



CITY OF LAKE OSWEGO Planning Commission Minutes September 14, 2015

1. CALL TO ORDER

Chair Randy Arthur called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 380 A Avenue, Lake Oswego, Oregon.

2. ROLL CALL

Members present were Chair Randy Arthur, Vice Chair John LaMotte, and Commissioners Adrienne Brockman, Ed Brockman, Robert Heape, and Bill Ward. Commissioner William Gaar was excused. Council Liaison Joe Buck was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Anne MacDonald, Stormwater Quality Coordinator; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support.

3. COUNCIL UPDATE

Councilor Buck updated the Commission on Council actions and activities.

4. COMMISSION FOR CITIZEN INVOLVEMENT – GENERAL UPDATES

Commissioner Ward was reappointed Commission liaison to the Mayor's meetings with neighborhood chairs. Announcements were upcoming tours of Palisades and Old Town Neighborhoods; the Parks and Recreation Department's open house; public meetings hosted by the Boones Ferry Road advisory and by LORA; and an opening on HRAB.

5. CITIZEN COMMENT – Regarding issues not on the agenda

Carolyn Jones, 2818 Poplar Way, Lake Oswego, 97034, read aloud and submitted written comments regarding City employees' lack of respect for private property owners. She offered the example that City employees who trespassed on her property to maintain a sewer line did not listen to her when she told them the easement was actually on her neighbors' property.

Dave Sengenberger, 25 Hillshire Drive, Lake Oswego, 97034, read aloud and submitted written comments. He discussed that the Planning Department had an "urbanization agenda." He asked the Planning Commission to advise the City Council to focus on maintaining the character of Lake Oswego. Commissioner A. Brockman advised Mr. Sengenberger to discuss his concern with the City Council.

6. MINUTES

6.1 July 27, 2015

Vice Chair LaMotte **moved** to approve the Minutes of July 27, 2015, as amended by Commissioner Ward, Chair Arthur and Vice Chair LaMotte. Commissioner Ward **seconded** the motion and it **passed 5:0:1**. Commissioner A. Brockman abstained.

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6.2 August 16, 2015

Vice Chair LaMotte ~~moved to approve the Minutes of August 16, 2015~~. Commissioner E. Brockman ~~seconded~~ the motion and it **passed 5:0:1**. Commissioner A. Brockman abstained.

7. **PUBLIC HEARING**

7.1 Natural Resources Program and Sensitive Lands Revisions (LU 15-0019)

A request from the City of Lake Oswego to amend the Comprehensive Plan (text and map), Community Development Code, and Zoning Map. Ordinance 2687 would amend the Comprehensive Plan by adopting a new Healthy Ecosystems chapter, replacing Plan provisions under Goal 5 (Open Spaces, Scenic and Natural Resources), Goal 6 (Air Resources Quality), and Goal 15 (Willamette River Greenway). The ordinance would also amend the Community Development Code (CDC) and Zoning Map to implement revisions to the Sensitive Lands overlay districts (LOC 50.05.010 and LOC 50.07.004.8), consistent with the Healthy Ecosystems chapter. Code cross-references contained in the CDC, LOC 42 (Streets and Sidewalks), LOC 47 (Signs), and LOC 55 (Trees) would also be amended for consistency with the CDC. Staff coordinator is Scot Siegel, Planning and Building Services Director.

Chair Arthur opened the public hearing. Mr. Boone outlined the applicable criteria and procedure. At time of declarations Chair Arthur related he was a shareholder in the Lake Oswego Corporation; Commissioner A. Brockman related she was a member of an easement and paid dues to the Lake Oswego Corporation; and Commissioner Ward related that he owned property with a Sensitive Lands overlay on it. No one challenged any Commissioner's right to consider the application.

