APPROVED: Planning Commission, January 25, 2010

APPROVED: City Council, February 10, 2010

**CITY OF ALBANY**
**CITY COUNCIL AND PLANNING COMMISSION WORK SESSION**
**City Hall Council Chambers, 333 Broadalbin Street**
Tuesday, August 18, 2009
4:00 p.m.

**MINUTES**

CALL TO ORDER

Mayor Konopa called the meeting to order at 4:00 p.m.

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| Councilors present: | Sharon Konopa, Jeff Christman, Bill Coburn, Floyd Collins, Bessie Johnson, Dick Olsen and Ralph Reid Jr. |
| Commission members present: | Paul Davis, David Faller, Cordell Post, Wayne Rackham, Dala Rouse, Michael Styler, Larry Tomlin, and Scott Whitney |
| Commission members absent: | Lolly Gibbs |
| Staff present: | Water Quality Control Supervisor Chris Bailey, Assistant City Engineer Jeff Blaine, Community Development Director Greg Byrne, Planning Manager Don Donovan, Planner III Heather Hansen, Parks and Recreation Director Ed Hodney, City Manager Wes Hare, Urban Renewal Manager Kate Porsche, Management Assistant Marylyn Smith, and Administrative Assistant I Sheena Dodson. |
| Others present: | 8 others |

CALL TO ORDER:

Mayor Konopa called the meeting to order at 4:04 p.m.

INTRODUCTIONS

The Council and Planning Commission briefly introduced themselves.

REVIEW OF GOAL 5

Community Development Director Greg Byrne introduced Planner III Heather Hansen who oversees the Goal 5 project. Hansen introduced consultant John van Staveren, from Pacific Habitat, and Ed Moore and Amanda Punton from the Department of Land Conservation and Development (DLCD). She noted that eventually there would be an interdepartmental team that would include staff from Public Works (PW), Parks and Recreation (P&R), legal council and the economic development g that will work on Goal 5 amendments to the

Development Code (DC).

Declaration: Commissioner Cordell Post submitted and read a memorandum disclosing that the implementation of Goal 5 may give rise to a potential conflict of interest as any decision may result in financial impact on real property owned by him or members of his family (Exhibit A).

Hansen handed out discussion aids (Exhibit B).

van Staveren said that to identify riparian corridors they used three methodologies; the Urban Riparian Inventory and Assessment Guide (URIAG), the Safe Harbor, and the Effective Shade methods. He recommends using URIAG for Oak Creek and Calapooia the Safe Harbor method for the Willamette and all other fish-bearing lakes and streams. He recommends going through the Economic, Social, Environmental, and Energy (ESEE) which analyzes the consequences of those four factors to be the process for the downtown waterfront.

van Staveren continued saying that the research concluded that the only significant wildlife habitat in Albany is Thornton Lake where there are turtles. The recommendation is to protect the wildlife habitat through the riparian and wetlands ordinances. An additional provision would be that if a development was proposed within 100 feet of documented wildlife habitat, then a biologist must be hired to conduct an assessment and document what the potential effects of the development would be on the species.

Hansen went through the resources listed on page 2 of Exhibit B. There are various ways to define resources. She gave the Goal 5 definition of wetlands which are areas inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated conditions, including farm wetlands.

Hansen noted that the method used for wetlands was the Local Wetland inventory methodology prescribed by the state. The state provides the criteria for identifying significance. They do not address setbacks or buffer requirements. She stated that wetland boundaries are considered to be accurate to within 25 feet in most cases and that most cities do have a buffer.

Hansen said that the work program is to complete inventories and develop an ordinance to protect significant wetlands. There are two approaches that can be used, either Safe Harbor or Standard. Safe Harbor is recommended by the consultant and used by most cities. With the Safe Harbor protection it would include these terms; restrict grading excavating replacement and fill, and vegetation removal other than mowing and cutting for hazard prevention. It would include a procedure for hardship variances, claims of map errors, and removal of restrictions for any lands demonstrated to have been rendered not buildable by application of the ordinance

Hansen said that the consultant recommends a 50-foot buffer but it can be reduced if there is a Department of State Land (DSL) delineation. She reminded them that every wetland must go through a DSL process delineation. Post asked if a person had a delineation done from DSL why there would need to be an additional buffer. van Staveren said it would protect the wetland.

