working on addressing these Code amendments for a long time and considered the issue very important.

- * Staff often found out about lots created without City approval through the building permit process or simple inquiries. People were able to create lots because certain property divisions could be done by recording a deed with the County Recorder. The County Recorder had gotten much better at recognizing subdivisions and minor land partitions and informing the owner that they needed to go through the City, but the Recorder was still obligated to record such deeds. Although the Recorder could turn away some subdivisions, they seemed very limited in what they could turn away.

Mr. Monahan confirmed that was generally the case for recorders unless a jurisdiction addressed the problem legislatively. The recording function was simply to record documents and not to determine whether a document's action was right or wrong.

- * **Ms. Mangle** added that County planners experienced the same problem.

Commissioner Qutub asked if the owner of a large lot, which had been divided into two separate tax lots but retained by a single owner, could deed a portion of one lot to the other and then record that with the City.

- * **Ms. Shanks** responded that it depended on the situation. Anyone could create multiple tax lots on a single lot for all different kinds of reasons, mortgage purposes being a common one, but they could not create another platted or buildable lot without the appropriate jurisdiction's approval.
 - Tax maps showed all kinds of lines for tax uses that had nothing to do with buildable lots, making them very confusing for planners.
- * People often did not realize they had to go through the appropriate jurisdiction and thought changes were effected through deed. Staff saw many illegal lots whose creation was many owners removed from the present owners, so the present owners are not aware their lot is illegal.
- * The Code only allowed staff to determine whether a lot was legal or illegal, and provided no authority to remedy an illegal lot. Therefore, this was really important to unwitting owners whose development was blocked.
 - Often illegal lots did not meet standards, so staff cannot retroactively approve the lots, and the Planning Director has no authority to fix such issues.
- * Future Code amendments meant to empower staff had previously been put on hold, both for higher priority Code amendments and because a 2007 State House of Representatives bill might have addressed the issue. The legislation passed allows staff to do certain things but fails to provide authority so authorization language is still needed.
- * She reviewed several examples of illegal lots and discussed the issues such lots created for staff and property owners, explaining what current alternatives and scenarios existed, as well as many reasons why illegal lots might have been missed in the past but were being caught now.
- * **Ms. Mangle** clarified an example of a platted lot that was not buildable.

Ms. Shanks reviewed various timelines for approval of land divisions between the State, County, and City jurisdictions, noting that between 1967 and 1973 the City had no land division Code. State law at that time had allowed land divisions and property boundary changes such as PLAs to be platted through the County, and the City Attorney had determined property division by deed during this time period must be treated as legal.

- She generally discussed options staff was considering to address illegal lots, such as giving staff the authority to grant conditional amnesty for illegal lots created from

possibly 1967 through the early '80s or later for minor land partitions of three lots or less and for PLAs, provided certain standards were met.

- * Commissioner Batey, via email, suggested formulating a clear and objective process to legalize lots and had also questioned two of staff's minimum standards for eligibility under the proposed amnesty program: lot size of at least 3,000 sq ft and public street frontage.
- * Staff had suggested both because a provision existed that allowed for development of legally created lots that did not meet standards as long they had 3,000 sq ft of area and frontage or approved access on a public ROW.
- She described an example of a legally created yet substandard lot, referred to as the 'skinny house' land use application.
- She noted that the City Attorney stressed clarity and objectivity for the standards to avoid subjectivity.

Commissioner Qutub asked if a 25x100-ft lot could be exempted even though it did not meet the 3000 minimum square footage, as long it was suitable and buildable.

- * **Ms. Shanks** responded that it could, but it might alarm the community with respect to density perceptions as reducing the minimum standard to 2,500 sq ft would create many very skinny lots, but that was open for discussion.
- * Staff chose 3,000 sq ft because it already existed in the Code. Knowing the development patterns of the hundreds of older lots in the City that are 25x100 ft, staff believes a minimum lot size greater than 2500 sq ft is necessary to exclude these lots as buildable lots in the City's inventory.
- * She reassured Commissioners that staff was not proposing to change the minimum square foot standard in the Code currently in place for legal lots. Staff considered applying that to the illegal lot situation for consistency but could go to a larger size. Staff chose a substandard lot size because many of the illegal lots could not be approved retroactively due to inadequate lot size, so working with current standards would not achieve much.

Vice-Chair Newman asked if a lot less than 3,000 sq ft with an existing residence could be legalized

- * **Ms. Shanks** replied such a lot could not be legalized within staff's current proposal parameters, but they had not encountered any illegal lots that were that small. Illegal lots were generally only a little substandard and staff typically saw lots that were 500 sq ft to 1,000 sq ft smaller than the minimum residential lot size.
- * **Ms. Mangle** noted that the 2007 House bill had allowed staff to acknowledge an illegal lot with a legal structure on it as legal. She discussed the provisions of that bill in more detail, including that no lots illegally created after January 1, 2007 could be legalized and that lots recorded at the County level had to include certain forms, releases, and disclosures, thus preventing further illegal lot creation.
- * **Ms. Shanks** indicated that an existing legal structure could be one of the criteria the City used to legalize illegal lots.

Commissioner Churchill wondered if his lot was illegal and whether that would be considered a conflict.

- * **Ms. Mangle** offered to do a search on the Commissioners' properties once staff had a formal proposal.

- * **Ms. Shanks** noted that a property in an area with 25x100-ft lots and many dashed lines on the tax map, or in a flag lot area with no dark line around it, could be a red flag, but the lot could still be legal.
- * The shape and size of a lot might not indicate an illegal lot. An area in the middle of the city had leftover pieces of land that had not been platted as part of a subdivision and had really awkward shapes and sizes, but were all legal.

The Commission discussed the concept of amnesty and possible amnesty dates.

Vice-Chair Newman:

- Was bothered by the possibility that since the City had a Planning Department in 1987, a building permit could have been approved for an illegal lot.
 - * **Ms. Mangle** responded it might make sense for a criterion to address whether the City had granted approval.
- Believed amnesty could go back to 1980 if such exceptions were used.
 - * **Ms. Mangle** assured that staff wanted the Commission's general reactions and input, since it was such an arbitrary issue.
 - * **Ms. Shanks** noted the sensitivity of the illegal lot issue as it involved private property rights, boundaries, and neighbors; and referred to a letter in the supplemental packet from someone affected by the issue asking for help.

The Commission discussed amnesty eligibility with respect to whether the illegality was known or unknown to the owner at sale, etc., and the mechanics of the proposed amnesty program with the following discussion points:

- * **Ms. Shanks** noted the State legislation also had a criterion that owners could be more eligible for amnesty if they had not created the illegal lot.
- * **Ms. Mangle** mentioned illegal lot situations had included industrial properties, indicating a wide array of situations existed.

