



APPROVED June 27, 2011

**CITY OF ALBANY
PLANNING COMMISSION
City Hall Council Chambers, 333 Broadalbin Street
Monday, April 4, 2011
5:15 p.m.**

MINUTES

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

Planning Commissioners absent: Bob Kish (excused), Cordell Post (excused)

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

Others present: 22 others in audience

CALL TO ORDER

Chair Faller called the meeting to order at 5:17 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

APPROVAL OF THE July 26, 2010, and March 21, 2011, MINUTES

MOTION: Commissioner Tomlin moved to approve the minutes as written. Commissioner Wood seconded it.
VOTE: Motion **passed** unanimously.

CONTINUED CONSOLIDATED LEGISLATIVE PUBLIC HEARINGS CP-02-10 AND DC-06-10

Chair Faller called to order a continued consolidated legislative public hearing regarding amendments to the Albany Comprehensive Plan Chapters 1, 2, 7, 8, 9 and Plates 3, 4, and 6; and amendments to the Development Code Articles 1, 2, 3, 4, 6, 9, 11 and 22 to implement Statewide Planning Goal 5.

Community Development Director Greg Byrne explained the meeting procedures. This is the third and final meeting of the Planning Commission (PC), after the public hearing closes there will be deliberation for a final recommendation. The City Council (CC) will make the final decision to amend the Albany Development Code (DC) and the Albany Comprehensive Plan (CP) to comply with the states requirements for Goal 5. This is the final element to complete Periodic review, and will be submitted to the State for their approval.

Chair Faller asked for a show of hands of who planned to testify (approximately 10). He limited the individual testimony to 5 minutes per person. He also asked the public not to repeat testimony that was submitted in the record at the last two public hearings.

Chair Faller opened the public hearing at 5:20 p.m.

DECLARATIONS:

Chair Faller asked for any declarations, including *ex parte* contacts and site visits.

City Attorney Jim Delapoer said that the PC needed to explain who the *ex parte* contact was with and what the substance of the communication was. The reason for this is the PC's decisions are based on the evidence presented at the hearing. When discussion takes place outside of the hearing there may be something discussed that the public may want the opportunity to challenge and respond to.

Commissioner Davis declared that he was contacted by Mr. Merle Mitchell. Mitchell brought up how riparian habitat may affect the value of his property. Mitchell informed him that he had an agreement to maintain the creek with the water control district (Grand Prairie Water Control District, GPWCD). Their discussion is completely contained in the letter submitted by Mitchell at the previous public hearing.

Commissioner Wood declared he had talked with Scott Lepman and no new information was shared other than what has been stated in Lepman's testimony.

Commissioner Rouse declared that she visited three properties located on Thornton Lakes: one on Jones Place and two on Thornton Lake Place to see the steepness of the banks. She also visited the Bark Place property. The gentleman had mentioned that he was against the riparian corridor because it infringed on the use of the area where he stockpiles his bark dust. She also talked with Dan Watson; the content was the same as he presented at the last public hearing. She had a site visit to the Lepman property and toured it with Candace Ribera to look at the wetlands, the bank and its steepness. They took some measurements from the edge of the wetlands to the edge of the property on the northside of Columbus Street.

Commissioner Styler declared that he was also on the tour of the Lepman property. He participated in the measuring process. He received no new information.

Commissioner Tomlin declared that he was also on the tour of the Lepman property. He said that he had subsequently talked with Candace Ribera. He was informed of background information from Pacific Habitat Services where it states that there are alternate ways to figure setbacks. Also, a buffer could be reduced to 25 feet if delineation is conducted and approved by the Department of State Lands (DSL). He also received photos by email on damage being done on the banks of the Willamette River. One photo showed someone driving a four wheeler along the water's edge; another was of someone camping within the Willamette Greenway. The property owner had asked a City Councilor what can be done to stop them. He was informed that there are ordinances in place.

Commissioner Fleming had nothing to declare.

Chair Faller declared that he had talked with the Albany Democrat Herald around February 25 or 26, 2011. The content was reported by Cathy Ingalls in an article printed in the February 28, 2011, paper.

