

Portland Planning and Sustainability Commission

May 26, 2020

5 p.m.

Meeting Minutes

Commissioners Present: Jeff Bachrach, Ben Bortolazzo, Mike Houck, Katie Larsell, Oriana Magnera (left at 6:40 p.m.), Steph Routh, Katherine Schultz (left 6:02 p.m.), Chris Smith, Eli Spevak [one open position]

Commissioners Absent: Daisy Quiñonez

City Staff Presenting: Andrea Durbin, Joe Zehnder, JP McNeil, Shannon Buono, Tom Armstrong, Sallie Edmunds, Jeff Caudill, Debbie Bischoff ; Laura John (Tribal Relations)

Documents and Presentations for today's meeting

Chair Spevak called the meeting to order at 5:01 p.m.

Items of Interest from Commissioners

Commissioner Bachrach: I am the PSC liaison to DRAC. I'll begin relaying more information from those meetings. Last week, 4 developers made a presentation about the bird-safe glazing requirement, which is proving difficult – time consuming and expensive.

Commissioner Routh: May 30 is the anniversary of the Vanport flood. The Vanport Mosaic festival continues (virtually) through May 30.

Director's Report

Andrea Durbin

- Council approved a Resiliency Resolution last week to prioritize and center equity and climate in all COVID-19 work.
- Today, Council had a work session on the CARES Act spending. Portland received \$114M, and Council has to decide how to spend our resources. Some will go to covering some County expenditures, and bureaus submitted suggestions and requests. BPS has 3 potentially eligible requests on the list: (1) anti-displacement work; (2) with OCT and Verde on the Digital Divide project; (3) Age-Friendly app to support elders in isolation, particularly in the Black community.

Expiration Date Extension Projects

Hearing / Recommendation: Joe Zehnder, JP McNeil, Sandra Wood, Shannon Buono, Tom Armstrong

Presentation

Disclosures

- *Commissioner Bortolazzo*: I work for an architectural/engineering firm that submits Design Review (DR) applications to the City of Portland.
- *Commissioner Schultz*: I am an architect that submit DR applications to the City of Portland.

JP provided an overview of the project. There are 5 proposals in the package as well as 2 amendments (slide 2). JP walked through the project context (slide 3) and the development review sequence.

The proposals are ordered in how they move through the DR process.

1. Extend the expiration date for some pre-application conferences for one more year (for those submitted March 2019 through December 2020).
2. Neighborhood Contact: allow neighborhood contact meetings to be held virtually using video conferencing technology.
3. Extend the expiration date for some land use reviews until January 1, 2024.

Commissioner Smith: Are Master Plans included in these reviews as was provided in testimony?

JP: This is a 10-year expiration date on the one we saw in testimony, so it's not included with this extension.

Sandra: Planners at the counter don't make discretionary decisions. If there is discretion involved, it goes into land use review (and there are lots of types of reviews). The commonality is that there is approval criteria and time for public input.

This project is in alignment with another project we passed in 2009 and 2012 in response the economic downfall.

4. Allow some final plats 365 days of inactivity before they are voided. Applies to final plats that have not expired and are submitted before January 1, 2021.
5. Extend the expiration date an additional three years for the lower inclusionary housing (IZ) rates that apply outside the Central City and Gateway plan districts.

Commissioner Bachrach: Was this proposed by BPS or PHB staff? If it's going to be beneficial to not increase the IZ rate, would it be more beneficial to lower the rate?

Sandra: Tom worked with the Housing Bureau to make sure they were supportive, and they are. Not with this project.

Tom: We just identified that the lower rates will expire at the end of 2020, and we could extend what we're doing now. In terms of what else we can do to decrease housing development costs,

that's a separate discussion outside the scope of this project.

Commissioner Magnera: How does extending this exclusion afford affordability and displacement longer-term?

Tom: It's still in place today has to do with property tax abatement incentives that developers receive. This is a City/County agreement and the cap on annual tax abatements that can happen in the city.

