

Portland Planning and Sustainability Commission

Tuesday, October 9, 2012

12:30-2:00pm

Meeting Minutes

Commissioners Present: Andre' Baugh, Karen Gray, Don Hanson, Mike Houck, Gary Oxman, Michelle Rudd, Katherine Schultz, Chris Smith

Commissioners Absent: Lai-Lani Ovalles, Howard Shapiro, Irma Valdez

BPS Staff Present: Joe Zehnder; Roberta Jortner; Jay Sugnet; Julie Ocken

Other City Staff Present: Kathryn Beaumont, City Attorney; Dave Skilton, BDS

Chair Baugh called the meeting to order at 12:33pm and provided an overview of the agenda.

Items of Interest from Commissioners

Chair Baugh welcomed new PSC commissioner, *Katherine Schultz*.

Director's Report

Joe Zehnder

- Last Wednesday City Council adopted the Comp Plan factual basis and background reports. There were only a few minor changes to the EOA to clarify some assumptions and remove reference to the Port of Vancouver as an option for marine terminal needs – something that they heard testimony on.
- The 122nd Rezone project hearing at Council is 10/10 (tomorrow) at 3pm time certain.
- The Commercial Building Performance update the PSC was briefed on in September has a new, official name: Kilowatt Crackdown. We are hoping to get building owners to enroll in the challenge in return for free technical assistance, building energy benchmarking and access to resources. Commissioners received a handout with more information.
- West Hayden Island updates:
 - a. If commissioners were unable to attend last week's mitigation information session with staff still want a briefing, please let Julie O know by 10/10. We are looking to schedule the briefing(s) the week of 10/15 so commissioners have the background information prior to the 10/23 PSC WHI briefing session.
 - b. All PSC members have been added to the WHI project list that receives the ongoing e-mails for the project.
 - c. The Health Report was just published and made available – staff forwarded the report to PSC members yesterday.
 - d. The next big WHI event is on Monday 10/22, 12:30-4:30pm for the WHI Advisory Committee work session on health (Oxford Suites, Hayden Island).

Consent Agenda

- Consideration of [Minutes from 09/25/12 PSC meeting](#)

Chair Baugh asked for any comments for the consent agenda.

The Consent Agenda was approved with an *aye* vote.

(Y8 – Baugh, Gray, Hanson, Houck, Oxman, Rudd, Schultz, Smith)

Title 13 - Metro/Portland IGA review

Briefing / Work Session: Roberta Jortner

Documents:

- [Draft IGA dated 10/05/12](#)
- [Draft Ordinance dated 10/05/12](#)
- [Staff memo to PSC](#)

July 24, 2012 was the PSC hearing for reviewing Portland's "substantial compliance" with Metro Title 13. The voluntary IGA, which the PSC supported at the meeting, will serve as a statement of intent of the City's efforts to continue its natural resource protection and enhancement over the long-term, including multi-objective projects and programs to meet watershed health goals. It also confirms Portland's intent to work together with Metro on multi-faceted efforts and issues of both city and regional concern, including the Comprehensive Plan update and options for addressing goals for jobs, the economy and watershed health.

Roberta gave a recap of the testimony received at the PSC hearing, where most testifiers supported the Title 13 compliance request and idea of an IGA between the City and Metro. The PSC also heard concerns about legal challenges and budget cuts that could constrain City efforts. At the July meeting, the PSC discussed the draft request and IGA outline, and voted unanimously to support it with the request that the draft IGA come before the commission as is being done today.

Components of the IGA include City obligations including making an annexation decision for West Hayden Island; completing the Comprehensive Plan update and updates to the Willamette Greenway Plan, an update to existing plans and regulations for the Columbia Corridor; and implementation of various programs to preserve and restore Portland's watersheds, such as new tree codes, willing-seller land acquisition, and invasive species management. The IGA also includes joint obligations between the City and Metro as well as reporting requirements.

