

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, April 25, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Adam Argo, Vice Chair
Sherry Grau
Scott Jones
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
Brett Kelter, Associate Planner
Tim Ramis, City Attorney

COMMISSIONERS ABSENT

Shannah Anderson
John Burns

1.0 Call to Order – Procedural Matters*

Chair Hemer called the meeting to order at 6:30 pm and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

2.0 Planning Commission Minutes

2.1 February 28, 2017

It was moved by Commissioner Jones and seconded by Commissioner Grau to approve the February 28, 2017 Planning Commission minutes as presented. The motion passed unanimously.

3.0 Information Items – There were none.

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

5.0 Public Hearings – There were none.

6.0 Worksession Items

6.1 Summary: North Milwaukie Industrial Area Framework Plan and Implementation Strategy – *rescheduled*
Staff: Amy Koski/Denny Egner

Denny Egner, Planning Director, noted a number of issues were still being addressed with the Framework Plan. He noted a special worksession would be held May 25th and the public hearing was scheduled for June 27, 2017.

6.2 Summary: Natural Resources Approval Criteria
Staff: Denny Egner/Brett Kelter

Mr. Egner presented the Natural Resources (NR) Overlay Zone section of the Milwaukie Municipal Code (MMC 19.402) via PowerPoint. He highlighted the background and approval criteria for the code. Staff addressed several clarifying questions.

Key discussion items and responses to Commissioner questions were as follows:

- Habitat Conservation Area (HCA) and Water Quality Resource (WQR) concepts originated from the Metro Title 13 process. Prior to that, concerns were focused more on water quality and water resources than on wildlife habitat. The HCA considered the relationship between wildlife and riparian areas. Some upland habitats were designated HCA; however, on a regional level most HCAs had some association with water.
- The City had wetland and riparian protections prior to Metro's Title 3 and Title 13, but no wildlife habitat protection. Staff provided a brief history on code amendments made to bring the City into compliance with Metro's regulations, noting the City did not have the staff resources to challenge Metro's mapping. However, some minor adjustments had been made, namely on the edges of existing HCA areas that were clearly developed areas, but not on a property-by-property basis.
- The HCA and WQR inventories were basically the mapped inventory work. The findings that Metro made related to the maps provided the broad justification for each area. The City still had the ability to adjust the maps locally.
- The City's Natural Resource Administrative Map was based on inventory data provided by Metro and adopted after some modifications by the City. The map was the City's inventory and protection map. Insignificant resources were dropped off the map at the regional level, so every resource on the map was considered a significant resource. The map was essentially rolled into the zoning code as an overlay zone.
- The Commission discussed the resource overlay map example in the staff report. Concern was expressed about a building and parking lot being located within the natural resource areas.
- Staff described the differences between HCA and WQR areas and riparian boundaries, noting that the code recognized that discrepancies existed. Developers must have a natural resource expert evaluate the natural resource to see if it qualified as a primary protected water feature. If the expert determined the resource did not need that level of protection, the map would be modified during the development review process.
- The natural resource designations were part of the zoning map, which would be explained if a potential buyer contacted the City about the property. Resource information was not listed on property deeds.
- The zoning code applied to real property, not the public right-of-way, so development within the public right-of-way was not subject to the zoning code or Natural Resource criteria. For example, utilities placed within the public right-of-way do not require a land use application.
- Staff discussed problematic language in the General Discretionary Review criteria related to satisfying the need for practicable alternatives to avoid and minimize impacts to the resource area.
 - Minimizing impacts and mitigation of impacts were often addressed in an application because fully avoiding a resource might prevent a landowner from exercising the right to develop their land, which could create a taking situation.
 - It was difficult to show that no practicable alternatives existed. Further discussion on how to address this issue was needed, including how to determine what was a truly practicable alternative.
 - The avoidance portion of the approval criteria standards was a starting point and gave

the Commission a platform for asking questions about alternatives and put the applicant on notice to explore alternatives.

- To qualify for a discretionary review, the applicant had to file a report prepared by a natural resource professional. The City did not require an Environmental Impact Statement (EIS) for development review. An EIS was specific to the Environmental Protection Act of the federal government. Washington and California have environmental protection agencies that require EIS-like documents for certain projects. Oregon's Goal 5 process was designed and programmed to be easier, more streamlined, and to provide certainty to a developer, which made it easier to develop inside the urban growth boundaries (UGBs).
- The 2008 Buildable Lands Map had recently been updated, but had not yet been adopted. None of the buildable lands should include natural resource areas. Although the sample map presented to the Commission showed two parcels of undeveloped land clearly within the natural resource area, the land inventory calculations would remove the resource area from the amount of buildable land since part of the property could be developable.

Tim Ramis, City Attorney, was not aware of any litigation regarding the term "practicable," which had a slightly different meaning, but was synonymous with the term "possible," but not the term "practical."