Hansen stated that the Natural Resource Advisory Committee (NRAC) did not address buffers. She noted that Rich Catlin, the previous planner that worked with Goal 5, was going to propose a 25-foot setback and reduce to 10 feet if an approved DSL delineation was done. She commented that other cities buffers are anywhere from 25 to 200 feet and the minimum requirement is none. The DLCD does not address buffers directly but protection has to be done.

van Staveren gave different scenarios of the Standard (ESEE) process and balance. He stated that it would be

expensive to do ESEE for the Albany area. Byrne asked van Staveren if the ESEE analysis introduces subjectivity or digression that would not be there with a fixed boundary. van Staveren affirmed. He commented that in Reedsport they used the Safe Harbor method but there was a provision that if the property owner wanted to do an ESEE and then present it to City Council it was possible.

Commissioner Rackham asked for clarification, on page 31 of the agenda packet, if Thornton Lake was the only significant wetland. van Staveren explained that Thornton Lake is the only area with significant wildlife. He added that there were 159 out of 372 wetlands that were deemed to be significant in Albany.

Mayor Konopa asked if the recommendation of a buffer allows DSL delineation, would the city allow to delineate significant wetlands. Hansen said yes. She explained that the recommendation is a 50 foot buffer around the local wetland inventory and if a property owner would have a wetland delineation done, which is more site specific, then it would only be a 25 foot buffer. This is the process for all wetlands. The reason for delineation would be for a better sense of the boundary.

Councilor Collins used an example of a church in North Albany where there were three non significant wetlands. The church had a delineation done. There were non significant wetlands on the property. A program was to mitigate those. van Staveren explained that if there was no other place to put a road or a building, encroaching on the wetlands would be allowable.

Commissioner Rouse asked if the minimum buffer could be 35 feet as 25 feet was not a lot. Hansen stated that the recommended minimum buffer should be 25 feet. Mayor Konopa suggested that it be defined what would be permitted in that area. Byrne explained that DSL defines wetlands and is stricter than the City.

Commissioner Tomlin asked if there were split systems. Hansen did not recall there being any.

Councilor Collins asked if identifying all the wetlands would mean taking the buildable lands. Hansen explained that the buildable lands analysis assumed that some wetlands were not buildable.

Hansen moved on to Riparian corridors. She noted that the Goal 5 requirements did not specify a methodology to be used for inventory or significance determination. In the periodic review plan the City is asked to apply the Safe Harbor approach to identify the location of fish bearing lakes and streams and develop an ordinance to protect them. Punton commented that the first step is the inventory. She added that the Standard inventory for riparian corridors would be having a consultation with someone who understands what the function and values of the riparian areas are and develop an analysis procedure to protect them.

Commissioner Rouse asked what season the measure of flow was taken. van Staveren said that the measurements are taken throughout the year and an average is created.

Councilor Collins, using a section of the Willamette River as an example, believed that the recommendation would be more restrictive than the current Greenway application. Planning Manager Don Donovan explained if the inventory was done under the ESEE analysis all factors would be considered. Hansen stated that the consultant's recommendation is to do the ESEE analysis for the downtown water front.

Rouse asked how the ESEE method would apply to a specific site. Hansen gave an example of allowing development with a certain setback and would mitigate for that setback by planting more or improving it.

Collins asked about if there was the same restriction for utilities in the riparian corridor. Hansen replied no. She explained that the riparian corridor is more flexible than significant wetlands. She highlighted the differences found on page 3.

Hansen reviewed the recommendation options and the variations. She noted that van Staveren recommends a combination of the Safe Harbor and Standard approach. She said van Staveren is using the Safe Harbor approach to be used for all rivers and creeks except Calapooia and Oak Creek. In those cases it would be based on the site potential tree height.

Rouse asked how it would be measured if the river changes. van Staveren explained that the buffer would only be designated if there was development on the site. If the stream meandered after that and the creek was in the buffer, during a redevelopment scenario then it would need to be redone. Reid mentioned a scenario in Benton County where that had taken place.

Davis asked if Linn County were doing Goal 5 requirements at the same time as the City. Hansen explained that the Goal 5 evaluation is done during Periodic Review and each area is on a different Periodic Review cycle. Donovan said that staff would find out their schedule.