Staff-proposed Amendments

1. Correct a typo in the Proposed Draft:
Replace "...[INSERT EFFECTIVE DATE OF THIS ORDINANCE]..." with "[INSERT THREE YEARS PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE]..." in several sections
2. List of Term Typos: Amend Chapter 33.900 List of Terms as follows:
Add "Courtyard" and delete "Exterior Courtyard"
Add "Fourplex" under Residential Structure Types
Add "Local Service Street" under Street Types

Written Testimony

Testimony

1. Iain Mackenzie, TBA Architects: Support and appreciate the project and what BPS is doing. Adopt the amendment as discussed along with the entire package. *see written testimony*
2. Dana Krawczuk: Two different clients and proposed amendments. (1) Conway Master Plan. (2) Non-conforming upgrades. *see written testimony*
3. Allison Reynolds: Appreciation for the City for taking action on this. Working on the developer of the Pearl East building. Proposed language. *see written testimony*
4. Michele Vives, Douglas Wilson Companies: 1400 NE Multnomah Street. *see written testimony*
5. Ezra Hammer: Support the work. Staff articulated that this is the type of work we need, particularly in times like this. Support the March 13 back-dating. *see written testimony*

Chair Spevak closed testimony at 5:55 p.m.

Discussion

Commissioner Smith moved amendment 1. *Commissioner Routh* seconded. *Commissioner Smith* noted the typo in the typo that staff will correct.

(Y9 – Bachrach, Bortolazzo, Houck, Larsell, Magnera, Routh, Schultz, Smith, Spevak)

The amendment passes.

Commissioner Smith moved amendment 2 (definitions list of terms). *Commissioner Houck* seconded.

(Y9 – Bachrach, Bortolazzo, Houck, Larsell, Magnera, Routh, Schultz, Smith, Spevak)

The amendment passes.

Chair Spevak moved to include an amendment (page 2) to exclude projects submitted prior to the inclusionary housing regulations going into effect on Feb 2, 2017. On the other IZ proposal, I agree with staff's work.

Commissioner Bachrach expressed concern about this and opening us up to more public testimony. We keep getting stalled with IZ, and this feels a little unfair in that it penalizes certain developers when we don't know the effectiveness of the entire program.

Commissioner Schultz: This is a potential conflict of interest because my firm is working on a project that could be affected by this. I differ with the comment that there are projects that haven't been affected by COVID in this group. The City wouldn't be able to know if we've been continuing to work and try to move forward that have the best of intentions but haven't been able to.

Commissioner Bortolazzo: Similar to *Commissioner Bachrach* and *Commissioner Schultz*... given the exceptionality of where we are right now, we don't want to hinder building housing opportunities.

Commissioner Smith: If we have to extend this to an additional hearing, can we still make the July 8 Council date?

- *Andrea*: We'd have to find a later date with Council. In terms of context, there are 10 projects that have not yet been permitted, and they would generate 2200 market-rate housing units.

Commissioner Magnera: How many units of IZ would be lost / created?

- *Commissioner Bachrach*: 440 if they came in with the same number and did 20%.

Commissioner Magnera: I understand the urgency, but we need to think about where we're putting the supports. Are we actually addressing the affordability issue or starting at the top and hoping for a trickle-down?

Chair Spevak: Traditionally for amendments we have winners and losers, and people can go to Council to share their input.

Chair Spevak withdrew his amendment.

Commissioner Schultz proposed an amendment (page 3) about expiration dates of pre-apps for Master Plans. This is a clean-up item in my opinion, not necessarily related to COVID-19. I am also supportive that it goes into our letter instead of being an amendment if that's preferred. *Commissioner Larsell* seconded.

There are two options that could be reviewed: one that is COVID-19 timeline-specific. *Commissioner Schultz* clarified that it is the first option being proposed.

Commissioner Smith: Does this affect the NW Master Plan issue?

- *Sandra*: No, that is about the extension of the plan, but not included here.

Commissioner Magnera: Do you think this will delay things with Council if we move this forward to Council? This may be too far outside the scope of the project and getting it going.