Mr. Ramis responded to a comment by Chair Hemer and confirmed that in order to approve an application, the Commission must find that the applicant had met their burden of proof on every one of the criterion, and in order to deny a project, the Commission must tie the reason to one of the criterion.

7.0 Planning Department Other Business/Updates

7.1 Planning Commission Notebook Interim Update Pages

Mr. Egner noted the Sign Code correction pages had been distributed for updating the Planning Commission's Code books. The new [revised] Bylaws were also provided.

8.0 Planning Commission Discussion Items

Chair Hemer reminded that the Visioning meeting would be May 3, 2017 at 6:30 pm. He announced plant sales would be held by the Friends of the Ledding Library, the Annie Ross House, and Milwaukie Garden Club on Saturday, May 13th

9.0 Forecast for Future Meetings:

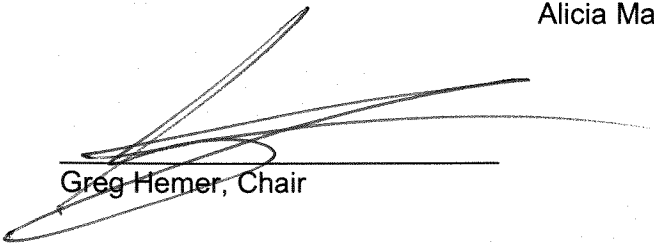
May 9, 2017	1. Public Hearing: CSU-2017-002 4107 SE Harrison St dance studio/theater 2. Public Hearing: WG-2017-001 10663 SE Riverway Ln addition 3. Public Hearing: HR-2017-001 4217 SE Railroad Ave demolition
May 23, 2017	1. PD-2017-001 13333 SE Rusk Rd planned development
May 25, 2017	1. Special Session Worksession: NMIA Recommendation of Framework Plan and Implementation Strategy Variance Training

Chair Hemer announced that on May 9th, he would be recusing himself from the public hearing on the Railroad Ave demolition due to a conflict of interest.

Meeting adjourned at approximately 8:07 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Greg Hemer, Chair



AGENDA
REVISED

MILWAUKIE PLANNING COMMISSION
Tuesday, April 25, 2017, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

1.0 Call to Order - Procedural Matters

2.0 Planning Commission Minutes – Motion Needed

2.1 February 28, 2017

3.0 Information Items

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda

5.0 Public Hearings – Public hearings will follow the procedure listed on reverse

6.0 Worksession Items

6.1 Summary: North Milwaukie Industrial Area Framework Plan and Implementation Strategy – **rescheduled**
Staff: Amy Koski/Denny Egner

6.2 Summary: Natural Resources Approval Criteria
Staff: Denny Egner

7.0 Planning Department Other Business/Updates

7.1 Planning Commission Notebook Interim Update Pages

8.0 Planning Commission Committee Updates and Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings:

- | | |
|---------------------------|---|
| May 9, 2017 | 1. Public Hearing: CSU-2017-002 4107 SE Harrison St dance studio/theater |
| | 2. Public Hearing: WG-2017-001 10663 SE Riverway Ln addition |
| | 3. Public Hearing: HR-2017-001 4217 SE Railroad Ave demolition |
| May 23, 2017 | 1. Public Hearing: PD-2017-001 13333 SE Rusk Rd planned development |
| May 25, 2017
tentative | 1. Special Session Worksession Public Hearing : NMIA Recommendation of Framework Plan and Implementation Strategy |

Milwaukie Planning Commission Statement

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

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

Public Hearing Procedure

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

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

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

Milwaukie Planning Commission:

Greg Hemer, Chair
Adam Argo, Vice Chair
Shannah Anderson
John Henry Burns
Sherry Grau
Scott Jones
Kim Travis

Planning Department Staff:

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kelter, Associate Planner
Vera Kolias, Associate Planner
Mary Heberling, Assistant Planner
Alicia Martin, Administrative Specialist II
Avery Pickard, Administrative Specialist II

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
Tuesday, February 28, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Adam Argo, Vice Chair
Shannah Anderson
Scott Barbur
John Burns
Sherry Grau
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
Brett Kelter, Associate Planner
Vera Kolias, Senior Planner
Tim Ramis, City Attorney

1.0 Call to Order – Procedural Matters*

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

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

2.0 Planning Commission Minutes

2.1 January 10, 2017

It was moved by Commissioner Anderson and seconded by Vice Chair Argo to approve the January 10, 2017 Planning Commission minutes as amended. The motion passed unanimously.

3.0 Information Items – There were none.

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

5.0 Public Hearings

5.1 Summary: Harmony Rd Mini-storage (continued from February 14, 2017)
Applicant/Owner: Hans Thygeson
Address: 5945 & 5965 SE Harmony Rd
File: CU-2016-001, NR-2016-001, TFR-2016-001, VR-2016-003
Staff: Brett Kelter

Chair Hemer opened the public hearing and read the conduct of quasi-judicial hearing format into the record. He also noted his previously declared potential conflict.

