



APPROVED June 27, 2011

**CITY OF ALBANY  
PLANNING COMMISSION  
City Hall Council Chambers, 333 Broadalbin Street  
Monday, January 31, 2011  
5:15 p.m.**

**MINUTES**

Planning Commissioners present: Paul Davis, David Faller, Glenda Fleming, Bob Kish, Dala Rouse, Michael Styler, Larry Tomlin, and Dave Wood

Planning Commissioners absent: Cordell Post (excused)

Staff present: Community Development Director Greg Byrne, Planner II Anne Catlin, Planning Manager Heather Hansen, and Administrative Assistant I Sheena Dickerman

Others present: 7 others in audience

**CALL TO ORDER**

Chair Faller called the meeting to order at 5:15 p.m.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**ROLL CALL**

**ELECTION OF OFFICERS**

**MOTION:** Commissioner Rouse nominated Commissioner Faller for Chair. Commissioner Tomlin seconded it. Vote: Motion **passed** unanimously.

**MOTION:** Commissioner Rouse nominated Commissioner Fleming for Vice-Chair. Commissioner Wood seconded it.

**VOTE:** Motion **passed** unanimously.

**HEARINGS BOARD APPOINTMENT**

**MOTION:** Rouse nominated Commissioner Post for the Hearings Board appointment. Wood seconded it.

**VOTE:** Motion **passed** unanimously.

**APPROVAL OF THE July 19, 2010; November 2, 2010; and November 15, 2010, MINUTES:**

**MOTION:** Tomlin moved to approve the minutes as written. Rouse seconded it.

**VOTE:** Motion **passed** unanimously

**GOAL 5 PUBLIC MEETING**

Chair Faller opened the public hearing at 5:19 p.m.

Planning Manager Heather Hansen gave a brief summary of staff's proposal for the Goal 5 provisions for protecting the resources inside the city limits (Exhibit A). The three Goal 5 resources the City is addressing are; riparian corridors, significant wetlands, and significant wildlife habitat. To ensure the provisions and restrictions are the minimum necessary the focus is *significant* resources; these are the highest quality resources that are currently in good quality or have the potential to be improved to high quality. Inventories were originally done in 1999 and 2001 and then updated in 2009.

One criteria for listing a resources as significant is that it is within a quarter mile of a water quality limited stream. Staff reviewed the 27 significant wetlands that were added to the inventory and the state had listed Oak Creek and Calapooia as water quality limited streams. An allowance for not calling some wetlands *significant* is if they are not contributing to the water quality issue that they are listed for. An example is a pasture or rye grass fields that are not improving the water quality. All wetlands are required to go through the DSL (Department of State Lands) process, if a person would impact the wetland.

The staff recommendation is to have all riparian widths for waterways be the minimum Safe Harbor approach. The original proposal was to have wider riparian corridors in the Oak Creek and Calapooia, now all the widths would be 50 feet. A decision has been made to call all fish bearing riparian areas *significant*, except the canal which was manmade.

Staff proposes amending the Cluster Development Standards which allows lots to be smaller in exchange for protecting natural resources. Currently it does not allow property owners to count Open Space zoned land toward the natural area requirement. Staff believes that with the implementation of Goal 5 if the resource is in good shape, protected or enhanced it warrants being counted toward the natural area requirements.

Hansen explained the Overlay Districts will show up as layer in InfoHub. She used the example of property in the RS-6.5/RC there would a layer showing the riparian corridor. This will help a property owner know if a riparian corridor is located on their property. The City does not have the ordinary high water mark information available on GIS.

If the City went forward with the staff's proposal then some of the water ways would have segments that Goal 5 would apply to and segments that it would not.

Fleming asked for clarification that the riparian corridor, 50 horizontal feet, was not slope distance. Hansen affirmed.

For the Habitat Assessment Overlay District, staff is proposing the minimal protection for turtles. The City does not have a detailed location of the critical habitat of the turtles; where the turtles are nesting, feeding and hibernate, etc. The consultant's recommendation is a 100-foot overlay for habitat.

Commissioner Styler asked who decided that the City should do the minimum necessary. Hansen explained that through the review process staff found that there was not much of a difference from using the Standard and the Safe Harbor approach but the difference allowed some properties to become developable.

Tomlin asked if Oak Creek was not going to be considered a creek in some areas. Hansen explained that some portions from the south might be able to be removed.

Fleming asked if Periwinkle was removed, if the water quality would be monitored. Hansen was unsure. Fleming raised a concern about degradation and who would be responsible to fix it. Hansen suggested

that the PC could propose that since the City owned the property that they work with procedure and best management practices. Fleming recommended something be in effect during the gap.

Rouse asked that definitions of the terms used to be included in the proposal. Hansen agreed.

Fleming stated that rye grass fields are better than an impervious service. Community Development Director Greg Byrne agreed. It is determining if a wetland was significant or not, a wetland has value as a wetland. Some wetlands are listed as significant and some are not. Staff does not want *significant* requirements to be required of *all* wetlands.