Commissioner Churchill:

- Asked how State law would come into play with respect to when the land was downzoned to the point of where it created a taking of the land.
 - * **Mr. Monahan** replied that taking of land would be when government action had eliminated any reasonable use of the land. In the context of illegal lots, a preexisting situation existed in which governmental liability for the inability to use the land could not be proven.
 - * He did not believe an amnesty program would remove rights, but would clarify rights, so the City's argument would be that more properties would clearly be of more reasonable use and developable.
- Asked whether the City would be creating a taking situation if a lot that was not legal or buildable had been created through a subdivision with the County.
 - * **Mr. Monahan** responded it would be difficult to prove the owner had a developable piece of land because the assumption would be the land had been broken up without going through the City Planning Department when it was known there were zoning regulations and the City records did not reflect the partition.
 - * **Ms. Shanks** noted that zoning had not changed much in general over the years and that illegal lots were generally in areas that had not been rezoned, so it would literally be a case of a property owner being allowed to use their property for the first time.

- * **Ms. Mangle** noted that one property owner had told her they had talked to both the City and the County and had gone through the County to save money.

Vice-Chair Newman asked if the proposed amnesty would be a ballot measure.

- * **Mr. Monahan** replied that ballot measures were difficult to interpret, but it would be a difficult burden for a property owner to show that amnesty regulation adoption had taken away a development right.
- * He further explained that according to those laws, if the City enacted a regulation, the property owner could go back to using the regulations that existed at the time they acquired the property, so even if a lot had been purchased in 1960, the owner still would not have a developable lot.
- * **Ms. Mangle** clarified that staff was not discussing reducing property rights, values, or limitations. Staff was trying to find the right balance to allow development in cases with reasonable circumstances that met some standards.
- * **Mr. Monahan** reiterated that it would be extremely difficult for someone to show their development rights had been taken away by an amnesty action.

Vice-Chair Newman asked if the City had any Measure 39 or 37 actions currently.

- * **Ms. Mangle** offered that one Measure 37 claim had been approved by the City Council, but had never been acted upon.

Ms. Shanks asked how sympathetic the Commission was to granting amnesty to owners of illegal lots regardless of whether the owners had known or not.

Commissioner Qutub was very sympathetic because when a person owned land, that was their future; and if the government was always restricting what an owner could or could not do, it was as if they did not really own the property.

- She believed the City really needed to seriously consider how to deal with amnesty and write the Code so people with illegal lots could develop that property and with due consideration as to how the Code would affect people.

Commissioner Bresaw:

- Responded that she was somewhat sympathetic, but more sympathetic to neighbors and thought that zoning needed to be a factor as well. She noted an example of a 3,000-sq ft lot in the R-7 Zone and the setback considerations involved.
 - * **Ms. Shanks** clarified that staff was not proposing an owner would get a break on any of the other development standards, only to designate their lot was legal, because all legal lots were not necessarily buildable.
 - * Speaking to Commissioner Bresaw's example, she noted that legal or not, with the 10-ft setback in R-7, the owner would have only 15 ft to build and would have to ask the Commission for a variance, adding that 25x100-ft lots could be legal but not buildable.
 - * **Ms. Mangle** noted that 'legal' referred to the process by which a lot was created.
- Stated that most people who owned those lots in that area knew the zoning.
 - * **Ms. Shanks** replied because of underlying platted lots, new owners were less aware because the tax maps could be so confusing since different lines had different meanings.

Commissioner Churchill:

- Said he was sympathetic toward someone who had a residence on an illegal lot, but agreed that having breathing room around density was an asset to the entire neighborhood and city; so illegally created, substandard, undeveloped lots, as long as the City did not create a taking, should remain undeveloped.
 - * **Ms. Shanks** confirmed her understanding that Commissioner Churchill was less sympathetic for undeveloped lots and asked if he was less sympathetic to the size issue on an undeveloped lot.
- Replied that he would not be in favor of amnesty for a 3,000-sq ft flag lot that appeared buildable but was illegally created because the flag lot standards were so important.
 - * **Ms. Shanks** posited an amnesty request scenario in which the illegally created lot size exceeded the current standards, had legal frontage, and was undeveloped.
- Agreed that he would be sympathetic to that request and others above 3,000 sq ft, but not toward undeveloped lots below 3,000 sq ft.

Commissioner Bresaw stated it would be better if the minimum was 5,000-sq ft.

- * **Ms. Shanks** noted for consideration that in more dense zones the minimum base lot size was 5,000 sq ft, but some of those zones allowed more than one unit.

Commissioner Churchill reconfirmed his threshold of 3,000 sq ft to 5,000 sq ft, noting that 3,000 sq ft would be tight.

Vice-Chair Newman:

- Stated that the difference between a legal and buildable lot might be clear to the Commission, but the average person might not understand the difference. It seemed a lot should be buildable before it was legalized.
 - * **Ms. Shanks** agreed, except in a situation where an owner wanted to legalize a lot so they could sell it to an adjacent property owner. She confirmed that construction requiring a permit would not be allowed on an undeveloped, illegal lot.
 - * **Ms. Mangle** also agreed, clarifying that staff was focusing on otherwise buildable lots that had been created illegally.
- Believed he would be supportive if that was made clear to people.

Ms. Shanks recapped her understanding that amnesty seemed preferable on a lot with a current legal structure and less desirable for undeveloped lots of 3,000 sq ft, suggesting perhaps 5,000 sq ft should be the bottom line for undeveloped lots.

- The Commission generally agreed flexibility would be allowable, for example if a 4,500-sq ft lot zoned R-5 had been created by moving the property line 5 ft, provided it had been ensured there would be no impacts that could not be mitigated on surrounding neighborhood properties, perhaps through a kind of variance-like process.

Vice-Chair Newman:

- Asked if such a variance process would go through the Planning Commission as opposed to the Planning Department.
 - * **Ms. Mangle** replied that currently such a variance request could not be made because such lots did not meet the variance criteria.

- * **Ms. Shanks** clarified that process would be specific to the legalization process, not necessarily a variance, but something that allowed some flexibility for review and evaluation for instances in which the lot was so very close to the minimum size. She related the process as being similar to that used to extend a nonconforming structure where staff determined there would be no additional detriment to surrounding neighbors.
- Agreed with that type of flexibility.

Commissioners Qutub and Bresaw echoed that agreement.

Commissioner Churchill believed consideration of the effect on neighbors was key.

- * **Ms. Shanks** concluded that even though the Code had a 3,000 sq ft minimum for legally created lots, the Code recognized that all sorts of pre-Code configurations existed and was intended to restrict the rights of those property owners. The Code could have different standards for lot legalization.
- * **Ms. Mangle** noted this was a 'go-slow' project, noting other amendments under consideration might move faster.