Brett Kelter, Associate Planner, presented the staff report via PowerPoint. He noted the findings excerpts and reviewed the revised conditions related to the jurisdiction of Harmony Rd and the outstanding issues discussed at the February 14 hearing, which included the bridge embankment issues and stormwater management. Staff recommended approval with the

revised conditions. He responded to questions about the applicant's request to extend the approval to five years.

Chair Hemer called for the applicant's testimony.

John Lewis, 3975 Dee Hwy, Hood River, OR, stated the applicant had met with North Clackamas Urban Watersheds Council (NCUWC) and made efforts to accommodate their suggestions, incurring additional expense to modify the embankments of the bridge. However, no guidelines existed from any jurisdiction, habitat organization, or the Corps of Engineers for under-bridge clearance regarding wildlife. The applicant's proposal regarding the under-bridge clearance was supported by ESA, the City's consultant.

- He described the options for handling stormwater, noting underground detention would be used to meet the stormwater requirements if needed.
- The applicant had no issues with the street standards being changed to the City's if Harmony Rd were annexed; however, under Oregon Revised Statute (ORS) 227.178, the City was not allowed to change the requirements after the applicant submitted the application, which could potentially cause economic duress.
- The extension of the approval was requested due to the new federal administration and economic uncertainty. The applicant did not want to lose the conditional use again, which was expensive to establish.

Hans Thygeson, 2500 Willamette Falls Drive, West Linn, OR, said he wanted to assure the Commission that he had hired the best consultants, wetland specialists, and experts in Oregon. Each change in the parking area resulted in additional expenses for storm detention studies. He noted that bridges were more expensive to install than culverts, but the applicant chose a bridge to be more responsible.

Chair Hemer asked if the applicant would rather have the condition related to the annexation of the road or the length of time of the permit.

- **Mr. Lewis** answered the length of time on the permit. The concern about the road was if future changes to Harmony Rd would require the applicant to shoulder the cost of improvements. The applicant wanted to know all the variables, especially before requesting a bank loan. The applicant would benefit from the City standards, which were less stringent than the County's.

Chair Hemer called for public testimony, reminding that testimony would only be heard regarding the conditions of approval.

Chris Runyard spoke in opposition to the application. He believed NCUWC was misrepresented; it was opposed to a bridge because it would be destructive to what was left of Minthorn Creek. NCUWC preferred shared access of the bridge if the applicant was going to use the north end of the property. Building on the north end would require excessive fill. He reminded that the developer's environmental consultants were still hired by the applicants in support of their project. If the Commission wanted habitat and ecology in the city of Milwaukie, the Commission needed to give a wide berth for the wildlife that remained.

Staff responded to whether the County's street standards were more stringent than the City of Milwaukie's with these comments:

- Key differences included sidewalk widths and the width of the accessway into the site. The City's standards were less stringent overall.

- The City and the County had discussed this matter internally and decided that the County's greater standards would apply, since Harmony Rd was currently under the County's jurisdiction.
- Regarding changing approval criteria after an application was filed, the City's view was that the engineering standards were separate from the approval criteria. The statute limited changes to approval criteria but allowed the City to make adjustments in the engineering standards that would apply after approval, so the City disagreed with the applicant.
- The applicant also expressed concern that they would be obligated by condition to build a substantially bigger facility with the planned expansion of the road. Because the City applied the constitutional standard of proportionality, no major additional improvements would be required.

Chair Hemer confirmed the applicant had no rebuttal and closed the public testimony portion of the hearing. He then called for deliberation from the Commission.

The Commission noted storage units were identified as a conditional use in the Business Industrial Zone, although the use did not fit the definition of the zone, which stated "a mix of clean, employee-intensive, industrial and office uses." This contradiction should be addressed as a future work plan item.

Following discussion, the Commission consented to deny the request for the five-year extension since the Code already allowed the applicant to request an extension in the future if needed. The City's ongoing Visioning work and upcoming Comprehensive Plan update were also considerations regarding the extension request.

Commissioner Burns noted for the record his professional experience as a stormwater engineer, and added that he wrote the latest version of the presumptive approach calculator being used for this project. He discussed his concerns about the stormwater mitigation and his dismay with staff's response to his questions via email. He preferred denying the applicant's variance requests in order to get a better stormwater management plan, such as by reducing impervious surfaces.

Tim Ramis, City Attorney, clarified details related to the email exchange and that no Commissioner deliberation had occurred. He advised the Commission on how to communicate with staff and other Commissioners with regard to the official record. He suggested taking a short break to ensure all the parties could see the email communication and comment on it if needed.