STAFF REPORT:

Planning Manager Heather Hansen gave an overview of what is required to comply with Goal 5 and revisions made since the last PC hearing (pages 1-2 of agenda).

Fleming pointed to the cluster development standards in Sections 11.450 and 11.460 and asked if upgrading a degraded resource would count if it was part of the OS zone. Hansen replied no. It would only apply to those areas that are currently not zoned OS. Fleming asked if there was wording in the code that would encourage upgrading in OS. Hansen replied there are mitigation requirements.

Regarding mitigation, Hansen said another change was the bonding requirements went from a five year period to a two year period. There is a check in after two years, if the plants have a survival rate of 80 percent then there is no need to hold the bond longer. If there is not an 80 percent survival rate then it would be extended another two years.

PUBLIC TESTIMONY:

Jack Burrell, K& D Engineering, 276 Hickory, Albany, was representing a couple of different properties and requested more than 5 minutes. The PC agreed. Showing a map (Exhibit I, page 1), he pointed out that the blue area is part of the City that is in the Urban Growth Boundary (UGB) but outside the City limits. It is 2,500 acres. He pointed out on pages

2 and 3 of Exhibit I the areas that are impacted by the wetlands boundary and the riparian area boundary. His point was that the proposal will have a huge impact on these areas. He asked the PC for time to evaluate and find the places where the wording is not clear or subject to interpretation in the proposal.

Burrell, representing Grace Point Church, said that they are moving to a new site shown on map (Exhibit J). The issue for this property is the term significant versus non-significant wetland. There is not a single wetland in the City or UGB that will not have to through the DSL. The difference is, once there is an overlay, there will be less discretion to be able to do things on a property.

Burrell commented that there are classifications of wetlands that do not make sense. He pointed to the wetland in the middle of the property (Exhibit J) which is classified as significant. The wetland to the north of it is classified as non-significant. He wanted an answer regarding the difference. He said that part of the problem is the wetland inventory study was done in 1997 under a different classification system to determine significance. He met with a local wetland consultant who said the Grace Pointe property may not be classified significant under the current rules. He asked that the Code allow that if DSL changes the classification of a wetland to non-significant that wetland overlay be amended.

Burrell moved on to the Mitchell property (Exhibit K). He pointed out that there are wetlands running through the property. There is also a wetland corridor around a ditch along the highway frontage. He is unsure if there is a way to get into the property or across the creek under the proposed guidelines.

Burrell asked that the record be kept open for the public to review the new material. Every review that the PC has allowed has helped improve the proposal.

Dan Watson, 710 East Thornton Lake Drive, showed a large picture of what the riparian and habitat overlay zone would look like (Exhibit L). The turtle overlay zone encompasses most of the houses on the north and west sides of the lake.

Watson expressed appreciation that staff had incorporated some of the things that had been asked for. On the riparian zones there are some issues with the method that was used to evaluate the wetlands, in the case of the property that Burrell had spoken of. It was deemed critical because of its water quality function.

Watson read a letter (Exhibit M). He is requesting that if a wetland is reclassified non-significant and approved by DSL, if it would be removed from the overlay district. He then referred to the OAR language regarding where the riparian corridor is determined when there is a significant wetland. The state is telling staff to go to the edge of the wetland and then add 50 feet. It could be interpreted to mean that it be done to ensure that the wetland is in the riparian corridor because it might function as part of the riparian corridor. He suggested the PC adopt it as such in order not to add an additional 50 feet.

Watson read OAR 660-023-0100 (8) regarding wetland conservation plans complying with Goal 5.

Ed Schultz, PO Box 667, Albany, representing Samaritan Health Services, handed out a letter (Exhibit N). He asked that the PC follow Burrell's advice and to wait and figure out what the proposal actually means.

The hospital property is located east of Mitchell's property as shown in Exhibit O. The property is covered with wetlands. The riparian corridor runs through the property and around the ditch along Highway 20, restricting access to the property. A concern is if there are enough scientific facts to have a riparian corridor for the ditch on Highway 20. The second concern is if there is an overlay zone and a technical review is done to change the inventory, would that mean that someone will have to go through a zone change in order to change the overlay on the property.