Moore mentioned that by identifying the Goal 5 resource inventory it can be taken out of the buildable lands.

Hansen noted that for the wildlife habitat they do not include fish, which is not required to be included by the State. It is habitat that performs a life support function for species that are listed on the state or federal list. Setbacks or buffer widths are not addressed in the state requirements. The periodic review work program states that the City must compile any existing inventories and develop an ordinance to protect wildlife habitat. Protection options are not specified. The Natural Resource Advisory Committee (NRAC) did not address wildlife separately; they felt that the riparian corridors and wetland protections addressed it. Most other cities do not address wildlife separately either. She noted that both the City of Eugene and Benton County have done work on wildlife protection and could be used as examples of how they implemented it. For wildlife protection, the recommendation is to address it through enhanced riparian and wetland protection.

Hansen noted that the protection requirements for wildlife depended on the value of the community. Some residents will feel strongly that all wildlife is important, others will not.

Hansen explained that it needs to be documented wildlife habitat by a state agency or by a scientist. Post asked how a property owner would know. Hansen replied that other than Thornton Lake van Staveren's research showed that there was no other documented wildlife habitat. The City would be responsible to keep the list. If people found other species in the City then it would need to be documented by the State or a scientist and then the wildlife habitat assessment area would apply. van Staveren said the research came from the Oregon Natural Heritage Center.

Tomlin asked if mitigation would have to be done on Thornton Lake if the City adopted Goal 5. Hansen replied that an interdepartmental team would figure out how to implement Goal 5 and then it would be brought before the PC and the CC for review.

Hansen clarified that the recommendation is not to have wildlife habitat done separately but to address it though the Riparian Corridors and wetlands. van Staveren reiterated that there was no significant wildlife besides Thornton Lakes.

Rouse asked for clarification of the definition of the wildlife being discussed. Donovan stated that wildlife is defined as sensitive, threatened or endangered. Hansen added wildlife that is documented. Rouse using deer and bald eagle as examples, said that the public thinks that animals coming on their property need to be protected. She said the definition of the wildlife being discussed needs to be very clear.

Davis asked what the City could do in the Safe Harbor riparian corridors, such as streets. van Staveren responded that a wildlife assessment would be done. The results of the assessment would determine if

something was going through a significant wildlife habitat and would need to be required to be moved.

Reid using an endangered butterfly as an example asked if it were to land on someone's property if it would be included on the list. Hansen explained that it is only the wildlife that is on the documented list, and only habitat that the wildlife depends on for food, shelter, water or reproduction.

Punton asked how the ordinance would apply if a new species was found and not listed on the inventory. Christman suggested that the City make it very specific to Thornton Lake as it has been found to have significant wildlife. Tomlin said that if other areas were found in the 5 year review they could be inserted.

Rouse asked if Thornton Lake was the only inventory what would happen if someone came to a PC meeting with documentation that there was significant wildlife at another location. Hansen said it would be something that the interdepartmental team would work on. Donovan explained that the meetings were to see if people found problems with the study and if the City would need to do more.

Rouse suggested listing the significant wildlife that could be found in an area *thus far* (emphasis added). Donovan stated that van Staveren had done that. Rouse recommended the language be written that if another location was found to have significant wildlife that it could be included without amending the comprehensive plan.

Reid asked if Salmon was included on the inventory. Donovan explained that fish was not included in wildlife. Byrne explained that fish are assumed to be protected by the riparian protections.

Byrne suggested that the City lists a species as being protected and if the species was found at a different location then the protection would follow. Rouse agreed.

Councilor Johnson asked if a turtle moved its nesting from one location to different location, such as the middle of a property, where the 100 feet would be. She asked for it to be discussed in the interdepartmental meetings.

Davis said at the PC meetings they have had people object to development because it would impinge on the existing wildlife corridor. He thinks the issue of corridors should be looked at in greater degree. Hansen agreed.

Rackham suggested that part of the discussions include that the City will not be taking people's property. Others agreed. Hansen said a question to ask is how the City will maximize the protection of the resource while minimizing the impact to property owners.

Hansen stated that the total acres combined, riparian corridor and wetlands, is 1500 acres. She noted that 1200 acres is private ownership. The floodway Open Space and Willamette Greenway setback account for 900 acres. She commented that what was not accounted for in the acreage is existing restrictions, such as easements, annexations agreements or deed restrictions.