Fleming recommended that the language change to “when any impacts to significant natural resources are approved, mitigation shall be approved.” Hansen agreed.

Davis asked if on page 15, the 1,600-square-foot building envelope and the 3,000-square-foot single family property impervious surface requirements were numbers that the PC had agreed upon. Hansen replied the numbers are what other cities use. Tomlin suggested that it be a percentage of the lot. Rouse agreed. Hansen replied the impact needed to be the minimal possible. Fleming recommended using both the square foot maximum and the percentage of a lot.

Davis pointed to page 16, where it says “private ownership...has not been an effective way of protecting the natural resources”. He stated the public commons tend to be neglected because no one has an investment in it. He did not believe it would be effective. Hansen reiterated that private and HOA (homeowners association) have not worked either. Davis suggested that education and resources may work without taking it away from private ownership.

Fleming asked if the City had looked at conservation easements or providing information to private landowners about conservation easements. Hansen answered that it could be a part of the education. Byrne said land that is subject to a conservation easement must have an annual review. Those that grant the easement usually grant funding and do an annual review. Fleming believed it could work if the homeowners agreed to it.

Byrne said the recommendation is anything adjacent to a stream corridor is considered *significant* and it does not differentiate from high quality versus low quality. He gave an example of where Periwinkle Creek comes into the Willamette River; there are *significant* wetlands, there are salmon habitat and significant shading and riparian area. Other areas of Periwinkle Creek are mowed to the waterline and have high human activity. Hansen said the Riparian Functional Assessment gives scores of high, medium, low for thermal regulation, wildlife habitat, flood regulation, and water quality. Staff looked at the score and that particular area was scored low. Byrne said staff was proposing a regulation to differentiate between high quality riparian area that would be regulated with an overlay district and low quality that would not. Hansen added that low quality without the potential to improve it.

#### PUBLIC TESTIMONY:

Mark Azevedo, 1210 NW Skyline, Albany, shared that he had a meeting earlier in the day with other members of City staff. The meeting included discussion about Periwinkle Creek, habitat and habitat restoration. He suggested the information discussed tonight should be shared with those members of City staff.

Azevedo said he did not agree with the Goal 5 process because it had developed this contentious environment. The Goal 5 process, in particular with regards to waterways, is occurring throughout the state to meet federal clean water act standards. It is not the State of Oregon or the politicians that have an

agenda; this is coming from the nation level. The national level has determined that streams, waterways, and wildlife is rapidly disappearing in the country.

The process should be about what the City wants to look like in 20 to 50 years. The City has double in the past 20 years. He has noticed habitat disappearing rapidly in the North Albany area and is happening everywhere in the country. It is important to talk about the values and issues and come to a consensus of what the community should look like. Those in the natural resource community say that Albany is not doing enough. People on the development side say that there are too many regulations.

Azevedo stated that the lower end of Periwinkle Creek has good habitat. There are migratory fish, particularly juveniles, which use the lower end of Periwinkle Creek. Juvenile migratory fish have trouble in the Willamette Basin. All of the creeks that come into the Willamette River used to open up into wetlands. The juvenile fish would feed in the wetlands during winter to early spring. The fish no longer have any habitat left. The lower end of Periwinkle serves this function for the fish.

The Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Transportation (ODOT) are talking about improvements on the freeway. The discussions include changing the passage ways under the freeway for Periwinkle and other creeks, in order to be fish friendly. If this happens the fish at the lower end would have the potential to go under the I-5 freeway and higher up in the system.

Azevedo agreed with exempting some parts of streams as part of the Goal 5 process. He hoped the City would not lose sight of the potential of streams to be improved.

The Goal 5 has process shown that the City staff lacks a natural resource expertise. No person on staff has the ability to answer technical background questions about wildlife. At some point the City needs to look at having a natural resource expert on staff.

Dan Watson, 710 E Thornton Lake Drive, Albany, owns about 7 acres on Thornton Lakes, zoned RS-6.5, and was suitable for development when he purchased the property. He has a difficult time understanding what the proposal means for him, personally. He asked if he could develop lots that are consistent with his neighbors, at a later date. He asked if the proposal meant that there would be 100 feet that he would need to leave native. His concern is when he wants to develop that it will be a battle to figure out what he would be allowed to do. He asked if he would be able to put a patio in his backyard. He recommended the consultant communicate what the turtles would need.

Watson said the aerial photos show that most of the structures around Thornton Lakes are setback 45 feet to 130 feet, with most being around 70 feet to 95 feet setback from the water. His home is approximately 90 feet from the water.

Watson expressed a concern about adding a third layer of regulations for wetlands. The DSL and Army Corp of Engineers already regulate wetlands. If a wetland is not self-sustaining than it should not be considered significant. He acknowledged that damage can be done to wetlands with development that are self sustaining.

Watson reminded the PC that Goal 5 is one of many co-equal Goals in the planning process. In Oregon an agreement was made 35 years ago to limit development to within city limits. This was to protect the majority of habitat and open land in Oregon.

Watson stated that the wording in the proposal must be very clear.