- JP: This hasn't had public process, and it's a big change without public process, so it definitely could delay things.
- Sandra: The 1-year has been in the code for a long time. We might have push back from PHB, PBOT, and other bureaus in terms of administrative codes that would have to change.

Commissioner Routh: I've also been weighing if this is housekeeping or more substantive. If this were not to move forward today, is there a future conversation where we could look at pre-app conference validity?

- Andrea: I'm not sure what package it would come back with, but we could review and bring it back to the PSC at a future date.

Chair Spevak: I am now convinced that there needs to be more conversation internal to City bureaus.

Commissioner Bortolazzo: There is public process after the pre-app for the public to weigh in, so that's not much concern for me.

(Y6 – Bachrach, Bortolazzo, Houck, Larsell, Schultz, Spevak; N3 – Magnera, Routh, Smith)

The amendment passes.

Chair Spevak moved the meeting on to the River Plan / South Reach work session. The following discussion on the EDEP project started at 7:40 p.m.

Nonconforming Upgrades Option 2

JP walked through the definition and code about nonconforming situations. Staff initially thought it was not entirely necessary to include this – it's usually triggered by needing a building permit, and they should be able to do the upgrades before that.

Commissioner Bachrach noted he's a bit on the fence about this and if it's necessary. I am sensitive to any development that might get caught up in this COVID-19 time frame. *Commissioner Bachrach* moved to adopt the proposed language. *Commissioner Bortolazzo* seconded.

Commissioner Schultz: I think this seems a bit unnecessary, but it's something for consistency that we're doing re: COVID-19 extensions. Construction is not easy, and it's really difficult right now. Someone may be trying to do the right thing but are having a difficult time having a contractor show up, etc. I would be supportive of this.

Chair Spevak: I have not had an issue having a subcontract these days. It's not yet cheaper, but people are available.

Commissioner Routh: Is this more housekeeping? Non-controversial? Or are there possible impediments?

Commissioner Bachrach: It's definitely COVID-related. It's probably very few projects affected, but I'll keep my motion on the table for consistency in what we're doing.

Commissioner Smith: Does this really need 4 years of relief? Or maybe just a couple? I propose a friendly amendment for January 1, 2022. *Commissioner Bachrach* accepted this amendment. *Commissioner Bortolazzo* seconded.

(Y8 – Bachrach, Bortolazzo, Houck, Larsell, Routh, Schultz, Smith, Spevak)

The amendment passes.

Northwest Master Plan amendment

This encompasses the Conway site in NW Portland. It's written in code that there is a process to create NW Master Plans, which was created as a quasi-judicial procedure in 2012. This has its own expiration date, written for 10 years out (2022). We received a request from the developers (the only NW Master Plan) to extend that because of COVID issues in getting the site further developed. The extension would be until January 1, 2024.

Chair Spevak: Would IZ apply to this project?

- JP: They were approved under the old code, so no. Future design review would have IZ applied.

Commissioner Smith: I have some history but no financial interest. I worked on the NW District Plan, and it has shaped development of lots of the NW. There are important public benefits still to be realized, and I don't want to see those derailed because of COVID, so move this amendment. *Commissioner Houck* seconded.

Commissioner Schultz: I am not sure on this one. I have a potential conflict of interest as we were part of getting this Master Plan approved. I should step away from this portion, but I do want to ask: the Master Plan becoming no longer effective has parts and pieces, and I'm not sure what the zoning reverts back to.

Chair Spevak: If the code update doesn't happen, and we get to the end of the 10 year Master Plan, what happens?

- JP: There is a process to amend the Master Plan in a quasi-judicial process, which could open them up to the new code.
- Shannon: There is a process to amend. They would have the same criteria as the original Master Plan (old code). Kim Tallant noted they were coming in for an update to their Master Plan.

Commissioner Bachrach: This isn't one project, and each piece depends on the other components of the plan. There are so many moving parts in the 16-block project, so it would be large to recreate, particularly in the midst of COVID. I think granting an extension is consistent with what we have done.