Chair Hemer called for a brief recess and reconvened the meeting at approximately 8:12 p.m. He reported that the email discussion had been distributed to the applicant, Planning Commissioners, staff, city attorney, and each member of the audience.

Chair Hemer reopened the public hearing to allow further testimony and rebuttal.

Mr. Lewis stated that the applicant followed the guidelines of the City's municipal code and that the plans would meet the mitigation requirements of the code. Therefore, he disagreed with denying the application for more mitigation and suggested the code be adjusted if the Commission felt the requirements should be more stringent. The applicant could meet the stormwater requirements on the site and so the Commission should move forward from this topic.

Commissioner Burns asked if the applicant would consider alternative mitigation solutions that might cost less than constructing 3 ft of additional bridge on either side and revise the stormwater plan with options such as reduced impervious surface and additional green space.

Mr. Lewis noted that the applicant was not resistant to options, citing the bridge modifications that had been volunteered. He reminded that 3 ft was measuring from the high-water mark. Per the applicant's engineer, when the water was at its normal level, with the creek about 10 ft-wide, there would be 10 ft to 13 ft between the ordinary high water mark and the bridge abutments on each side of the creek.

Chair Hemer closed the public hearing and called for Planning Commission deliberation.

The Commission discussed wildlife passage along the creek, City and County street standards, landscaping, potential alternatives to the proposed WQR and HCA disturbance, and use of the existing shared facility. The Commission consented to leave the street improvements as conditioned, which was to apply the Clackamas County street standards.

It was moved by Commissioner Barbur and seconded by Vice Chair Argo to approve land use applications CU-2016-001, NR-2016-001, TFR-2016-001, and VR-2016-003 for 5945 & 5965 SE Harmony Rd with the recommended findings and conditions as amended. The motion passed unanimously.

Chair Hemer read the rights of appeal into the record.

Chair Hemer suggested that more research should be done and more protection provided regarding HCAs.

5.2 Summary: Sign Code Amendments
Applicant: City of Milwaukie
File: ZA-2016-003
Staff: Vera Kolas

Chair Hemer opened the public hearing and read the conduct of quasi-judicial hearing format into the record. He confirmed there were no declarations from any of the Commissioners.

Vera Kolas, Associate Planner, cited the applicable Code criteria and presented the staff report via PowerPoint, including the two options proposed for determining the location of a freestanding sign on a frontage. At the study session on February 23, 2017, City Council was generally supportive of Option 2, but asked that the Planning Commission consider including a 150-ft minimum spacing requirement between freestanding signs if a property elected to have two freestanding signs on a frontage that exceeded 300 ft. She noted two phone calls were received by staff regarding the proposed Sign Code Amendments and that the public hearing on the amendments was scheduled at City Council on April 4, 2017. No other correspondence was received.

Staff addressed clarifying questions from the Commission, which included the following responses:

- The proposed amendments retained the definition of frontage found in (#CI-2015-002, which was the lineal street frontage area of 1 sq ft per lineal ft of street frontage with a maximum

sign size of 250 sq ft, but only one frontage, not multiple frontages, could be counted. A property with 400 sq ft would still be limited to a 250 sq ft sign.

- Limiting the size of roof signs was an aesthetic decision; the copy and content would not be affected. Concern was more about the size of signs and sign clutter in some of Milwaukie's sign districts.
- An extension could be granted for the subject sign of the 2015 Code Interpretation (#CI-2015-002). If the extension was not granted, the applicant would have to comply with the subject Sign Code Amendments if in effect at that time. No criteria existed regarding the granting of an extension; applicants received the extension request provided nothing had changed.

Chair Hemer closed the public hearing and called for deliberation from the Commission.

The Commission discussed the lack of public testimony, especially with regard to economic impact, the 250 sq ft maximum size limit for freestanding signs, and Option 2 with a 150-ft minimum spacing requirement.

Vice Chair Argo clarified that the history leading to the need for Sign Code Amendments regarded consistency on where signage was placed, not sign size.

It was moved by Commissioner Burns and seconded by Commissioner Grau to recommend approval to City Council of legislative application ZA-2016-003 for Sign Code Amendments with the recommended findings as presented and Option 2 with a 150-ft minimum spacing requirement. The motion passed 5 to 2 with Chair Hemer and Commissioner Barbur opposed.

Chair Hemer read the rights of appeal into the record.

6.0 Worksession Items

- 6.1 Summary: Planning Commission Bylaws
 Staff: Denny Egner

Denny Egner, Planning Director, presented the proposed language updates to the Planning Commission Bylaws which would better align the role of the Planning Commission with the Commission's actual duties. He asked the Planning Commission to vote on the adoption of the proposed changes.

It was moved by Commissioner Barbur and seconded by Commissioner Anderson to approve to recommended proposed bylaws for adoption by City Council as presented. The motion passed unanimously.