Watson supports protecting habitat areas. He suggested professionals be asked where the turtle habitat is and what is required to protect rather than putting the burden on the individual property owners. He was concerned if individual property owners were responsible then there would be disputes between one property owner and another regarding the results from the individual consultants.

Scott Lepman, 100 Ferry Street, read his letter portion of Exhibit B.

Rouse noted that most of his property is in the wetlands. She asked if his property slopes down to the creek. Lepman replied that it slopes approximately 20 feet; it was filled to be above the floodplain. Rouse asked if he had to mitigate the wetlands. Lepman replied that he had corrected a fill violation from the previous owner.

Fleming asked if he had any suggestions that the City could implement in the Goal 5 process. Lepman replied having wetland consultants be licensed and for the City to be about what is developable and what is not.

Lepman stated that people will not want to own property that has wetlands on it because of all the regulations. He suggested having a regional wetland bank.

Byrne said the City is doing what is required to comply with state laws on Goal 5. One of those is setbacks for significant wetlands and riparian zones. He asked Lepman if he had a specific recommendation on a change to the proposal. Lepman recommended that any prior delineation completed on a wetland should be respected.

Fleming asked why someone would want to create a wetland on their property. Lepman replied the market wants property adjacent open space because the values of the properties are higher. If there were fewer regulations a developer would create a wetland, if there was enough land. Byrne stated the regulations do not require anyone to create a wetland. The City is trying to establish protections for existing wetlands that are deemed significant in the wetland inventory. Staff is willing to change anything that is specific in protecting wetlands. He added that Lepman's property is in the county and has not been annexed into the City. It is not subject to these regulations until it is annexed.

Rouse said the City's storm water drains into the creek creating more water in that particular spot. It looks as if Lepman would not be able to develop any portion of his property. She asked if he annexed into the city, if there were any variances that would allow him to develop. Davis pointed out the steep banks the 50 foot high water mark is possibly in another eco system and may not need the protection the first portion would need. Byrne stated an ESEE analysis is site specific and fact specific evaluations of a particular property. An ESEE analysis is not staff is proposing.

Rouse asked if Lepman would be able to apply for a variance to develop his property. Hansen explained that the variance procedure is if a property is rendered unbuildable on an existing lot. She said the variance would not apply with Lepman's property.

#### STAFF RESPONSE

Hansen stated that the variance provisions are only available to existing lots, under the Code, a property cannot be subdivided to create a lot that is unbuildable.

Hansen said the 100-foot segment adjacent to the lake would not need to be left native. The consultant proposed for development, on undeveloped property, there would need to be a habitat assessment. The cost to do an entire habitat assessment on the lake would cost approximately \$60,000 to \$100,000. For

developed properties, the proposal is up to 20 percent of the existing yard could be impacted without requiring a review. Impact over the 20 percent would require a review and a habitat assessment. Byrne added that minor activities, such as building a patio, would be exempt.

Hansen stated that the City is required to regulate the significant wetlands. Someone could challenge if a wetland was significant or not but she was unsure how. The consultant went through the approved DSL process to determine significance.

Byrne added that the City is not going to regulate improvement along Periwinkle Creek. There are places that the City can designate as high resource value and not make them worse through regulation. As a community if “we” want to improve the areas that are degraded, Goal 5 is not the way to do it but cooperation among city departments and property owners. The City must protect what is left.

Byrne stated that the information gathered at previous public hearings and meetings shows that 100 feet of habitat assessment is a modest assessment. It is not uncommon for the habitat to move over areas larger than 300 feet when they are free to do so. The turtle habitat is not free to move that far in some areas and is still surviving. The habitat assessment is an attempt to look at the areas the habitat are using and ensure it is not degraded further. This has to be done on a case by case basis. The City does not have the information to do this differently.

Davis asked for an example regarding water related dependent uses, that still needed to be resolved. Hansen replied a dock was one. Byrne said there are some cases where certain uses are dependent on access to that resource.

Chair Faller closed the public hearing at 7:10 p.m.

## COMMISSION DISCUSSION

Rouse made comments and suggestions to help make the proposal clearer:

- Who will review the overlay districts?
- Land division and existing development.
- Page 13, to clarify what the “certain” requirements were.
- Page 15, for adjustments is there consideration of the size of the lots?
- For those that are impacted by the proposal, the proposal needs to be able to be read in layman’s terms.
- Include a definition of the terms used.

Byrne asked if the PC was in a general agreement on how staff is scoring the riparian areas for those that would be deemed significant and the areas that would not. The Commissioners agreed. Fleming said that she would like to see how the system was used.

## ACTIVITY UPDATE

Byrne handed out an article from the Register Guard (Exhibit C) regarding an egregious case of a violation of open meetings law.

## NEXT MEETING:

The next meeting of the Planning Commission is February 7, 2011.

## ADJOURNMENT

Hearing no further business, Chair Faller adjourned the meeting at 7:20 p.m.

Submitted by

Reviewed by

*Signature on file*

*Signature on file*

Sheena Dickerman  
Administrative Assistant I

Heather Hansen  
Planning Manager