The draft ordinance provides context for the IGA. It authorizes the BPS director to submit the Title 13 compliance request to Metro, and the directors of BPS, PP&R and BES to sign into the IGA with Metro; these bureaus lead the projects and programs identified in the IGA.

In preparing the IGA draft, staff notified various agencies, business, neighborhood and environmental organizations, sending them the drafts and letting them know about the PSC briefing and the City Council hearing (likely in November)

Staff introduced a few amendments to the draft IGA and ordinance. The amendments reflect discussions with the PSC leadership, Commissioner Houck and Metro staff, in preparation for the briefing. The amendments provided additional clarification and guidance for future City work and City-Metro collaboration efforts. The amendments also clarify that the IGA is intended to go into effect after Metro finds the City in compliance.

Discussion

Commissioner Houck noted he is pleased with the IGA. It will be a reference for Portland and Metro to return to monitor successes and processes to implement actions. "Balancing" and "integrating" were words that were debated in a review of the IGA, but both will remain in it as the issue will be discussed further in conjunction with the Comprehensive Plan Update. *Commissioner Houck* also confirmed that references to "riparian corridors" include streams, and emphasized the importance of the City and Metro working together to obtain funding to maintain natural resource areas. He thanked City staff and Metro for working together.

Commissioner Gray asked which environmental organizations had been notified and what comments were received from them.

- Audubon Society of Portland, Friends of Trees, local watershed councils and the East and West Multnomah County Soil and Water Conservation Districts. No comments were received. Staff received a call from Bob Sallinger, Audubon Society of Portland who questioned how the City intended to address unprotected streams. Staff explained that this issue was addressed in section e. of the IGA under Joint Obligations and advised him of his opportunity to provide additional comments at the Council hearing.

Commissioner Hanson asked if the IGA would get updated to reflect completed projects or if it is a “snapshot” of work the City and Metro plan to do.

- It is a snapshot for what we foresee over the next 10 years. It is a statement of the City’s intent today, but we can’t commit a new City Council. The IGA does commit the City, in consultation with Metro, to report on progress on an every-other year basis.

Staff will draft a letter for review by the PSC to be included in the recommendation to City Council.

Historic Resources Code Improvement Project

Briefing: Jay Sugnet; Dave Skilton, BDS

Documents:

- [Staff memo and project background](#)

This project is a quick (8 month) partnership between BPS and BDS. Today’s briefing is to give a sense of what staff has heard from the public and a chance for PSC members to weigh in on the concepts, before code amendments are created.

The project is reassessing when historic design review is necessary and appropriate. The focus is on single-family homes, for the most part making it easier for homeowners to make minor updates to property without a lengthy and/or costly design review process. The focus is on what we can do in the short-term; there is a whole list of issues that are out of scope of this project, still need to be addressed, but this project is working on the smaller, quicker updates.

Since meeting with the PSC last summer, staff has conducted research, met with the Landmarks Commission, a DRAC sub-committee, and neighborhoods/coalitions. The draft Issues and Options Paper was released a few weeks ago for the community to review. Some neighborhoods/organizations have provided feedback, and staff is working with neighborhood associations, Remodelers Association, as well as with the Portland Coalition for Historic Resources.

Staff reviewed permit data for the last 18 months, looking at what we can learn. Of the 179 land use cases related to historic resources, about 50% of permits processed could benefit from a code project, but the other items are beyond the scope of this project. Staff also surveyed other cities about best practices. Visibility is a consideration in doing historic design review for most cities.

Discussion issues reviewed in the project include:

- When Historic Design review is required
 - Accessory structures
 - Interior Light Walls
 - Fire escape removal
 - Accessibility structures (wheelchair ramps)
 - Storm windows

- Alternative Review Procedures - The vast majority of reviews are currently processed through a Type II. Staff is exploring two options: an administrative review or a revised Type I for projects that require some form of review but are almost always approvable.