Staff Report

Mr. Siegel outlined the history of compliance with Statewide Planning Goal 5 starting in 1984 when the City's natural resource protection program attained compliance with the state goal. He explained that later, when Metro adopted rules in Title 3 (related to water resources) and Title 13 (related to wildlife habit), the City's program had then attained substantial conformance with those rules as well. He pointed out that some resources were still being protected by the City's original protection program predating Metro rules and Sensitive Lands regulations which was LODS 3 and 4 related to streams and wetlands. He acknowledged that it was confusing and problematic and that the current proposal would retire that code. Staff believed the proposed Sensitive Lands regulations could actually be more flexible than the older code.

Mr. Siegel summarized that the proposed ordinance would update the Comprehensive Plan by replacing Goal 5 and a section of Goal 6 as well as Goal 15 Willamette Greenway with one new Healthy Ecosystems chapter. He explained that it would place Resource Protection (RP) District buffers in their correct locations, show the streams properly aligned and result in Sensitive Lands regulations being removed from more properties than added. He clarified that added properties would be the result of corrected stream alignments and appropriately applying the buffers; and, (after a hearing) it would add properties that had been proposed for designation in 1997 when their owners contested designation but only where the property met the criteria for designation.

Mr. Siegel discussed replacing Resource Conservation (RC) overlays from private property with an alternative approach to meeting Title 13 which was the voluntary Habitat Benefit Area (HBA) incentive program. He reported that staff had looked at RC resources at the level of individual tree groves and the analyses supported that the City could remove RC districts from

private property where the change represented only a *De Minimis* (meaning “very small”) change in resource protection. He noted that basically meant they could remove RC on already-developed residential properties that were not further dividable. He also explained that the HBA program would replace RC districts on dividable private property and private property with Title 13 riparian habitat. He explained that those property owners would see that layer of regulation come off but they would still have to comply with existing standards such as those related to open space requirements, hillside protection, and the tree code. Staff believed that some of those regulations, such as Hillside protection standards for steep slopes, might provide even more protection than the RC District did. He also discussed the City Council’s intent to hold the City to the highest standard, and on public land and private open spaces, where RC districts would remain, the level of protection would increase from 50% to 85% of the RC District. He advised that it would help the City meet the Metro requirement to provide certainty of protection. He confirmed that staff had discussed this with the School District.

In regard to Title 3 compliance Mr. Siegel discussed that the proposal could correct situations where the stream channel had not been correctly identified or had changed and where there were gaps in protection. He provided an example where buffers would be evenly applied to each side of a stream and address situations where a buffer stopped just because of a property line. He explained that where an RC District was removed the width of the RP buffer would extend 50 feet (where the edge of an adjacent RC District could be combined with the RP District) to meet Metro’s buffering requirement. He clarified that improved mapping technology meant resources were more accurately mapped, but they were still subject to verification in the field and delineation prior to development. He noted that the City did not charge a fee for processing Sensitive Lands applications.

Mr. Siegel discussed incentives, options and flexibility for property owners, including density and floor area transfer from a resource area to a non-resource area on the same property or to an adjacent property under the same ownership. He discussed exceptions in the current code that would be continued that allowed small encroachments. He noted that neighborhoods that had developed prior to the Sensitive Lands code, that had been required to protect the same open space areas under the City’s original Goal 5 program, would be exempt if staff found they were still meeting those standards; and they would be identified on the Zoning Map. He explained that the existing code’s map correction process would be carried forward and that it allowed a boundary change or removal of the designation if the resource had changed due to natural conditions and the designation was no longer warranted.

Mr. Siegel reported that notification of proposed legislation had been mailed to Sensitive Lands property owners. He clarified that staff had not mailed Measure 56 notice to owners of properties with an existing overlay that might be expanded only because the mapping was now more precise. He explained that under the current and proposed code the actual effect of the regulations would not be known until the designated resources on the property were delineated. He indicated that staff offered to go out to look at individual properties to see how Light Detection and Ranging (LIDAR) mapping was working when invited by the owners. He clarified that the intent was not to increase the level of regulation on private property; the City Council’s goal and direction was to reduce it to the extent possible while using the most accurate mapping.