7.0 Planning Department Other Business/Updates

- 7.1 Summary: Planning Commission's Interim Update Pages
 Staff: Denny Egner

Denny Egner, Planning Director, noted the update pages had been distributed for the Planning Commission's Code books. He noted City Council had changed their study session day to the second Tuesday from 5:00 pm to 7:00 pm, which conflicted with the Planning Commission 6:30 pm meetings. He clarified there was no requirement to broadcast the meeting, but it was good practice and provided better outreach to the community.

The Commission discussed alternative meeting dates and times, but expressed concern about changing meeting days from Tuesdays and starting meetings any later than 6:30 pm. Front loading the agenda with items other than public hearings and having hearings start at 7 pm when broadcasting would be available was suggested.

8.0 Planning Commission Discussion Items

Mr. Egner reported that the Visioning event was well-attended, and good ideas were presented. The Vision Advisory Committee would meet tomorrow night to review the feedback and compile common ideas and identify which could be broader actions that might implement other ideas.

Chair Hemer said he was really proud of the group and how the non-English speaking participants were accommodated with interpreters so they could participate. This had been an issue at the initial event. It was great to see people that did not necessarily speak English included and involved in the community.

- He reported that the Milwaukie Historical Society was sponsoring City Council's proclamation of March as Women's History Month on March 7th at 6:00 pm. He invited everyone attend the Council meeting wearing red to show support for local women, noting the importance of celebrating great Milwaukie women like Annie Ross and Florence Ledding. The Milwaukie Historical Society had a book coming out titled, "A Perspective on Women's History from 1950 to Present", and would be hosting an event in June.

9.0 Forecast for Future Meetings:

March 14, 2017	1. Worksession: Variance Training
March 28, 2017	1. TBD

Mr. Egner suggested cancelling the March 14th meeting as two Commissioners had scheduling conflicts. The Commission agreed to cancel the meeting.

Meeting adjourned at approximately 9:48 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

Greg Hemer, Chair



To: Planning Commission

From: Denny Egner, Planning Director

Date: April 18, 2017 for April 25, 2017, Worksession

Subject: Land Use Approval Criteria for NR Overlay Zones - Worksession

ACTION REQUESTED

No formal action is requested. This worksession is intended to provide Commissioners with a common understanding of the Milwaukie Municipal Code (MMC) criteria for making land use decisions.

BACKGROUND

On April 11, the Commission held a worksession on the decision criteria for various land use applications. The April 25 worksession will focus on the criteria set forth in the Natural Resources (NR) overlay zone section of the code (MMC 19.402).

The City's NR overlay zone has been found to be compliance with Titles 3 and 13 of the Metro Urban Growth Management Functional Plan. By complying with the Metro Functional Plan, the City automatically complies with the corresponding Oregon Statewide Planning Goals. Metro's Title 3 (Water Quality and Flood Management) satisfies Oregon Statewide Planning Goal 6 (Air, Water and Land Resource Quality) and Goal 7 (Areas Subject to Natural Hazards). Metro's Title 13 (Nature in the Neighborhoods) satisfies Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

Oregon Statewide Planning Goal 5 outlines a detailed process that local governments (and Metro) are required to follow in order to protect natural resources including wetlands, riparian areas, and wildlife habitat areas. The process includes the following key steps:

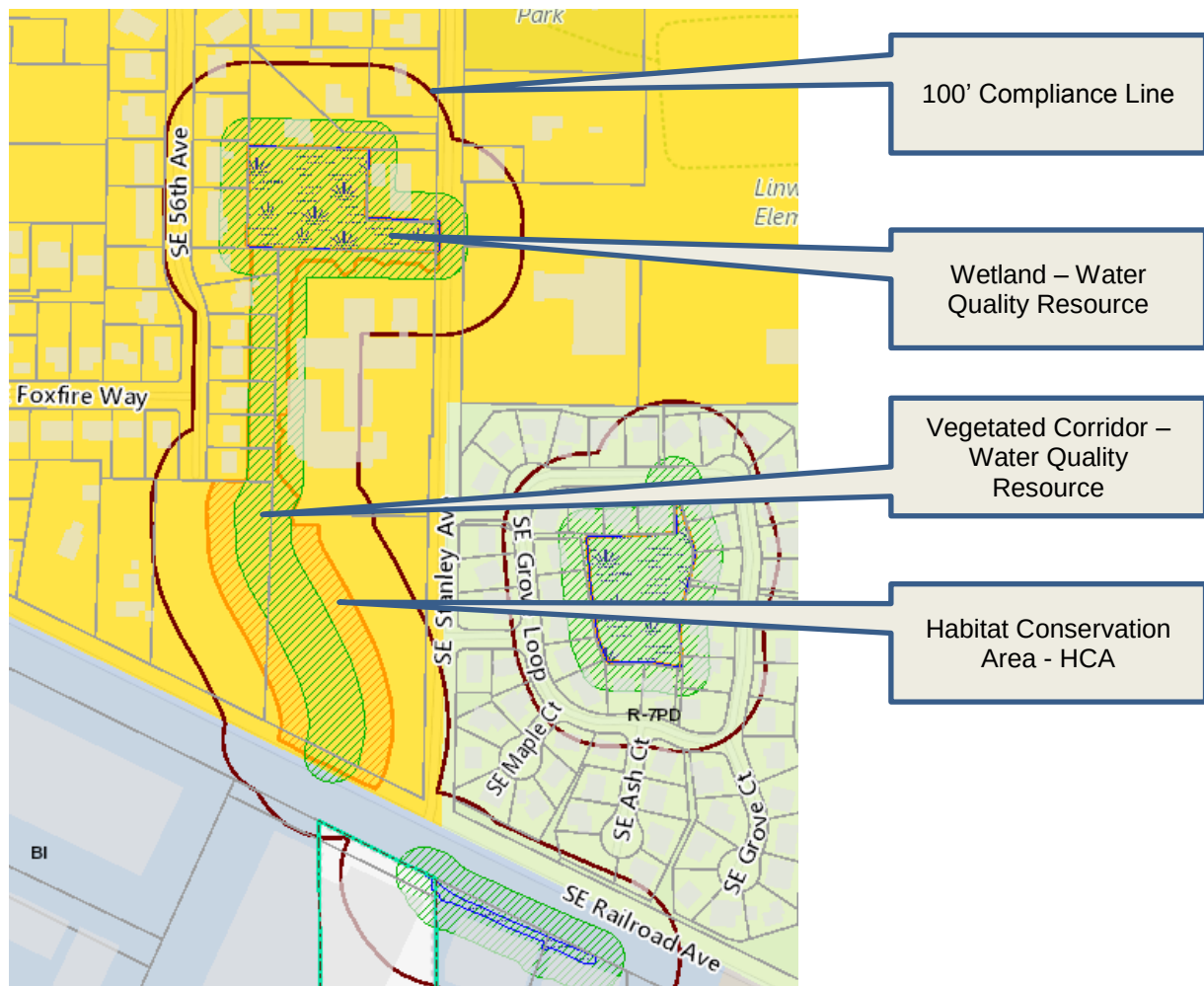
1. Inventory the resource with information about location, quantity, and quality.
2. Determine the significance of each inventoried resource and, if significant, include that resource in the local plan inventory.
3. Identify the uses that may conflict with the identified resource (e.g., housing development near a wetland or a road that must cross a riparian area for street connectivity).
4. Conduct an analysis of the environmental, economic, social, and energy (ESEE) consequences resulting from the conflicts between the use and the resource.

5. Based on the ESEE analysis, develop a program that resolves conflicts by fully allowing the conflicting use, allowing the conflicting use in a manner that limits and manages impacts to the resource, or fully protecting the resource.

In most instances, the resulting program is one that allows some degree of conflicting use and manages the impacts that result from the conflicts. The Metro Title 13 program followed this “managed” approach to resource protection, as does the City’s NR overlay zone.

Milwaukie’s NR overlay zone is implemented through section MMC 19.402 of the zoning ordinance, and it is one of the most complex sections in the code. The NR overlay defines two different sub-districts: Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs). These are mapped on the zoning map (see sample figure, below). The code includes lengthy intent, applicability, and exempt activities sections, and it identifies the activities permitted in the WQR and HCA sub-districts by approval type (Type I, II, or III) – see Table 19.402.3.K (attached).

Zoning Map Example



As stated at the April 11 worksession, the Commission is responsible for land use actions that follow the Type III process. For natural resource review, these are outlined in MMC 19.402.8 which is included below in italics (the nonitalicized notes are not part of the code). In addition, excerpts from MMC 19.402.12. are provided. This is the section that includes the decision-making criteria. Key sections are subsection A. which includes guidance for preparing the alternatives analysis and subsection B. which provides the approval criteria. Subsection C. addresses variances to HCA mitigation requirements and is not included below.

19.402.8 Activities Requiring Type III Review

Within either WQRs or HCAs, the following activities are subject to Type III review and approval by the Planning Commission under Section 19.1006, unless they are otherwise exempt or permitted as a Type I or II activity.