Hansen pointed to the summary of what other jurisdictions are doing for their buffers (page 5). Faller asked if the listed cities were the only cities with Goal 5. Hansen replied no.

Hansen explained that there was a lot of flexibility and variety of how to implement Goal 5. It needs to be clear for the public whose property may be different than the person next doors. It needs to be flexible to achieve the goals the City wants to achieve. Rouse agreed.

Hansen remarked that property cost would be a concern. There would be an attempt to limit the impact on

individual property owners. She noted that some of the property owners may not be able to develop to the extent that they would hope. She noted in the DC there was a way to mitigate that with cluster and planned development provisions where transferring development density to a different part of the property. She commented that some people would prefer a smaller lot in order to have OS next to them. Rouse stated it was one of the reasons the City adopted cluster development. Konopa asked if it meant the City would be allowing park amenities to be allowed in order to build in the protected area, park amenities being pavement. Hansen said it would be natural path areas where a person could walk but with no pavement. Konopa recommended that it be defined what could and could not be done.

Hansen mentioned that there were a lot of requirements coming up with regards to the management of storm water; its temperature, bacteria and mercury. Also, the City is to manage development in the floodplain to the extent of making sure it functions as a floodplain and that the water can move around and is not toxic water. She noted that there is not a provision for storage of toxic materials in the floodplain. There is in the floodway.

Konopa noted that under the stormwater management section she did not see any protection for the natural drainage ways. She asked if it would be identified or addressed. Hansen replied that it was on the interdepartmental list of items to be discussed. One of staff's goals is not having to come back to the City Council for changes that another department has changed.

Hansen said that the buildable land supply did need to be analyzed. Staff does need to figure out how it affects supply and if the Urban Growth Boundary expansion needs to be discussed or rezoned.

Styler asked why the fish bearing list of river, lakes and streams did not include Timber Linn Lake. Hansen said it would be added to the fish bearing list.

Hansen continued saying that the strategic plan, the Great Neighborhoods goal, is to provide effective stewardship of Albany's significant natural resources. In addition to the environmental health benefits, wetlands and riparian corridors support Great Neighborhoods by providing connection to the natural environment. It enhances neighborhoods' livability and sense of place. She noted that economic vitality is linked together with environmental protection.

Hansen moved on to other community benefits that wetlands and riparian corridors provide. She noted that they provide services, such as Eco system services, which the City would not have to pay or provide to do. The services include regulating the flow water and ground water levels, purification, climate control, education, research and spiritual opportunities. Styler commented that the Department of State Lands (DSL) regulations do not specify how the City treats the wetlands and the City needs to set our own standards.

Hansen noted that the next step in the process is notification to property owners. Also, there will be an open house on September 10, 2009. Other avenues of information will be the City Bridges and letters to potentially impacted property owners. There will be a public roundtable in October for staff to present draft recommendations based on the information received at the open house and input from the natural resource advisory committee, and the consultant. In November, there would be a joint public meeting with draft recommendations that people could respond to but it would not be a public hearing. The public hearing process would start in January with code amendments.

Moore made a correction to an earlier comment and said that Linn County does have a riparian setback of a minimum of 50 feet to a maximum of 100 feet. He said for wildlife they have a sensitive bird overlay, which includes the northern bald eagle, osprey nests, and banded tailed pigeon. In Linn County's code they have identified that the buffer starts from a point from the nest.

Styler asked for more knowledge of what the counties are doing.

Christman commented that the schedule for input and the schedule for implementation of Goal 5 felt aggressive. He suggested there be lots of time for reviewing it as it would affect all citizens.

Styler recommended that an email address be advertised for people that do not get out. Hansen commented that there will be a webpage set up for people to go to and provide comments.

Tomlin asked who would participate in the open house. Hansen replied that it would be great if the PC and the CC could attend and interact with the public.

NEXT MEETING DATE

The next joint work session is scheduled for Thursday, August 27, 2009 at 4:00 p.m. in Council Chambers.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:04 p.m.

Respectfully submitted,

Sheena Dodson
Administrative Assistant I

Reviewed by,

Don Donovan
Planning Manager