Schultz asked the PC not to make a final decision tonight. People will not know the significance of what is done today until they come to the City to do something. Then it will be an established plan and they will have to comply with the regulations. He urged the PC to take additional time. These are serious issues.

Ralph Nauman, 2304 Violet Avenue NW, Albany, read his letter (Exhibit P). He noted that neither of the suggested changes made it in the rewrite. He recommended that the PC change the proposal (impact area in habitat assessment overlay) from 1,000 square feet to 2,000 square feet. This change will affect less than 1 percent of the resource. He

believed it was a better balance to allow property owners use of their own land and would not harm the resource. He urged the PC to instruct the staff to make this change. It will cut down on studies that the property owner has to do to make changes to their home.

Candace Ribera, 545 Vista Avenue SE, Salem, representing Scott Lepman read her letter, Exhibit Q.

Scott Lepman, 100 Ferry, Albany, stated that this was a serious vote that the PC would be making regarding the wetlands. He read his submittal letter (Exhibit R).

Jesse Rupp, 35711 SE Kennel Road, Albany, is the chairman of the Grand Prairie Water Control District (GPWCD). He read the letter submitted by the maintenance manager, Lyle Krabill, for the GPWCD.

Phil McFadden, 524 NW 34th Street, Corvallis, raised a concern regarding the proposed revision to the Code in section 6.410, the mitigation standards being managed by the ODFW (Oregon Department of Fish and Wildlife). His concern was regarding how busy the ODFW would be to responding to minor mitigation issues. To designate a specific agency could lead to a two year process. He asked if any other professional advice could also be used for mitigation. Rouse asked if he felt the language was restrictive if he wanted to mitigate his property for enhancing turtle habitat. McFadden agreed.

McFadden added that there seemed to be a preference for converting marginal to good quality. He believed that good quality could always be made better.

Jack Burrell, returned to the dais. He asked what the City's position was when a property currently in the county but in the City's UGB comes in for annexation.

Diane Nauman, 2304 Violate, Albany, stated that the City staff has said that they have to do a blanket overlay for turtle habitat. She stated that the OAR does not dictate how the turtle habitat overlay is placed around Thornton Lake. It can be placed in specific areas and left out of other areas. She asked if the City can repair North Albany Road without a turtle habitat study. She also asked about driveways.

STAFF RESPONSE:

Hansen stated that regarding the urban growth management agreement with Linn County, they pass on proposed development for the City's review. The significant wetland overlay would only affect properties inside the City or when properties outside the City are annexed. She believed that the County has a 50-foot setback from wetlands, creeks and wildlife habitat.

Hansen pointed out that on Burrell's maps it shows the number of properties being affected and in reality it may only be a small portion of each affected property.

Regarding non-significant wetlands, they are still wetlands. The City must give notice to DSL and nothing is changing. If a wetland is deemed non-significant, there is a process to amend the boundary. It is a plan amendment. A scientist would look at the wetland using the same criteria required by law.

Hansen said that the OAR says that if a riparian corridor touches a wetland that it goes around that wetland. Referring to the Highway 20 drainage ditch, OAR says that if the waterway was never a creek but is drainage then it would not require the riparian corridor. This will be an administrative change.

Hansen said that for the Dunlap Street wetland, the criteria are the same today as used in 1997. It was deemed significant because the water quality function is intact.

Hansen stated that the overlay districts do not affect anything that is happening inside of a house.

The local wetland inventory has already been approved by the DSL. Staff has been told that if someone wants to change it then another assessment needs to be done. If it is possible to do the change administratively, staff is willing to incorporate it in to the code.

Hansen stated that the wetland conservation plan language in the OAR is allowed but is not part of the Safe Harbor method that is being proposed. Very few cities do them; noting West Eugene is the only one she knows of.

Hansen explained that there are two ways to challenge a significant resource or the overlay zone. One is an analysis that shows that it is not a significant resource. The second is an ESEE analysis where all the consequences are weighed of impact to the resource either completely, partially, or not at all. This would be a Comprehensive Plan amendment and Development Code amendment.