8.0 DISCUSSION ITEMS

Commissioner Churchill:

- Noted the email about Classic Cars and that Ms. Mangle had spoken with them to ensure the site was in compliance.
 - * **Ms. Mangle** reported that she had visited the site unannounced on Thursday because staff had been informed that cars were parked up front.
 - * After talking with the owners, she believed part of the problem was that the owners had misunderstood the nature of the concern, so she explained that compliance with the Commission's conditions was very important.
 - * She had asked Sarah Lander, who does parking enforcement, to keep an eye on the site. Staff had also informed the owners if they did not comply, the City would cite them.
 - * She clarified that cars were allowed to be parked up front as long as the back tires were inside the building.
- Stated what rubbed him wrong was that the presentation the Commission received from the Applicant bordered on misrepresentation. The Applicant denied having retail car sales and stated their sales were strictly through the Internet, assuring the Commission their operation would be quiet and low profile with their doors shut.
 - Car sale lots were not an allowed use in the Downtown Zone and he saw this as a bait and switch situation but was unsure what measures would be appropriate to address it.
- * Staff noted it was more complicated with respect to the Downtown Office versus Retail zone, which actually was more the issue.

Vice-Chair Newman asserted that question had been specifically asked and the Applicant had specifically answered that the site would not be used like a car lot.

- * **Ms. Mangle** believed there were a lot of very specific conditions about how the property would function, how it would be signed, where parking would be allowed/disallowed, etc., but the conditions did not specify the Internet sales part.
- * **Ms. Shanks** added that the conditions mentioned that they were primarily, but not exclusively, an Internet sales business.

- She honestly believed from her conversations with them that they really had been confused initially and that the business had been more successful than expected in that they were getting a better than expected response from the general public.
- * She believed the Applicant had not intentionally misrepresented their business, which was not to say they should be allowed to function in a manner that violated their conditions of approval.

Commissioner Churchill asked, specific to the Applicant's particular use, if they had been allowed to use adjacent parcel parking.

- * **Ms. Shanks** clarified they had been required to have designated customer and employee parking spaces on their property, but there were none available so the parking had gone onto private property. She added that the Applicant was also trying to determine how to discourage their customers from pulling up through the curb cut and parking inappropriately to show off their old cars.

Commissioner Bresaw asked for the status of the Immovable Foundation Church.

- * **Ms. Shanks** replied she was meeting with the church's attorney and the planning consultant that went through the land use process to discuss park easement issues, noting that they were at an impasse because what the church had submitted did not meet the intent or understanding of what was approved with regard to park use and the park's easement.
- * She believed the church has recognized their planner may not have explained adequately what had been agreed to and they were evaluating their options of either modifying their building permit and associated documents or even resubmitting their application as a major modification to change their land use approval.
- * She confirmed no complaints had been received from the church about the sidewalk requirement on 37th Ave going down to Hwy 224, adding that the church had modified their original plan due to funding. The current building permit is for modifying the existing building for use as a sanctuary pending the construction of the addition, and the church had never raised the sidewalk requirement; the only issue was about the park.

9.0 OLD BUSINESS

10.0 OTHER BUSINESS/UPDATES

11.0 NEXT MEETING: July 22 2008, Tentative cancellation

Commissioner Churchill moved to cancel the July 22, 2008 Planning Commission meeting. Commissioner Qutub seconded the motion, which passed unanimously.

Forecast for Future Meetings:

August 12, 2008 – A-07-02 Harmony Annexation (tentative)

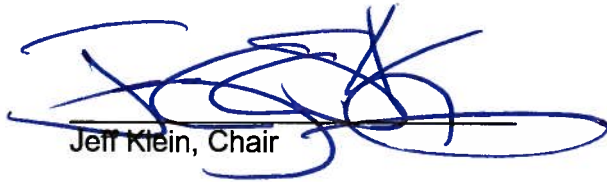
Ms. Mangle briefly mentioned key elements of the expected annexation, noting that staff was working very closely with the Applicant.

- She noted the upcoming water quality resource area tour, but that she would not be in attendance. Ms. Shanks would be the interim lead planner until her return in October.

The meeting adjourned at 8:12 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription for
Alicia Stoutenburg, Administrative Assistant

A handwritten signature in blue ink, appearing to be "Jeff Klein", written over a horizontal line.

Jeff Klein, Chair

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, July 08, 2008 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	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. Thank You.	
3.0	Planning Commission Minutes – None Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda.	
6.0	Public Hearings	Discussion and Motion Needed For These Items
6.1	Continuation of June 24 appeal of denial of property line adjustment Applicant/Owner: Philip Favorite Address: 12293 SE 40 th Ave. File: AP-08-01 Staff Member: Susan Shanks	
7.0	Worksession Items	Information Only
7.1	Nature in Neighborhoods Project Briefing Staff Member: Brett Kelter	
7.2	Illegal Lot Briefing Staff Member: Susan Shanks	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates	Information Only Review and Comment
11.0	Next Meeting: July 22, 2008: Tentative Cancellation The above items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	
Forecast for Future Meetings: August 12, 2008 - A-07-02 Harmony Annexation (tentative)		

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

Public Hearing Procedure

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.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.
12. **TIME LIMIT POLICY.** All meetings will end at 10:00pm. The Planning Commission will pause hearings/agenda items at 9:45pm to discuss options of either continuing the agenda item to a future date or finishing the agenda item.

Milwaukie Planning Commission:

Jeff Klein, Chair
Dick Newman, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Paulette Qutub
Charmaine Coleman

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Associate Planner
Bob Fraley, Associate Planner
Brett Kelter, Assistant Planner
Ryan Marquardt, Assistant Planner
Michelle Rodríguez, Administrative Assistant
Marcia Hamley, Administrative Assistant
Paula Pinyerd, Hearings Reporter



To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Brett Kelter, Assistant Planner *BK*

Date: July 1, 2008 for July 8, 2008 Work Session

Subject: Nature In Neighborhoods code update project to comply with Metro Title 13

Action Requested

None. This is a briefing on the City's code update project to comply with Metro Functional Plan Title 13 - Nature in Neighborhoods.

Background Information

History of Prior Actions and Discussions

- June 2006 – Staff briefed the Commission on the Nature in Neighborhoods program prior to Metro adopting Title 13 into the Metro Code.

Summary of Current Project

Planning staff has begun work on a code update project that was initiated by Metro in 2006 after the "Nature in Neighborhoods" program was adopted into the Urban Growth Management Functional Plan. Also known as Title 13, the program is designed to protect fish and wildlife habitat and water quality. It requires Milwaukie and other jurisdictions in the region to revise their comprehensive plans and implementing ordinances by January 2009 to allow the use of habitat-friendly development practices in designated Habitat Conservation Areas containing significant fish and wildlife habitat. The focus of the amendments will be to allow property owners to employ habitat-friendly practices and not necessarily add restrictions to the use of property.