Joe: We'd have to go back to research exactly what would happen if it expires. A question for the applicant would be without the COVID scenario of today, what was their plan? Jeff's last argument resonated with me, though.

Commissioner Smith: Can we include this but task staff to finalize and look into the extension? Need support of the neighborhood assn.

- Joe: This can work. If it expires and the next round of the process is not clear, it would have implications. At Council, it will be too complicated for them to do prospectively.

(Y7 – Bachrach, Bortolazzo, Houck, Larsell, Routh, Smith, Spevak)

The amendment passes.

Commissioner Routh moved to:

- Recommend that City Council adopt this report, as amended;
- Recommend that City Council amend the Zoning Code as shown in this report, as amended;
- Recommend that City Council adopt the ordinance; and
- Direct staff to continue to refine the recommended code language and commentary, as necessary.

Commissioner Bachrach seconded.

(Y8 – Bachrach, Bortolazzo, Houck, Larsell, Routh, Schultz, Smith, Spevak)

River Plan / South Reach

Work Session: Sallie Edmunds, Jeff Caudill, Debbie Bischoff ; Laura John (Tribal Relations)

Presentation

Commissioner Schultz recused herself from this project.

Chair Spevak opened the record as per Council's request. A public hearing will be held on June 23, 2020.

Sallie introduced today's work session and the team. As staff present their topics to you, please have the relevant table in front of you.

Topic C: Tribal Engagement.

Sallie introduced Laura John, Tribal Relations Director for the City.

Laura shared information about the City's Tribal Relations Program. She spoke to her support for this project: taking feedback from the Tribal Summits; boat tour; inviting tribes to provide feedback on City plans like South Reach. Portland is used by tribes due to the confluence of the rivers, and they caution that it is likely to find protected archaeological items anywhere in the city, so we need to be prepared that the protected areas are treated in accordance with the law. Tribes are looking for institutional tools to protect areas including easements and zoning options... an inadvertent discovery plan with tribes was suggested.

Slide 8 highlights the tribal engagement relative to the South Reach project.

Commissioner Houck: During the West Hayden Island, we had folks from CRITFC and other tribal representatives testify to the PSC. It had a big impact on our deliberations. Is it conceivable that if there is an issue that's of interest to the tribes that they would come to us? I found their input helpful and would like to input directly to PSC in the future as well.

- Laura: There are multiple doors for tribes to provide comment. Tonight we're talking about formalizing and standardizing it to say that it's not the responsibility of the tribes to monitor what's going on, but that the City is ahead and being proactive.

Nicholas summarized the development of the proposed archaeological resource protection provisions for the South Reach. In the High Probability Area the following is required:

1. Archaeological survey required prior to ground disturbing development
2. If resource found:
 - Site investigated.
 - Depending on impacts and resource type, development may proceed.
 - Some proposals require resource recovery plan and MOU with SHPO and tribe.

Staff Recommendations: Replacement Decision Table C contains a summary of 3 issues and staff-recommended amendments staff identified based on ongoing code refinement and consultations with public agencies.

- C-1 Allow for Washington based tribes with interest in Portland land.
- C-2 Commentary should state code supports state and federal policies and laws.
- C-3 Consistency with SHPO practice and terminology.

PSC members are supportive of this direction.

Topic B: Recreation.

Debbie introduced the topic and noted the below topics in Table B (continued). Residential docks are identified for PSC discussion but Items B-16 and B-17 are not, unless the Commission wanted to discuss them. She noted that *Commissioner Houck* has proposed a new action (B-18) that came out of item B-17.

Item B-11A, Residential docks

Item B-11B, Residential docks standard

Item B-16, Recreation action

Item B-17, Parks and Natural Areas land acquisition

Debbie noted *Commissioner Houck's* request for a new plan action, to see the submerged land areas historically owned by Ross Island Sand and Gravel (RISG) in public ownership. These are the locations where live-aboard boaters tie up and RISG has not consented for enforcement actions. The Oregon Department of State Lands (DSL) and Portland Parks and Recreation (PP&R) staff are fine with the new action.