Examples of alternative review procedures could be applied to:

- Window repair and replacement
 - Is there a way to encourage people to restore as opposed to removing and replacing? Home owners often are interested in new windows, for perceived energy efficiency and functionality. Landmarks Commission was ok with lesser level of review, but only if not street-facing.
- Restorations
 - Part of the goal is to create a clear definition of restoration, which Portland does not currently have. Landmarks Commission does want to incent people to do the right thing, but this is often expensive and requires quite a bit of staff time.
- Minor Alterations
 - Many other jurisdictions require a lesser level of review for minor projects through administrative procedures. Portland needs to better define what would be included as a minor alteration, perhaps with a list of what this includes and if these alterations would be exempt from review or would have a lesser level of review.
- Alterations not visible from the public right of way (best defined as not street facing facades) could have a few options for review. One option is an alteration under a square footage (500, 300, or 200 for example), which could be exempt from Historic Design Review or that may be taken care of in an administrative or Type I process.

The Discussion and Options draft also includes a section on terminology, which will be updated later to include definitions and standard terminology.

Discussion

Regardless of the review procedures that are used, BDS will need to recoup the costs of the new process.

In terms of creating a new process for reviews, we would need to determine if appeals go to a local board or directly to the Land Use Board of Appeals as is currently done.

Portland's approval criteria to create a new historic district or landmark are uniquely idiosyncratic - there is no rigor to them currently. People don't take advantage of this, though, because local landmarks are only locally landmarked pursuant to being registered nationally.

Part of the dilemma is the Federal process of designating historic districts without the benefit of city review, after which the City is required to protect and apply current regulations to a whole new geography. People in that newly created district are then surprised by costs for review, which is the disconnect. With this project, we are trying to balance a faster process to lessen bureau workload for things that aren't adding value.

Project timeline

- Staff will return to the Historic Landmarks Commission with a discussion draft in early December, where they will hold a public hearing.
- Staff will incorporate edits and will present the draft for a hearing at the PSC in January.
- City Council hearing will be in February.

Guidance for PSC members

Briefing / Work Session: Kathryn Beaumont, City Attorney

Kathryn provided a reminder about 3 topics PSC members are tied to by City law:

- **City lobbying rules** - include requirements for registering and recording for people who lobby the City. This only affects PSC members if they meet with someone who qualifies as a lobbyist by the City definition and receive a gift, meal, or something of value of more than \$25 quarterly. The suggestion is that PSC members buy their own items if in these meeting situations.
- **Conflicts of interest** - both State law and Portland's Zoning Code state if a PSC member, family or business for which you work or have worked has direct or substantial financial interest in matter before the commission, you need to state the conflict and recuse yourself from the business item. "Direct or substantial" means if the action would have direct financial cause/effect.
- **Ex parte contacts** - is only a concern in quasi-judicial decision-making. The PSC usually is working on legislative project (developing policy recommendations for large geographic area with large economic interests). Quasi-judicial decisions are usually what other City commissions review, applying criteria to facts specific to a piece of property. In quasi-judicial cases, decision-makers need to be impartial with the information they receive in an open public hearing, with an open/transparent exchange of information. Ex parte refers to private conversation outside of this open context, which is not heard by others, and decision-making has been influenced or made privately.
 - Specifically for the PSC, this could be something to consider for WHI. The City's conservative advice is that if PSC members meet with individuals or representatives with specific interests in WHI outside of the public hearing context, they should keep a record of the meeting(s) and be prepared to disclose the meeting, and then they can participate in hearing. WHI site visits are included in this ex parte contact, which will be noted in the staff briefing prior to the WHI hearing at the PSC. WHI open houses and interactions can be included under ex parte if discussions are had in these situations. If e-mails are shared between commissioners and others, then messages are included and should be added to the meeting record. If PSC members contact an outside expert who's not engaged in the process, this should be disclosed as well.

Adjourn

Chair Baugh adjourned the meeting at 1:48pm.