This project to update the City's various codes related to the protection of fish and wildlife habitat and water quality is required for Milwaukie to continue to comply with Metro's Urban Growth Management Functional Plan. City and Metro staff have reviewed the City's municipal code and comprehensive plan and identified language and policies that could potentially promote or impede the prescribed development practices. Key parts of the municipal code and comprehensive plan were flagged for further attention, including:

- Milwaukie Municipal Code (MMC) Title 19 – Zoning
- MMC Title 18 – Flood hazard regulations

- MMC Title 16 – Environment
- MMC Title 12 – Streets, sidewalks and public places
- Milwaukie Comprehensive Plan, Chapter 3 – Environment and natural resources

In addition, the City will need to adopt an overlay zone to include regionally defined Habitat Conservation Areas. These areas generally follow the stream, river and wetland areas that are already covered by the City's Water Quality Resources overlay. See Attachment 1 for a map showing the designated habitat conservation areas in Milwaukie.

Metro has developed a model ordinance to facilitate the adoption of the appropriate language and policies deemed necessary to afford greater protection to designated habitat and water quality resources.

Current Status

Staff is currently identifying potential code amendments, based on a code audit supplied by Metro staff and drawing from elements of Metro's model ordinance. Some of the proposed changes will be included in the specific code update projects currently underway related to off-street parking (MMC Chapter 19.500) and transportation planning (MMC Chapter 19.1400). All others will be packaged in this code update project.

Next Steps

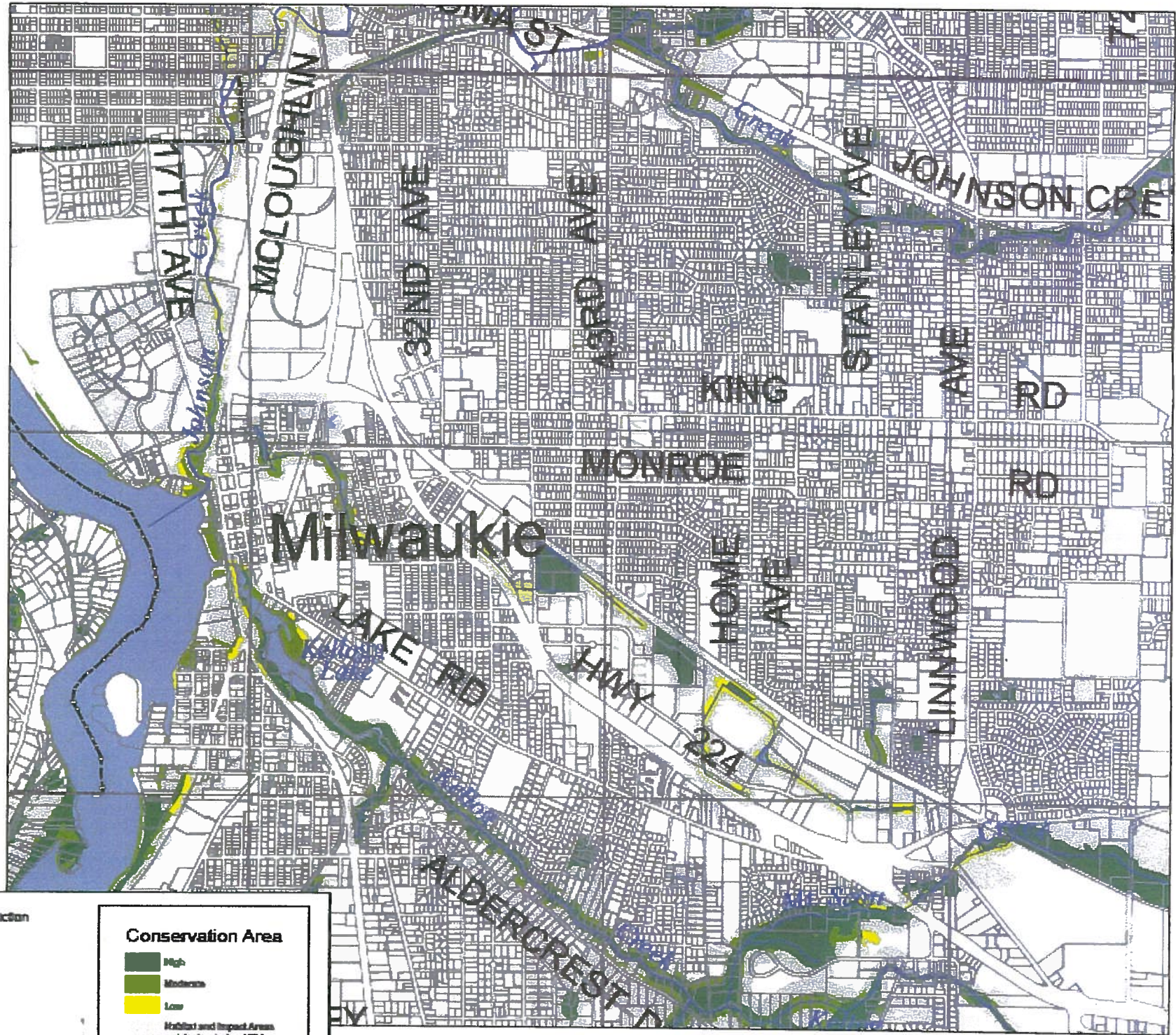
A second work session on the proposed amendments is anticipated for September 2008. Staff anticipates a public hearing by the Planning Commission in November 2008, followed by a City Council hearing in December 2008.

Attachment

1. Metro map of Habitat Conservation Areas in Milwaukie



Title 13 map
(Milwaukie area)





To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Susan P. Shanks, Senior Planner

Date: June 30, 2008 for July 8, 2008 Work Session

Subject: Illegal Lot Practices and Policies

Action Requested

None. This is a briefing for discussion only. Staff would appreciate feedback on future policy changes¹ regarding the treatment of illegal lots.

Background Information

History of Prior Actions and Discussions

Staff is not aware of prior Planning Commission discussion of this topic. The Milwaukie Municipal Code does not currently provide guidance on resolving illegally created lots.

Background on Illegally Created Lots

Dividing property into one or more lots or moving a property line is a very technical and legal process that requires detailed review by planners, surveyors, engineers, and even attorneys at times. Staff considers many aspects of a situation prior to approving a land division or property line adjustment to make sure, for example, that the transportation system is adequate, that each lot meets development and access standards, and that stormwater runoff can be managed on site. Consequently, it is important to the City that lot creation is subject to the appropriate level of review.