BPS staff revision to *Commissioner Houck's* proposal (Item B-18 new Recreation action):
The City of Portland will work with the Oregon Department of State Lands (DSL) and Ross Island Sand and Gravel to explore ways to regain public ownership of submerged private lands in the Willamette River and Holgate Channel."

Lead: PPR, Partners: DSL, Private Timeframe: 6-20 years

Commissioner Houck: The fact that Ross Island owns this land is an anomaly. It's a public resource. I'm happily surprised that DSL is open to this. It's an important public policy issue.

PSC members are supportive of this direction.

Debbie noted the staff considerations and intent as well as recommendation (slides 16-17).

As discussed at the May 12 work session, the intent of these regulations are: to reduce environmental impacts of residential docks on threatened and endangered species and their habitats, reduce the river area dedicated to private docks for the benefit of public recreation on the river, and clarify review and approval of residential docks for BDS planners, applicants and the public.

There are 31 privately-owned and mostly residential docks in the South Reach south of the Sellwood Bridge. Staff's analysis also showed that there are only a limited number of (7) sites where additional new residential docks could be proposed. City staff discussed this and recognized the opportunity to address the impacts of existing docks when significant repairs are made or when the floating boat docking structure is replaced.

Debbie highlighted staff's revised recommendations, which are updated from the May 12 recommendations, the PSC conceptually approved:

1. Revise new residential dock development standard to update the purpose statement, and limit the size of the floating boat docking structure and location of floating dock structures outside of shallow water habitat.
2. Update the exemption for normal repair and maintenance for existing residential docks; trigger River Review and a dock development standard if replacing floating dock portion or repair or alteration is greater than 50% of combined constituent systems of floating boat docking structure.
3. New River Environmental overlay zone development standard for residential replacement docks and significant repair and alterations (that are not exempt) that reduces the size of the existing floating structure and retains the dock's location in shallow water habitat.
4. Reorganize approval criteria section, delete fee-in-lieu reference and a new criterion about mitigation.
5. No new action needed to implement fee-in-lieu program.

Kaitlin shared data about juvenile fish and the over-water structures impact on their habitats in discussion of recommendation 1.

Commissioner Houck: If feds and state require 1:1, but if the City requires 2:1, I can understand the mitigation. But I assume the individual needs to do the additional mitigation to meet the City requirements. [yes]

PSC members are generally supportive of Memo B-11, Part 2.

Topic A: Watershed Health and Resilience.

Jeff noted A-10 part 2, items related to enforcement. He offered to move this discussion to June 23. What we are going to work more with BDS on is the removal standards (first bullet on slide 22). We will look into the removals that might trigger the standard that might be quite small, so we might not require 3 years of proof for the smaller actions.

Recommendations 2 and 3 we would continue to move forward with as noted:

- Add similar requirement for 3-year compliance in mitigation standards.
- In River Review, clarify expected outcome of the operation and long-term maintenance plan and require annual monitoring reports for up to 5 years.

Topic E: Miscellaneous Zoning Code and Text Amendments.

This is a list of miscellaneous code and text amendments.

After further discussions with Commissioner Houck, staff supports the amendments included in E-49b and E-49c. Staff believes the inclusion of East and Toe islands as areas of shallow water habitat (E-49b) and the recognition of East and Toe islands and Ross Island lagoon as future restoration project locations is an important addition to the plan.

Commissioner Houck is supportive of this plan.

Revised amendments in E-49b and E-49c.

Other proposed Zoning Code and text amendments in Table E.

PSC members are supportive of this direction.

Homelessness and the outstanding **enforcement** items will be discussed at the June 23 meeting.

Chair Spevak continued the South Reach Plan to the June 23, 2020 PSC meeting, where a hearing, final work session, and recommendation are expected.

Adjourn

Chair Spevak adjourned the meeting at 8:14 p.m.

Submitted by Julie Ocken