- A. *The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:*
 1. *Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or II activity. (Note: Exempt activities include planting native plants, removing nuisance species, emergency activities, landscape maintenance, 150 sq ft of disturbance, and installation of low-impact trails.)*
 2. *Within HCAs, development that is not in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D. (Note: Detached and attached single family homes are allowed if disturbance is limited to amounts permitted though a formula that requires building on the portion of a parcel outside of the HCA as a first priority; the formula allows up to 5,000 sq ft of disturbance, and tree planting is required for mitigation.)*
 3. *New roads to provide access to protected water features, necessary ingress and egress across WQRs, or the widening of an existing road.*
 4. *Improvement of existing public utility facilities that cannot meet the applicable standards of Subsection 19.402.11.E. (Note: E.g., 15-ft-wide disturbance area for utility upgrades.)*
 5. *New stormwater facilities that cannot meet the applicable standards of Subsection 19.402.11.E. (Note: Encroachment limited to 25 ft into a WQR.)*
 6. *New public or private utility facility construction that cannot meet the applicable standards of Subsection 19.402.11.E. (Note: 25-ft-wide disturbance for new underground utilities for no more than 200 lineal ft.)*
 7. *Walkways and bike paths that are not exempt per Subsection 19.402.4 or cannot meet the applicable standards of Subsection 19.402.11.E. (Note: walkways/bikepaths limited to 10 ft width and set back 10 ft from a protected water feature.)*
 8. *Tree removal in excess of that permitted under Subsections 19.402.4 or 19.402.6. (Note: Emergency removal; removal of nuisance species.)*
 9. *Landscaping and maintenance of existing landscaping that would increase impervious area by more than 150 sq ft.*
 10. *Routine repair and maintenance, alteration, total replacement, and/or change of use of existing legal buildings or structures that that increases the disturbance area by more than 150 sq ft within the WQR.*

11. *Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that would disturb more than 150 sq ft within the WQR.*
- B. *The activities listed below shall be subject to the review criteria for partitions and subdivisions provided in Subsections 19.402.13.H and I, respectively:*
1. *The partitioning of land containing a WQR or HCA that cannot meet the standards provided in Subsection 19.402.13.G. (Note: Partitions that result in parcels that are not overly encumbered by HCA).*
 2. *The subdividing of land containing a WQR or HCA.*

19.402.12 General Discretionary Review

This subsection establishes a discretionary process by which the City shall analyze the impacts of development on WQRs and HCAs, including measures to prevent negative impacts and requirements for mitigation and enhancement. The Planning Director may consult with a professional with appropriate expertise to evaluate an application, or they may rely on appropriate staff expertise to properly evaluate the report's conclusions.

A. Impact Evaluation and Alternatives Analysis

An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria for general discretionary review and to evaluate development alternatives for a particular property. A report presenting this evaluation and analysis shall be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. At the Planning Director's discretion, the requirement to provide such a report may be waived for small projects that trigger discretionary review but can be evaluated without professional assistance.

The alternatives shall be evaluated on the basis of their impact on WQRs and HCAs, the ecological functions provided by the resource on the property, and off-site impacts within the subwatershed (6th Field Hydrologic Unit Code) where the property is located. The evaluation and analysis shall include the following:

1. *Identification of the ecological functions of riparian habitat found on the property, as described in Subsection 19.402.1.C.2.*
2. *An inventory of vegetation, sufficient to categorize the existing condition of the WQR per Table 19.402.11.C, including the percentage of ground and canopy coverage materials within the WQR. (Note: Existing conditions are categorized as good, marginal, or poor).*
3. *An assessment of the water quality impacts related to the development, including sediments, temperature and nutrients, sediment control, and temperature control, or any other condition with the potential to cause the protected water feature to be listed on DEQ's 303(d) list.*
4. *An alternatives analysis, providing an explanation of the rationale behind choosing the alternative selected, listing measures that will be taken to avoid and/or minimize adverse impacts to designated natural resources, and demonstrating that:*
 - a. *No practicable alternatives to the requested development exist that will not disturb the WQR or HCA.*

- b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.*
 - c. If disturbed, the WQR can be restored to an equal or better condition in accordance with Table 19.402.11.C; and the HCA can be restored consistent with the mitigation requirements of Subsection 19.402.11.D.2.*
 - d. Road crossings will be minimized as much as possible.*
- 5. Evidence that the applicant has done the following, for applications proposing routine repair and maintenance, alteration, and/or total replacement of existing structures located within the WQR:*
 - a. Demonstrated that no practicable alternative design or method of development exists that would have a lesser impact on the WQR than the one proposed. If no such practicable alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR to the minimum extent necessary to achieve the proposed repair/maintenance, alteration, and/or replacement.*
 - b. Provided mitigation to ensure that impacts to the functions and values of the WQR will be mitigated or restored to the extent practicable.*
- 6. A mitigation plan for the designated natural resource that contains the following information:*
 - a. A description of adverse impacts that will be caused as a result of development.*
 - b. An explanation of measures that will be taken to avoid, minimize, and/or mitigate adverse impacts to the designated natural resource; in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.*
 - c. Sufficient description to demonstrate how the following standards will be achieved:*
 - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.*
 - (2) Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.*
 - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous; particularly along natural drainage courses, except where mitigation is approved; so as to provide a transition between the proposed development and the designated natural resource and to provide opportunity for food, water, and cover for animals located within the WQR.*
 - d. A map showing where the specific mitigation activities will occur. Off-site mitigation related to WQRs shall not be used to meet the mitigation requirements of Section 19.402.*
 - e. An implementation schedule; including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting; as well as a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.*

B. Approval Criteria

1. *Unless specified elsewhere in Section 19.402, applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:*

- a. *Avoid*

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity shall have less detrimental impact to the designated natural resource than other practicable alternatives, including significantly different practicable alternatives that propose less development within the resource area.