Unfortunately, it is not uncommon for staff to discover lots that were created without City review or approval. This is a type of problem for which the Milwaukie Municipal code does not provide a reasonable solution. Staff, therefore, has worked closely with the City Attorney over the past two years to craft an approach to solving such problems in a way that is responsible, fair, and reasonable.

This staff report describes why illegal lots exist, outlines current options for correcting such situations, and makes recommendations for a new approach to resolving such situations. See

¹ Any future policy change would take the form of a code amendment to the Land Division Ordinance and would be processed through the proper legislative channels.

Attachment 1 for a graphic representation of illegal lot creation events and the illegal lot legalization proposal.

What makes a lot illegal?

Prior to the June 1967 adoption of the City's Land Division Ordinance (Title 17), there were two ways to divide property or to change a property boundary: (1) by deed, and (2) by subdivision plat through the County. The City's 1967 Land Division Ordinance required all partitions,² subdivisions,³ and property boundary changes⁴ to be approved through the City's land division process prior to recordation with the County. In October 1973, the State required property owners to obtain local approval for all land divisions and property boundary changes when the local jurisdiction had land division regulations in place.

A lot is legal⁵ if it was created or modified⁶ by deed or subdivision plat prior to 1967 or approved by the City after 1967. A lot that was created or modified after 1967 and was not approved by the City is potentially illegal.

The legal status of a lot and the legal status of a structure are two separate legal matters. An illegal structure can be located on a legal lot, and a legal structure can be located on an illegal lot. The latter situation occurs when a building permit is issued for a structure on an illegal lot, which, at the time, was not known or determined to be illegal, or when a legal structure was already in existence at the time of the illegal lot creation.

The County has continued to record land division deeds—usually partitions—and property boundary changes after the City adopted its 1967 regulations and after the State required local approval in 1973. The City Attorney has indicated that lots created or modified by deed between 1967 and 1973 should be treated as legal lots.⁷ How to deal with lots created or modified by deed after 1973, however, is entirely a matter of City policy.

Problem: How and when to remedy an illegal lot situation

Many illegal lots were created out of ignorance of the City's requirements. Many illegal lots are now owned by property owners who were not involved in the original illegal lot creation and who were ignorant of the lot's illegal status upon purchase. Illegal lots create uncertainty and anxiety for property owners, and illegal lot status limits development options and potentially reduces resale value.

The City's Municipal Code⁸ gives the Planning Director the authority to determine a lot's legal status. It does not, however, empower the Planning Director to change a lot's legal status from

² The creation of three or fewer lots.

³ The creation of four or more lots.

⁴ A property boundary change is the relocation of a common boundary between one or more lots that does not result in a change to the number of lots. This is commonly referred to as a property line adjustment.

⁵ A buildable lot is a legal lot that meets the City's minimum standards for size and frontage on a public street or approved access to a public street. A nonconforming lot is a legal lot that does not meet the City's current standards.

⁶ For the purposes of this document, a modified lot is a lot that has undergone a property boundary change.

⁷ Property owners' actions during this period were consistent with State law but not City requirements. The City has no real means of correcting these actions since these land divisions are considered legal under State law per the City Attorney.

⁸ Section 17.04.110 of Title 17 Land Division Ordinance

illegal to legal. The land division process is currently the only means by which an existing illegal lot can be legalized. This is problematic for two reasons: 1) the current land division process is time and resource intensive for both staff and property owners; and 2) many illegal lots do not meet current land division standards and, therefore, could not be approved through the City's land division process.

2007 State Legislation

In 2006, Milwaukie planning staff worked on a proposal to establish City policy for addressing illegally created lots. However, this work was suspended when House Bill 2723 was proposed to the Oregon Legislature. It was encouraging that the legislature considered this issue to be one of statewide importance, and that it was not just a concern for Milwaukie. Early versions of this bill would have provided guidance to the City on how and when to remedy illegally created lots, and staff submitted comments on the draft language. However, the final legislation (ORS 92.176 - Validation of Unit of Land Not Lawfully Established) falls short of providing the needed direction – it is, in essence, enabling legislation that still requires local policy changes to implement.

In summary, ORS 92.176 establishes that the City:

- *May* approve an application to validate an illegally created unit of land if it could have complied with the applicable criteria when the lot was established.
- *May* approve an application to validate an illegally created unit of land if the City approved a building permit for construction of a building on the site.
- *May not* approve an application to validate an illegally created unit of land if it was unlawfully created on or after January 1, 2007.

Potential City of Milwaukie Solutions

The Planning Department would like to encourage property owners to legalize illegally created lots where appropriate. Staff, therefore, proposes to continue some practices, begin others, and eventually amend the City's Land Division Ordinance as outlined below.

Existing Practices to Continue

- Continue to approve building permits for additions and alterations to existing legal structures that are on illegal lots.
- Do not approve building permits for new structures (including detached accessory structures) on illegal lots until the lots are legalized.
- Do not investigate the legal status of a lot when processing a building permit for an existing legal structure, unless such an investigation is relevant to the processing of the building permit.⁹
- Advise property owners about the City's existing legal lot determination process.
- Advise property owners about the City's existing land division process.

New Practices Proposed by Staff

- When illegal lots are discovered, notify all affected property owners of illegal lot status, development limitations, and legalization options.

⁹ Examples include the need to review the land division decisions for flag lots and planned development lots to ensure that the type of new development or redevelopment proposed would comply with all conditions of approval placed upon these types of lots when they were created.

- Do not require property owners to resolve illegal lot status through either the existing land division process or the future proposed legalization process.
- Maintain a voluntary list of property owners who would like notification of any future code amendments regarding illegal lot legalization.
- Maintain list of known illegal lots in a database.

Future Code Amendments

The Planning Department's work plan includes a project to address illegally created lots. One solution staff is considering is amending the City's Land Division Ordinance (Title 17) to empower the Planning Director, through a Type I review process, to legalize illegally created lots when the following objective criteria are met.

1. Documentation that the land division or property boundary change occurred on or before a specified date.
2. Documentation that the deed that originally divided or modified the property was recorded with the County.
3. Documentation that each illegal lot is greater than 3000 square feet and has frontage on a public street or City-approved access to a public street.
4. Require property owners to record a final plat with the County as the final step in the City's legalization process as described above.

Discussion Items

Staff believes that the practices and policies outlined above are a necessary, fair and reasonable solution to an existing, on-going problem. If Planning Commission is in general agreement with this position, staff requests direction from the Commission with regard to a proposed amnesty date to use in the future proposed code amendment.

The City Attorney recommends that the City adopt a specific amnesty date to keep the criteria for a streamlined legalization process clear and objective. This is a challenging task since, without knowing the exact number, types, and dates of illegal lots, it is difficult to gauge the effects of any given amnesty date. Staff recommends an amnesty date no earlier than December 31, 1983 and no later than December 31, 1989.