Mr. Siegel clarified that the Zoning Map applied to land within the City limits and that the Comprehensive Plan Map applied to land both inside and outside the City (within the Urban Services Boundary). He pointed out that it guided future zoning of annexed land. He explained that the Sensitive Lands map had been made a subset of the above maps because

it was practical and helpful to show the environmental zones on a separate map. He clarified that all of the zones could be seen on the City's online interactive zoning map, where the user could filter which layers of information they wanted to see.

Questions of Staff

The questions were in regard to why there were no overlays shown on railroad rights-of-way; how much more land on private properties would be added to RP Districts as a result of the new mapping technology; and, why Measure 56 notice had not been sent to everyone affected by existing or proposed Sensitive Lands overlays. There were requests for specifics about exceptions that allowed small encroachments into the RP District and HBA incentives related to height.

Mr. Siegel related that staff had sent the legislative notice to all owners of property with Sensitive Lands. They had sent Measure 56 notice to those with a proposed new Sensitive Lands designation who currently did not have a Sensitive Lands overlay on their property and currently did not have to delineate when they developed, because Measure 56 notice was specific to a proposed change that would limit use of property. He explained that the current proposal would not increase the area that would no longer be available for development on properties that were already designated, but it would update the mapping to more closely reflect what was actually there. He clarified that the designated resources would have to be delineated (surveyed) when the properties were developed. He mentioned that the incentives program offered flexibility in aspects such as lot size, setbacks, density and floor area transfer, and height.

Public Testimony

Lou Lauman, 15537 Village Park Court, Lake Oswego, 97034, questioned why the map should show Sensitive Lands over planned developments when the overlay might not apply there. He stated that it would generate questions and be an obstacle to selling the property. He suggested that if the Commission was going to recommend an overlay with a disclaimer the disclaimer should be very clear and easy to understand. Mr. Siegel indicated that the Planning Commission had previously discussed that and staff would work on it.

Charles (Skip) Ormsby, 770 SW Birdshill Road, Portland, Oregon (97219), Co-Chair of the Birdshill CPO/Neighborhood Association, discussed concerns about the relationship between the 2015 TMDL plan and the Clean Water Rule (aka "Waters of the U.S."). He advised the City to ditch the Rule and all references to it in Lake Oswego plans and policies, cautioning that no one knew how the Rule was going to affect individual tax lots within the Lake Oswego Urban Growth Boundary (UGB) in terms of fees, fines, and compliance requirements; and, it gave planners unprecedented latitude in interpretation and use of technical tools so there was potential for abuse. He asked the Commission to scrap the current approach until those aspects were examined in public venues where property owners would learn about it. He read portions of his written testimony aloud pertaining to Abstracts 01 and 02 from US Army Corps of Engineers' (Corps) documents. He noted the Corps did not want to be associated with the Environmental Protection Agency (EPA) in regard to Clean Water Act regulations. He asked the Commission to remove all references and linkages to them immediately and table the proposal until Waters of the U.S. issues were resolved. He also discussed his concerns related to not getting timely notices and responses to his requests for information. He inquired why there were no overlays in the railroad rights-of-way and the Willamette Shoreline and Tryon Cove Park annex areas.