Hansen noted that Nauman made two suggestions at the last PC but the PC did not instruct staff to implement those suggestions.

The wildlife habitat ESEE analysis looked at a specific resources and specific impacts. It proposes a 100-foot overlay with up to 1,000 square feet impact before an assessment is done. There are not provisions to exempt specific properties, it is all or nothing within the overlay like the riparian corridor.

Regarding the Lepman property, Hansen said she was told by Janet Morland, of DSL, that the delineation done as part of the consent order for illegal fill is not an approved delineation. It is only relevant to the consent order. Lepman would need to submit a delineation for DSL to approve.

Hansen commented that on the Lepman property, there has never been a subdivision reviewed or approved. This property is outside the city limits. It has a lot of Open Space zoning and illegal fill was placed on the property to create an area for lots.

With regards to the GPWCD, this is an example of where the state and federal requirements are in conflict with one another. The management practice of keeping waterways clear conflicts with current and best management practices for floodplain and natural resource protection. Staff is recommending that the state and FEMA be involved to inform the City on how to comply with the different regulations required.

Byrne added that there are some misunderstandings in the Krabill letter. The proposed language exempts the removal of non-native vegetation in the riparian areas. Hansen said that maintenance is also included as an exemption, as long as there were no impervious surfaces added or native vegetation removed. If the engineered portions are armored or paved or piped, and done legally, they would not be subject to the regulations (page 51 of agenda packet).

Hansen gave the reason that ODFW was in the mitigation review proposal. Currently, if a species is listed, ODFW can require a mitigation plan for impact to the development. This is similar to the DSL or the state archaeologist. If development is proposed where it is believed that there is habitat, for listed species, ODFW would review and decide what the mitigation requirements would be. Staff does not have the capacity to evaluate wildlife assessments or to decide how it should be mitigated. She clarified that if DSL, Army Corp of Engineers, or ODFW decides on a mitigation plan then the City would not impose additional requirements. Byrne added that staff tried to avoid process duplication in the proposal. If DSL does a delineation, staff accepts the delineation. If ODFW approves a habitat plan, staff accepts the plan.

Hansen said staff could add that anything required for a mitigation plan would be exempt, such as tree removal.

Repairs to North Albany Road would be exempt. Any repairs to existing developments are exempt.

Regarding the turtle habitat overlay boundary, it is a result of an ESEE analysis. It can have a different result based on criteria used in the ESEE analysis. The recommendation is to apply it equally and not to exempt specific properties. An estimate of a habitat assessment for a 10,000-square-foot property would be approximately \$200 at \$30 to \$40 an hour. Staff did not have to apply a blanket overlay, but absent site specific information on the turtle habitat staff went with the best data. Once an assessment is completed the overlay boundary could be amended and made site specific. The proposal has been changed to enable an easy boundary amendment following a habitat assessment.

Delapoer explained the Lepman consent order (Exhibit S). Usually people believe that consent, from government, is giving permission for something. A "consent order" is when someone that has violated the law consents to a sanction.

It is not the government consenting to an action. He read the highlighted portions of the displayed consent order. There is a civil penalty and a restoration plan. It is not intended to be a wetland delineation. The term consent order, as used here, is different than an approval from DSL.

Rouse asked if the PC was under legal obligation to extend the meeting based on the requests to keep the record open. Delapoer responded no. Byrne added that the City Council will hold at least one public hearing with additional public testimony.

Rouse asked if on page 51, Section 6.280, if Truax, Burkhart, Periwinkle and Cox Creeks would be exempt because they are armored. Hansen affirmed if they met the criteria. The creeks would still be left on the inventory because they can change over time.

Rouse pointed out the different terminology used of measuring the riparian corridor either from top of bank, the edge, or high water line. Hansen replied that the consultant's recommendation is for the ordinary high water mark (OHW). The OHW is where the highest water goes. There is an impression in the bank and the vegetation changes. Rouse asked where the wetland is measured. Hansen replied that OHW does not apply to wetlands. The edge of the wetland is the edge of the delineation.