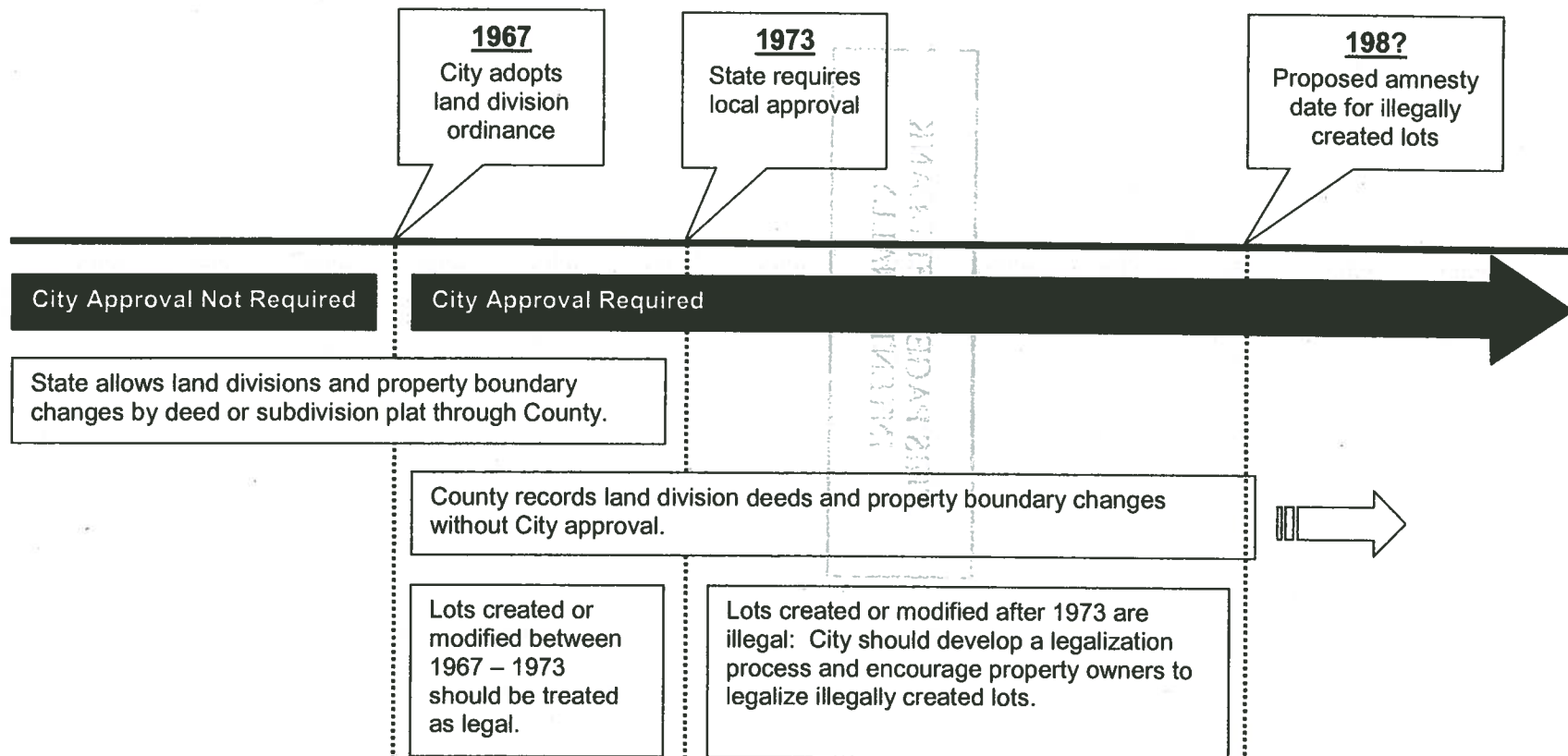
Staff recommends an amnesty date no earlier than 1983 because it appears that the City did not track or process property boundary changes before this time. The 1989 amnesty date recommendation is arbitrary, but would encompass all of the 1980's and would be an easy date to remember and convey to the public.

Attachments

Attachment 1: Overview of Illegal Lot Creation Events and Legalization Proposal

ATTACHMENT 1

OVERVIEW OF ILLEGAL LOT CREATION EVENTS AND LEGALIZATION PROPOSAL





To: Planning Commission
From: Katie Mangle, Planning Director
Date: July 2, 2008
Subject: Supplemental Information for July 8, 2008 Planning Commission meeting

Please review the following additional information, which was not included in the original Planning Commission Packet for the July 8th meeting.

1. Supplemental Attachment for Item 6.1:
Staff Report with Findings in Support of Approval with Conditions
File: AP-08-01 (Appeal of File PLA-08-01)
Appellant: Philip Favorite
Address: 12293 SE 40th Avenue
Legal Description: Map 1S1E36DD, Tax Lot 103
NDA: Lake Road
2. Supplemental Attachment for Item 7.2:
Letter from Citizens Doug & Linda Burgard



To: Planning Commission

Through: Katie Mangle, Planning Director

From: Susan P. Shanks, Senior Planner

Date: July 1, 2008 for July 8, 2008

Subject: **File:** AP-08-01 (Appeal of File PLA-08-01)
Appellant: Philip Favorite
Address: 12293 SE 40th Avenue
Legal Description: Map 1S1E36DD, Tax Lot 103
NDA: Lake Road

Action Requested

Adopt the recommended findings (Attachment 1) and conditions (Attachment 2) to implement the Planning Commission's decision on June 24, 2008 in support of the appellant's appeal. This action will overturn the Planning Director's decision to deny the appellant's proposed property line adjustment (PLA) as described in land use file PLA-08-01.

ATTACHMENT 1

Recommended Findings in Support of Approval

1. The Appellant submitted a Property Line Adjustment (PLA) application on January 31, 2008. The Planning Director denied the application on March 24, 2008 upon finding that the proposed PLA did not meet the applicable approval criteria governing property line adjustments contained in the City's Land Division Ordinance. The Appellant subsequently submitted an Appeal application appealing the Planning Director's denial of the proposed PLA.
2. Pursuant to Milwaukie Municipal Code (MMC) Chapter 19.1000, Land Use File AP-08-01 has been processed and public notice has been provided in accordance with MMC Subsection 19.1011.3 Minor Quasi-Judicial Review and MMC Subsection 19.1001.4.H Appeal Procedure.
3. The Planning Commission finds that, in the absence of conclusive case law or code language regarding adverse possession boundary changes, the proposed PLA is subject to the following provisions of the Milwaukie Zoning Ordinance (Title 19) and Land Division Ordinance (Title 17) of the Milwaukie Municipal Code (MMC).
 - MMC Subsection 17.12.030 Approval Criteria for Property Line Adjustment
 - MMC Subsection 17.28.040 General Lot Design
 - MMC Section 19.301 Residential Zone R10
4. The Planning Commission approves the appeal upon finding that the proposed PLA meets the applicable approval criteria governing property line adjustments contained in MMC Subsection 17.12.030.
 - A. MMC Subsection 17.12.030.A.1 requires compliance with Title 19 Zoning Ordinance and Title 17 Land Division Ordinance.