- b. *Minimize*

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

- (1) *The proposed activity shall minimize detrimental impacts to ecological functions and loss of habitat, consistent with uses allowed by right under the base zone, to the extent practicable.*
- (2) *To the extent practicable within the designated natural resource, the proposed activity shall be designed, located, and constructed to:*
 - (a) *Minimize grading, removal of native vegetation, and disturbance and removal of native soils; by using the approaches described in Subsection 19.402.11.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).*
 - (b) *Minimize adverse hydrological impacts on water resources.*
 - (c) *Minimize impacts on wildlife corridors and fish passage.*
 - (d) *Allow for use of other techniques to further minimize the impacts of development in the resource area; such as using native plants throughout the site (not just in the resource area), locating other required landscaping adjacent to the resource area, reducing light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.*

- c. *Mitigate*

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. All proposed mitigation plans shall meet the following standards:

- (1) *The mitigation plan shall demonstrate that it compensates for detrimental impacts to the ecological functions of resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.*
- (2) *Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and if*

the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

- (3) All revegetation plantings shall use native plants listed on the Milwaukie Native Plant List.*
- (4) All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.*
- (5) A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting. Compliance with the plan shall be a condition of development approval.*

2. *Municipal Water Utility Facilities Standards (Not Included in this staff report)*

C. *Limitations and Mitigation for Disturbance of HCAs (Not Included in this staff report)*

DISCUSSION

At the Commission work session, staff intends to focus on the criteria outlined in MMC 19.402.12. Subsection A provides guidance for developing the alternatives analysis that is required to show that impacts are being avoided to the extent practicable and that the level of mitigation proposed is appropriate. Subsection B outlines the approval criteria and requires applicants to avoid, minimize, and mitigate impacts to identified natural resources.

Key questions for discussion include:

- How much detail and analysis is adequate in an alternatives analysis?
- If the applicant is proposing to impact the resource area, the Commission must find that there is no practicable alternative to the proposed alternative. What should be considered in making this finding?
- Do Commissioners have other concerns or questions about how to address any of the criteria listed above?

RECOMMENDATION

There is no formal staff recommendation.

ATTACHMENTS

Attachment 1 – Table 19.402.3.K.

19.402

K. Activities that are not exempt per Subsection 19.402.4, or prohibited per Subsection 19.402.5, are subject to the Type I, II, or III review process as outlined in Table 19.402.3.k.

Table 19.402.3.K Types of Process Review for Various Activities			
Activity (and applicable code sections)	Type of Review Process		
	Type I (19.1004)	Type II (19.1005)	Type III (19.1006)
Construction management plans (Subsection 19.402.9)	✓		
Agency-approved natural resource management plans (Subsections 19.402.10.A and C)	✓		
Independent natural resource management plans (Subsections 19.402.10.B and C)		✓	
Limited tree removal (Subsection 19.402.6.B)	✓		
Tree removal that is not exempt or allowable with Type I review (Subsection 19.402.8.A.8)			✓
Activities within HCA that meet nondiscretionary standards (Subsection 19.402.11.D)	✓		
Maintenance of existing utility facilities (Subsection 19.402.6.E)	✓		
Utility connections (Subsection 19.402.6.F)	✓		
Nonemergency abatement of nuisances or violations (Subsection 19.402.6.G)	✓		
Special use activities (Subsections 19.402.7.A and 19.402.11.E)		✓	
Limited disturbance to WQRs (Subsection 19.402.7.D)		✓	
Property line adjustments that balance the HCA distribution (Subsection 19.402.13.E.1 or 2)	✓		
Property line adjustments that otherwise limit HCA disparity (Subsection 19.402.13.E.3)		✓	
Low-impact partitions or replats (put designated natural resources in separate tract) (Subsection 19.402.13.G)		✓	
Other partitions, replats, subdivisions. Development activities that are not exempt or allowable with Type I or II review (Subsections 19.402.8, 19.402.12, and 19.402.13.F, H or I)			✓
Boundary verifications with minor corrections (Subsection 19.402.15.A.1)	✓		
Boundary verifications with substantial corrections (Subsection 19.402.15.A.2)		✓	