Rouse asked if on page 45, Section 6.010, it should be the UGB or the City. Hansen replied that it could say the City of Albany. Delapoer said that the City can impose regulations within the UGB. Byrne advised to leave the language. The Comprehensive Plan covers the UGB.

Rouse asked if on page 47, Section 6.400, staff was saying that in some cases the open space is not in the riparian corridor and not in the significant wetland overlay districts. Hansen replied yes, in some cases. Planner II Anne Catlin responded saying the Calapooia was an example.

Rouse pointed out that in Section 6.050 it says "public" water and storm water but it does not say "private" being available. Hansen replied that staff tried not to change too much of the existing language. Catlin replied that the language includes all existing uses, and public is intended.

Byrne said that there were some cases of misunderstanding of riparian corridors versus significant wetlands. The riparian corridor does not preclude access to property. The issue is where access will be sited and doing the minimum damage.

Faller closed the public hearing at 7:03 p.m.

PLANNING COMMISSION DISCUSSION:

Rouse recommended including the word "private" in section 6.050 (2). Fleming pointed out that it does not exclude private. Hansen suggested removing the word public. Rouse agreed.

Rouse asked when the assessments were done. Hansen replied that the wetland assessments were done between 1997 and 2002 and then updated in 2008 and 2009 by the consultant. One of the criteria is if it is within a quarter of a mile of a water quality limited stream that they be added as significant if they are helping improve the creek for the reason that it was listed. Any fill permits or delineations were updated. Rouse asked if the property on Dunlap had been looked at since 2009. Hansen replied that a wetland may not look significant but it may still have a water quality function or hydrologic function making it significant.

Rouse asked if Section 6.300, on page 52, means that if someone wanted to improve their roadway they would be exempt. Hansen affirmed, as long as it was existing.

Rouse asked if Section 6.300 (7) a person would be able to redo their lawn. Hansen affirmed. Staff could add existing landscaping and lawn area. Delapoer suggested adding "maintenance and restoration". Hansen suggested "maintenance and replacement" instead.

Rouse asked what would happen if someone subdivided their property and put in a new lawn in the Thornton Lake area. Hansen explained that it would be a mitigation requirement if it is within the overlay districts. If an overlay completely impacts a property, there is a provision for an adjustment for up to 3,000 square feet of impacted area. The idea is not to remove native vegetation and replace it with lawn.

Rouse asked if for Section 6.310 (3) lakes should be added to the list. Hansen replied that it should say water resources.

Rouse pointed out that on page 56, Section 6.410, under Mitigation, it says 2,000 square feet. Hansen said that the 2,000 square feet would initiate the mitigation process. Two thousand square feet also initiates the EPSC (Erosion Prevention and Sediment Control) permitting process.

Chair Faller called for a break at 7:14 p.m. The meeting reconvened at 7:21 p.m.

Davis asked if on page 47, conditional uses, would be included in the riparian corridor and the wildlife habitat overlay. Hansen replied that those are uses allowed in the Open Space zoning district, any other overlays would still apply.

Davis asked if there was a limit to accessory buildings and green houses. Hansen replied any accessory building related to a use that is allowed in the Open Space. Catlin added that there are review criteria for conditional uses to determine their impact. It will depend on the site, location, and impacts they may have. There is no size limit.

Styler asked if plant nurseries should be allowed. Byrne said that the Open Space zoning district is not an overlay. It must provide for permitted uses. He directed the PC back to the purpose statement found on page 46. One of the reasons it is a conditional use and not a permitted use is for staff or the PC to have the ability to impose conditions in light of the purpose and intent of the district.

Wood asked what remedies could be used for the Samaritan Health Services and Grace Pointe Church properties. Hansen said the riparian corridor along the ditch would be removed. Wood asked if the wetland that has been delineated would need to be moved or the property owner would have to buy wetland credits. Hansen replied that with the Safe Harbor significant wetland overlay those would not be options. The significant wetland has to be protected. She pointed out that most of the wetlands on the Samaritan property are non-significant. The Grace Pointe Church has a significant wetland, a case would need to be made that the wetland is not significant.