Corrina Chase, 11321 SW Terwilliger Blvd., Portland, 97219, Coordinator, Tryon Creek Watershed Council, discussed why HBA areas would not be adequate for meeting Metro and state requirements and how the result could negatively affect the character of Lake Oswego in terms of natural resource benefits. She advised that how the local community addressed their streams affected the fish in the Willamette River basin. She explained that decreasing the level of protection of riparian areas would worsen the impacts of urbanization on watersheds and fish habitat and the lack of canopy cover and the amount of impervious surface raised the water temperature and created more flash-flooding-caused erosion and sediments. She discussed concerns that the voluntary protection program would not result in equivalent actual protection; hillside protection regulations did not seem to require adequate canopy cover and vegetation to prevent erosion and slope failure; the 50-foot buffer was only the minimum protection and did not address the whole scope of impact on creeks and the slide risks to properties; and there would be stormwater impacts from the results of the density transfer component of the proposal. She supported LIDAR mapping because it was more accurate and she encouraged the City to partner with the watershed councils in regard to enhancing Homeowner Association (HOA) green spaces in the future, relating that HOA members frequently asked her organization for help. She asked the City to do anything they could when they made land use decisions to gain more protection and create better habitat.

John (Cap) Hedges, 11950 SW Bryman Avenue, Portland, 97219, indicated he owned a totally encumbered acre of land on Poplar Way. He asked for and received confirmation from Mr. Siegel that the proposal would provide some flexibility for reasonable development on totally encumbered lots.

William Holmer, 1000 Forest Meadows Way, Lake Oswego, 97034, who lived outside the City within the City's Urban Growth Management area, inquired about the process for delineating resources when property was going to be developed. Mr. Siegel advised the City's zoning regulations did not apply there but the county had stormwater management standards. In regard to the process of delineation he clarified that staff did not actually do the delineation but worked with the property owner to ensure they understood the rules. Mr. Siegel explained that a land owner who was preparing to develop typically used a qualified professional to delineate the resource area and then staff reviewed it; per City Council policy they did not charge a fee for the review.

Phil Zald, 13430 Atwater Lane, Lake Oswego, 97034, spoke for the Forest Highlands Neighborhood Association. They inquired about a specific gap in the mapped RP District in the vicinity of Country Commons Road and Atwater Lane. Mr. Siegel focused the interactive map on the area, which was outside of the City and indicated that that staff would look at it because if it had a stream or wetland on it the map should show the county-required buffers. He advised that designating the resource there would make sense so that if and when the property was annexed to the City the City could require the owner to delineate it. However, the City's current policy was not to require designations upon annexation. Mr. Siegel confirmed that staff had received written testimony from Chris Robinson regarding Measure 56 notice.

Jim Wick, 1817 Cedar Court, Lake Oswego, 97034, indicated that the proposal was not addressing the right problem, which was that runoff from impermeable surfaces of existing development increased from almost nothing to high peak flows when it rained and carried a lot of silt downstream. He advised that the answer was better stream management and better infiltration. He described a stream in his area that was in a culvert until it came out from under South Shore Boulevard. He held that it was not a stream even though it was mapped as one – it was a storm drain and its volume ranged from that of a garden hose to a flash flood. He

advised that it also fed a pond in his yard and every year he cleaned the pond and removed about ten yards of silt. He inquired if he would be allowed to repair the little dam that collected the silt if the dam gave out. When advised that the proposal was the City's means to comply with Metro requirements he suggested someone needed to talk to Metro about it. Commissioner Ward anticipated that because new development was now required to handle their stormwater runoff on site future development would have less impact on the stormwater system. Mr. Siegel related that staff would look at the site Mr. Wick had discussed.

David Beckett, 17738 Kelok Road, Lake Oswego, 97034, stated that he had served on the board of Three Rivers Nature Conservancy. He advised that property owners would participate in the HBA program. He referred to how well the voluntary Backyard Habitat Program was doing in Lake Oswego and that there were close to 3,000 households in the program in the metropolitan area. He clarified they had to renew every three years. He advised that when entities such as Bonneville Power Administration were required to mitigate, they provided mitigation grants and that if the City had a protection program in place they could benefit from that. He reported that the Columbia Land Trust had just picked up an additional 278 acres on the Tualatin River in part due to a \$1.8 million mitigation grant from Bonneville Power. He encouraged the City to support the Lake Oswego Watershed Habitat Program and Friends of Tryon Creek as it would help accomplish the objectives of the program.