Title 19 Zoning Ordinance Evaluation

Tax Lots 103 and 800 are zoned R10 and are subject to the standards of MMC Section 19.301 Residential Zone R10. Tax Lot 4500 is zoned R7. Pursuant to MMC Section 19.204, however, when a site has more than one zone designation, the entire lot shall be deemed to be in the zone in which the greater area of the site resides, which is the R10 zone in this instance. Therefore, the R10 standards apply to both properties. Table 1- Zoning Compliance (on the following page) and the accompanying narrative demonstrate how both properties would continue to meet the standards of the R10 zone if the proposed PLA were approved.

ATTACHMENT 1
 Recommended Findings in Support of Approval
 Page -- Page 3 of 7

Table 1 – Zoning Compliance

Standards	R10 Zone Requirements	Tax Lot 103		Tax Lots 800 & 4500 ¹	
		Existing	Proposed	Existing	Proposed
Lot Area	10,000 sq. ft. minimum	37,529 sq. ft.	Increasing.	Approx. 9.77 acres	Approx. 9.65 acres
Lot Width	70 ft. minimum	200+ feet	200+ feet	Not changing.	
Lot Depth	100 ft. minimum	172 feet	Increasing.	Not changing.	
Front Yard Setback	20 ft. minimum (2/3 height of structure)	Not changing.			
Side Yard Setback	10 ft. minimum (2/3 height of structure)	Not changing.			
Rear Yard Setback	20 ft. minimum (2/3 height of structure)	Not changing.			
Off-Street Parking	Varies	See narrative below.			
Height Restriction	2-1/2 stories or 35 feet (50 feet)	Not applicable. No new structures proposed.			
Maximum Lot Coverage	30% maximum	Lot size increasing. No new structures proposed. Lot coverage percentage decreasing.		Lot size decreasing. Lot coverage increasing from 7% to approximately 7.5 %.	
Minimum Vegetation	35% minimum (15% minimum)	Lot size increasing. No vegetation removal proposed. Vegetation percentage increasing.		Lot size decreasing. Vegetation coverage decreasing from 48% to approximately 47%.	
Public Street Frontage	35 feet minimum	See narrative below.			
Minimum Density	3.5 to 4.4 units/net acre	Not applicable per MMC Subsection 19.301.3.K.			
Transportation Requirements	Varies	Not applicable per MMC Section 19.1403.			

¹ Tax Lots 800 and 4500 are in a residential zone but are developed with an approved community service use. Pursuant to MMC Subsection 19.321.12, Community Service Use development standards for setbacks, building height, and minimum vegetation supersede the R10 standards for this site. These standards are shown in parentheses next to their R10 counterparts in Table 1.

Off-Street Parking: Off-street parking on Tax Lot 103 is not changing and is not affected by the proposed PLA. Tax Lots 800 and 4500, on the other hand, are affected by the proposed PLA. Since this site contains an approved non-residential use, it must meet the landscaping standards of MMC Subsection 19.503.19. The only standard that is affected by the proposed PLA is the perimeter landscape buffer requirement because of the proximity of the proposed PLA to the existing parking lot on Tax Lot 800. A minimum of 6 feet of landscape buffer is required between off-street parking areas and lot lines. The proposed PLA would reduce the existing buffer width from 34 feet to 11 feet. The standard, therefore, would continue to be met.

Public Street Frontage: Tax Lot 103 has public street frontage on the west side of SE 40th Avenue in excess of the required 35 feet. The proposed PLA would essentially double the site's frontage since it would create a site with frontage on both sides of the right-of-way instead of just one. Tax Lots 800 and 4500 have public street frontage on SE Lake Rd (71 feet), SE 40th Ave (462 feet), and SE 37th Ave (204 feet). The proposed PLA would reduce the 40th Avenue frontage; however, this would still leave Tax Lots 800 and 4500 with frontage in excess of the required 35 feet. The standard, therefore, would continue to be met.

In summary, the Planning Commission finds that the proposed PLA meets all applicable Title 19 development standards.

Title 17 Land Division Ordinance Evaluation

The standards of MMC Section 17.28.040 General Lot Design apply to the proposed property line adjustment. No public easements, streets, or parks are associated with this application; therefore the remaining sections of MMC Chapter 17.28 do not apply.

MMC Subsection 17.28.040.A requires that lot size, width, shape, and orientation be appropriate for the location and type of use contemplated. As indicated in Table 1 on the previous page, both properties would continue to meet the required lot dimensional standards. The proposed PLA, however, would create a residential lot (Tax Lot 103) with frontage on both sides of a public right-of-way (SE 40th Avenue). While this is not typical, the Planning Commission finds that this kind of orientation is not specifically prohibited by the code. In summary, the Planning Commission finds that the proposed PLA meets the lot orientation requirements of MMC Subsection 17.28.040.A for Tax Lot 103.

MMC Subsection 17.28.040.B requires lots to be rectilinear in shape where practicable. Tax Lots 800 and 4500 are not rectilinear in shape. However, the line segments that make up their boundaries are straight and at right angles to one another except along existing rights-of-way, which is allowed. The proposed PLA would introduce line segments that are not straight nor at right angles to adjacent line segments. Tax Lot 103 is rectilinear in shape except along its SE 40th Avenue frontage, which is allowed. The proposed PLA would change Tax Lot 103 into a non-rectilinear lot along its southern and eastern lot lines. In summary, the Planning Commission finds that the proposed PLA does not meet the rectilinear lot shape requirements of MMC Subsection 17.28.040.B for both properties. As conditioned, however, this standard will be met.

MMC Subsection 17.28.040.C limits compound lot line segments. Cumulative lateral changes in direction of a side or rear lot line cannot exceed 10% of the distance between opposing lot corners as measured along a straight line. It is unclear whether the

ATTACHMENT 1

Recommended Findings in Support of Approval

Page -- Page 5 of 7

proposed PLA would prevent Tax Lot 800 from meeting this standard. It is clear, however, that the proposed PLA would prevent Tax Lot 103 from meeting this standard along its southern side² lot line.³ The straight-line distance between the two opposing corners of the proposed southern side lot line would be 250 feet. The proposed line jogs a total of approximately 38 feet from the straight line. This is the equivalent of a 15% lateral change in direction and exceeds the 10% standard. In summary, the Planning Commission finds that the proposed PLA does not meet the compound lot line requirements of MMC Subsection 17.28.040.C for Tax Lot 103. As conditioned, however, this standard will be met.