Wood asked if the language proposed by Watson made sense. Hansen concurred, but suggested not referring to the OAR, as it changes. She recommended adding language that is similar to if a delineation or determination is approved by DSL and would automatically change the map. If a different methodology is approved by DSL then there could be a process for an administrative change without a plan amendment. Byrne agreed.

Styler asked if there was a requirement to remove invasive species. Hansen replied no.

Styler asked if someone could only have one house in the OS zone, why subdividing the property would be allowed to take place, Section 6.060. Hansen replied there are instances where a large property has split zoning. This would allow someone to subdivide an area if there is a buildable area outside of the Open Space zone. Byrne said the intent is that it would not create additional lots in the Open Space zone.

Styler suggested Sections 9.206 and 9.207 that there should be something that allows for looking at the specific species of trees. Hansen said that staff is not proposing revising the tree protection ordinance at this time. Staff will add this to the "parking lot" issues to be addressed at another time.

Styler mentioned a property that had removed 5 large trees and was adjacent a property that was not allowed to remove trees because of a documented acorn owl. He asked that the City Forester be given specific direction of duties as written in the code. Byrne recommended having the City Forester come to a PC work session. Fleming suggested meeting with the Tree Commission prior to meeting with the Forester.

Styler suggested that the CC form a natural resources board or commission to assist with communication so that residents can come before a small group to ask questions, rather than to a public hearing before the PC or CC. Fleming

asked if the role of the committee was to provide a decision or to bring issues to the PC. Styler said it would be an advisory role to resolve issues before the need to come to the PC or CC.

Tomlin recommended striking the word “maximum” from page 19, line 3. For page 13, #6 he asked if the language should be more specific. There are some possibilities where drainage tile could be used for mitigation of fertilizer contamination of wetlands downhill. He asked if this would be a possible reason to shorten the 50-foot zone to allow use of a property. Byrne said that the 50-foot setback can’t vary because it is a Safe Harbor setback.

Rouse asked if on page 6 the language was restrictive where an apple tree could not be planted if it is not native. Byrne replied no.

Rouse said that on page 6 it talks about protecting the City and on page 7 uses “UGB”. Delapoe stated that it was not an inconsistency. Rouse recommended that to be consistent to include the UGB in the goal if it is going to be pointed out in the implementation method. Hansen agreed.

Rouse pointed out on page 7, 1 (b), if the City would regulate wood cutting, timber and development in the UGB. Hansen said it is already regulated. Catlin stated that there are regulations in Article 9 and they are consistent.

Rouse asked if on page 14, #1, the proposal was that all floodplains and riparian corridors be zoned Open Space. Byrne explained that the language here is referring designating to “open space” in general, not the zone. Discussion ensued. He said it is a policy of the Comprehensive Plan to have open space, one way is to zone it as Open Space, the other way would be to set it aside as open space.

Rouse expressed the need for the PC to read the new information and understand it before making changes. Delapoe said that the PC can make changes to address the comments without another public hearing.

Faller asked if the PC had a motion or suggested changes.

Tomlin recommended that the habitat overlay be delayed until a study has been completed. He liked the idea of a citizens group working with the City. Faller stated that he agreed with the state’s 50-foot corridor but he would not support a habitat overlay of 100 feet. Fleming said that a habitat overlay should be implemented. She liked the citizens group. She emphasized that the 100-foot corridor is the only scientific recommendation to protect habitat. The 100 feet does not change existing uses. It allows for 1,000 square feet of disturbance, a size of a small house. It would protect the property if there were new property owners. To implement 50 feet now until a study is completed would allow for 3 to 5 years of degradation. The 100 feet offers more protection without burden.

Tomlin pointed out that the majority of the PC did not want the 100-foot habitat assessment. Byrne responded that staff has a responsibility to give the best possible professional recommendation. The PC does not have to accept staff’s recommendation. To the degree that staff’s recommendation differs from the PC, staff has the responsibility to give their best professional judgment to the CC. Staff will respect and honor the decision of the PC.