Commission Comments/Questions of a Clarifying Nature

Commissioners A. Brockman and Heape indicated they did not support the HBA incentive that allowed additional height. Commissioner A. Brockman pointed out that the Comprehensive Plan talked about preserving neighborhoods and allowing additional height changed neighborhood character. Commissioner Heape did not think the height incentive was necessary because there were other incentives that offered flexibility.

There was discussion regarding what agencies' requirements the City was required to comply with, which were two state agencies and Metro. Staff advised that the Oregon Department of Land Conservation and Development (DLCD) administered Oregon Administrative Rules for Land Use Planning, e.g., with respect to allowed actions within Waters of the State – submerged lands, delineated wetlands, and below ordinary high water on streams, rivers, ponds, and lakes. Staff explained that the two Statewide Planning Goals that directly applied were Goal 5 – Natural Resources, and Goal 6 – Water, Air, and Land Resources Quality. Staff advised that the City had to demonstrate to the DLCD that they were in compliance with Goal 6, and to do this the City must demonstrate that it was in compliance with all water quality regulations issued by the DEQ. Staff advised that the Sensitive Lands program and the TMDL Plan were the means to achieve compliance with DEQ regulations, including those pertaining to the City's MS4 permit. Ms. MacDonald clarified that the City did not interact directly with the EPA as that federal agency had delegated implementation of the Clean Water Act to the State of Oregon.

Ms. MacDonald and Mr. Boone clarified that the Oregon Department of State Lands (ODSL) administered wetland regulations related to removing fill from or developing near wetlands and Waters of the State. They went on to explain that the U.S. Army Corps of Engineers regulated filling wetlands and Waters of the U.S. Staff clarified that the ODSL and Corps regulations were related to development review, not policy-making and that the property owner would have to comply with the applicable set of standards from each agency and get the respective permit from each of them. Staff indicated that the City was not trying to enforce their standards as each agency enforced their own standards.

Commissioner Heape recalled the Tryon Creek Watershed Council's testimony and asked if the Commission should consider increasing the buffer in areas of steep slopes. Mr. Siegel discussed how the code-required buffers were somewhat scaled to the topography. He explained that on steeply sloping sites the buffer could be more than 50 feet because it was based on the distance from the stream to the top of bank. He clarified that the minimum buffer on level land approached 50 feet because it was 10 feet out from the stream centerline, plus 25 or 30 feet, plus a 10-foot construction buffer. He commented that the proposal tried to strike the right balance for the community. He discussed the example of a 30-foot stream buffer that would increase to 50 feet after consolidation of some RC with the RP District. He clarified that the RC District beyond that would become part of the HBA incentives program. Ms. MacDonald related that the DEQ had reviewed the proposal and they believed it met their minimum requirement. She clarified that the City had linked their Sensitive Lands buffers to implementing the Total Maximum Daily Load (TDML) requirements since 2003.

When asked to speak to the issue related to "Waters of the U.S." Ms. MacDonald advised that it was the federal standard through the Clean Water Act. She explained that the City's water quality regulations applied to what was defined as "Waters of the State" (in ODSL regulations) and that the EPA had recently started using equivalent language. She advised that as far as the DEQ was concerned there should be no change in urban areas regarding what was jurisdictional before the 2015 federal Clean Water Rule went into effect. She commented that the Rule had been challenged by other states, but Oregon and Washington each supported it and equivalent standards were in effect in Oregon.

When asked to speak about a change that one could no longer put water in the storm sewers and had to handle it on each site, Ms. MacDonald clarified that the City was not asking people to stop putting water into the storm sewers, but it was asking them to treat it before they did so. She explained that the City was in the process of revising the drainage code in a way that would decrease the threshold to applying the stormwater management requirement. She related that the decreased threshold was not currently required on each lot of a subdivision, but that it would be required on individual lots if the new code and manual were adopted. When asked how it was handled in the Street of Dreams development she said they managed runoff from the roof and driveway on each individual lot. She noted that system overflowed to a system that also managed the street runoff communally. When asked how the City was dealing with the impact of septic systems she related that the Engineering Department was considering looking at the issue. She reported that approximately 160 parcels inside the City were on septic systems.