MMC Subsection 17.28.040.D indicates that lot shape standards may be adjusted through the variance process. The appellant did not submit a variance request or application pursuant to MMC Chapter 19.700 Variances.

MMC Subsection 17.28.040.E restricts the creation of double frontage lots except where essential to provide separation between incompatible uses or to overcome topographical constraints. Double frontage lots have frontage on two or more streets. Their creation is restricted because double frontage lots, specifically through lots,⁴ are generally not compatible with the longstanding and codified urban development pattern within the City. The proposed PLA would not technically create a double frontage lot since the double frontage that would be created is on the same street not a different street. Consequently, the Planning Commission finds that the proposed PLA meets the double frontage restriction requirements of MMC Subsection 17.28.040.E.

In summary, the Planning Commission finds that the proposed PLA meets or can be conditioned to meet all applicable Title 17 lot design standards. As a result, the PLA application meets the approval criterion contained in MMC Subsection 17.12.30.A.1.

- B. MMC Subsection 17.12.30.A.2 requires that the property line adjustment allow reasonable development of the affected lots and will not create a need for a variance of any land division or zoning standard.

Tax Lots 800 and 4500 are just under 10 acres in size and are zoned R10. The site is not currently developed with residential uses. It contains a single large structure and parking lot. The owners received land use approval in 2006 to operate a religious institution from this site pursuant to the City's community service use regulations. The site has frontage on three public rights-of way, namely SE Lake Road, SE 40th Avenue, and SE 37th Avenue. For its size, it has relatively little frontage. It is bounded to the north by Highway 224, to the south by SE Lake Road, and to the east and west by single family residences. Access to the site is currently taken from SE Lake Road and SE 37th

² The front lot line for Tax Lot 103 is the line running in a mostly north-south direction along SE 40th Avenue per MMC Section 103. Since the rear lot line is the line that runs opposite and most distant from the front lot line, the lines running in a mostly east-west direction are the side lot lines by default.

³ Since the right-of-way is situated between Tax Lot 103 and the proposed relocation of its eastern property line, the proposed southern side lot line is composed of three segments: (1) the southern boundary of Tax Lot 103, (2) the line that connects the eastern terminus of the first segment to the western terminus of the third segment through the right-of-way, and (3) the southern boundary of the proposed PLA.

⁴ A through lot is an interior lot with frontage on two streets.

Avenue.

Since development of an area can happen incrementally over many decades, the Planning Commission believes that it is reasonable to consider both current development and future development potential when analyzing proposed boundary changes. The Planning Commission asserts that it is reasonable to believe that Tax Lots 800 and 4500 could redevelop in the future as zoned given their size, location, and current underutilization. Redevelopment could take the form of a traditional or planned development residential subdivision. After considering existing site conditions, zone designations, right-of-way locations and alignments, and land division standards when evaluating the impact of the proposed PLA on a future redevelopment scenario, the Planning Commission finds that the proposed PLA would allow for future reasonable development of Tax Lots 800 and 4500 and would not create the need for future variances.

The Planning Commission finds that the proposed PLA allows for future reasonable development of Tax Lots 800 and 4500 and does not create the need for a variance. As a result, the PLA application meets the approval criterion contained in MMC Subsection 17.12.30.A.2.

- C. MMC Subsection 17.12.30.A.3 requires that the property line adjustment does not reduce the residential density below the minimum density requirements of the zoning district. The Planning Commission finds that the proposed PLA would not change the number of lots and would not decrease the existing residential density for either property. This criterion is met.

ATTACHMENT 2

Conditions of Approval

1. The final site plan documenting the approved property line adjustment (PLA) shall be in substantial conformance with the proposed site plan approved by this action—except as modified by these conditions—which is the plan prepared by Compass Engineering dated February 28, 2008. This action approves a property line adjustment between two adjacent properties. It does not create a new unit of land for development purposes despite the fact that this action creates a lot traversed by public right-of-way.
2. To rectify the proposed PLA's lot design issues, the appellant shall modify, through the process set forth below, the southern lot line that runs east-west so that it does not exceed the cumulative lateral change standard as described in MMC Subsection 17.28.040.C.
3. To rectify the unapproved PLA that has already been recorded with Clackamas County, the appellant shall quit claim the existing PLA area back to the adjacent property owner at 4011 SE Lake Road and then have that owner approve a quit claim deed that transfers ownership of the approved PLA configuration back to the appellant. Both actions shall occur within six (6) months from the date of this approval.
4. Prior to filing and/or recording the approved PLA configuration with Clackamas County, the appellant shall submit the recording instrument to the Milwaukie Planning Department for review and approval pursuant to MMC Subsection 17.04.120.B. The recording instrument shall include a signature block that states "Approved by City of Milwaukie Planning Director."
5. A copy of both recording instruments—one revoking the unapproved PLA and one recording the approved PLA—shall be submitted to the Planning Director no later than 15 days after recordation with the County.

June 25th, 2008

RECEIVED
JUN 27 2008
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Milwaukie Planning Commission
6101 SE Johnson Creek Blvd.
Portland, OR 97206

Dear Board Members,

It was our intent to be at the July 8th meeting at which time illegal lot line adjustments is scheduled to be on the agenda, however we will be out of town. We are therefore addressing our concern through this correspondence.

This issue is very important to us as we have been in a legal battle for the last 3+ years with an illegally adjusted lot. It is an issue that could easily be resolved with the counsel approving House Bill 2723.

In July 2003 we purchased through a foreclosure lots 3, 4, 5&6, with the west 5' of lot 6 illegally adjusted in 1998. Unfortunately we lost lots 3&4 and retained lot 5&6 minus the west 5' of lot 6. We had no idea the lot had been illegally adjusted, hence not buildable until May of 2005. The parties that illegally adjusted the lot were aware of the actions in making the lot unbuildable and have stated so in 2 different letters to us. The lot is located at 3906 SE Jackson and at this time measures 45X100. The amount of property we need to make the lot buildable is the 5' that was illegally adjusted in 1998.

It has now become a legal battle as to how much the property is worth, who will move fences, ponds and etc.

We keep on running into dead ends and have run out of options except to pay someone for doing something illegal.

Please, Please, Please make this a priority with the city, we know there are other in our same predicament and feel it is in the cities power to help us out.

Thank-You
Concerned Milwaukie Citizens,

Doug and Linda Burgard

Cc: City of Milwaukie Planning, Jack Hoffman