Wood asked what the consequences, including monetary, were at the state level if the PC recommends 50 feet and the state thinks it should be 100 feet. Byrne said the state may fail to accept it and it may affect state grant funds. Wood asked if a compromise of 75 feet would garner support for or against at the state level. It is unknown. Tomlin stated that there is no specific requirement for habitat protection. Byrne said if the proposal does a good job of protecting the resource then the state would probably accept it. Tomlin asked about formalizing a citizens group to help protect the habitat Byrne replied that protection is still needed in the code.

Hansen stated that when the ESEE analysis approach is used, there must be clear and objective standards for development. The clear and objective standard is the 1,000 square feet impact area. The wildlife habitat assessment is the alternative. If the City went with the 50-foot riparian corridor the protection would no longer be clear and objective because it overlaps with the 50-foot riparian corridor. The City would not be able to require an assessment in the 50-foot riparian corridor.

Catlin asked the PC if they would consider Mr. Nauman’s request of increasing the impact area to 2,000 square feet while keeping the 100-foot overlay, it would still be clear and objective.

Rouse said that since there has not been an assessment of where the turtles are she could not support 100 feet around the lake. Byrne replied that the City will not have that level of information for a while and there needs to be something to protect the resource.

Davis proposed a compromise of having a 75-foot habitat overlay. It would provide protection for the turtles until an assessment was completed.

Delapoer stated the options the PC had in making a decision are: to table, recommend as presented, recommend against, or recommend as modified.

Fleming summarized the options for the habitat overlay. Davis suggested accepting the language that Dan Watson presented. Byrne noted that staff will capture the wording changes.

Wood asked Delapoer if the PC went into a work session to outline their decision would it need to come back to a public hearing. Delapoer responded that that it could be a public meeting not a public hearing.

Byrne reviewed the decision points. The main issue is to determine the habitat overlay distance and impact area.

Styler asked to see the final version before the proposal goes before the CC.

Tomlin suggested another alternative for habitat protection of using the 50-foot riparian corridor, with no expansion without a habitat assessment being completed. Hansen reminded that the option would not be clear and objective.

Commission Action:

MOTION: Wood moved that the PC recommend that the CC approve as modified the proposed Comprehensive Plan and Development Code amendments to implement statewide planning Goal 5; the word changes that have been captured including those from Dan Watson, the 75-foot turtle habitat overlay with a 2,000 square foot exemption. The motion is based on the findings and conclusions of the staff report and the testimony presented at the public hearings. Davis seconded it.

Davis said that he was more favorable of the 1,000-square-feet of impacted area. Fleming agreed, but noted the provision was still there are about 20 percent.

VOTE: Motion **passed** 5-2 with Rouse and Styler opposed.

Faller announced that the City Council would hold a public hearing on Wednesday, April 27, 2011, at 7:15 p.m.

ACTIVITY UPDATE

The PC will have two public hearings on April 18, 2011.

Byrne announced that the CC schedule for the Goal 5 public hearings has been amended. Staff has incorporated a work session with the CC regarding Goal 5 between their two public hearings.

Delapoer cautioned the PC about *ex parte* contact. When a Commissioner met with a person who has an interest in the outcome, looked at their property and heard one side of the story, it was *really significant ex parte* communication. If this proceeding was quasi-judicial, it would have been bad. He also expressed concern about violating public meeting laws. If multiple commissioners meet privately and discuss it there is a risk of being challenged of violating the public meeting laws.

Fleming asked if there was a way to arrange for the PC to see a particular piece of property. Delapoer said that the PC could make a motion to take a tour, as a commission, of a property. The tour would be a public meeting so that public would also have the right to view the property.

NEXT MEETING:

The next meeting of the Planning Commission is on April 18, 2011.

ADJOURNMENT

Hearing no further business, Chair Faller adjourned the meeting at 8:54 p.m.

Submitted by

Signature on file

Sheena Dickerman
Administrative Assistant I

Reviewed by

Signature on file

Heather Hansen
Planning Manager