Discussion of Attachment B – Healthy Ecosystems Comprehensive Plan Chapter

Mr. Siegel was asked to make it clear in the policy language exactly which map showed the HBA. He was asked to clarify how the Willamette Greenway section was proposed to be changed. Staff was asked how the \$250,000 budgeted for upland and riparian habitat enhancement projects in fiscal year 2014-15 had been used. Staff reported that two grants (totaling \$90,000) had been awarded to the Tryon Creek and Lake Oswego Watershed Councils for projects in riparian areas on private lands and the remainder supplemented the City's open space program.

There were questions in regard to what 'same ownership' meant under Healthy Ecosystems Policy 5.b which talked about an incentive related to transfer of density and floor area between adjacent lands under the same ownership. Mr. Siegel recalled from their substandard lot discussion it meant "identical," meaning the same name on the title. When asked about a situation where the properties were in separate ownerships but one party was the controlling

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authority, Mr. Boone observed those owners could decide to change them to the same ownership.

The Commissioners and staff discussed the City Council's suspension of the City's past practice of looking for unmapped resources to designate on property when it was proposed to be annexed. Mr. Siegel advised that if the Commission wanted to recommend resuming the practice they should do that in a separate action because the proposed legislation did not address it and did not need to as the code already authorized the City Manager to initiate designations upon annexation. When asked for his recommendation, Mr. Siegel indicated he recommended resuming the practice in the interest of having a fair system. Commissioner E. Brockman discussed that there were state and federal agencies that would protect water resources even if the City did not, but that was not the case in regard to unmapped tree groves. Vice Chair LaMotte and Commissioner A. Brockman talked about treating similarly-situated properties equally.

Under Summary of Major Issues it was reported that the City had improved utility and surface water management practices by requiring things like on-site disposal of stormwater. Commissioner Heape recalled the testimony from Tryon Creek Watershed Council in regard to impervious surface and suggested the approach could be a little more aggressive and call for containment of stormwater on a "per lot" level rather than the "on-site" level.

In regard to Recommended Action Measure A to develop financial incentives, the Commissioners anticipated that they would talk about recommending incentives during deliberations. Mr. Siegel confirmed the City had not yet received an application for tree removal using the new Tree Code provision for Large Forested Tracts. There was also a question about the accuracy of the Oswego Lake Background information related to access to the Lake Grove Swim Park.

The Commissioners discussed a suggestion to change Open Spaces Policy 5 related to establishing and maintaining open space buffers and protected view corridors between Lake Oswego and adjacent communities to specify "protected public view corridors" so it was clear this would not be used by someone to protect their own personal view. There was no consensus to do that as there was another perspective that view corridors should be protected as they went over both public and private property.

Commissioner Heape suggested the Air Quality section could encourage use of electric vehicles by offering incentives such as giving preference to EV-charging spaces just as they gave preference to handicapped spaces. Staff discussed that if it was made a policy they would need to amend the parking code, but if the intent was general encouragement it could be a Recommended Action Measure (RAM).

Commissioner Ward **moved to continue LU 15-0019 to September 28, 2015**, and to leave the record open to additional testimony. Vice Chair LaMotte **seconded** the motion and it **passed 6:0**.

8. SCHEDULE REVIEW

Mr. Siegel and Chair Arthur indicated that they would work on the future meeting forecast and provide an update at the next meeting.

9. OTHER BUSINESS – PLANNING COMMISSION

None.

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10. ADJOURNMENT

There being no other business Chair Arthur adjourned the meeting at 10:00 p.m.

Respectfully submitted,

Iris McCaleb /s/
Iris McCaleb
Administrative Support

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