

Portland Planning and Sustainability Commission

October 25, 2022

5:00 p.m.

Meeting Minutes

PSC Commissioners Present: Jessie Gittemeier, Steph Routh

PSC Commissioners Virtual: Jeff Bachrach, Johnell Bell, Katie Larsell, Oriana Magnera, Gabe Sheoships, Eli Spevak, Erica Thompson

City Staff Presenting: Lance Lindahl (PBOT), Claudia Echeverria (PBOT), Phil Nameny (BPS), Ingrid Fish (BPS), Sandra Wood (BPS), Jeff Caudill (BPS), Sallie Edmunds (BPS), Nancy Thorington (BDS), Kaitlin Lovell (BES), Jason Butler-Brown (BDS)

Documents and Presentations

Chair Routh called the meeting to order at 5:04 p.m.

Chair Routh: In keeping with the Oregon Public Meetings law, Statutory land use hearing requirements, and Title 33 of the Portland City Code, the Portland Planning and Sustainability Commission is hybrid, which provides for both virtual and in-person attendance for commissioners, staff, and the public.

- Members of the PSC will elect to attend remotely or in-person. The public may watch the livestream or attend in person at 1900 SW 4th Ave, Suite 2500.
- Public testimony for projects that have a hearing at the PSC will be taken both in-person and by electronic means.
- The PSC is taking these steps as a result of the COVID-19 pandemic and the need to limit in-person contact and promote social distancing. The pandemic is an emergency that threatens the public health, safety and welfare which requires us to meet remotely by electronic communications.
- Thank you all for your patience, humor, flexibility and understanding as we manage through this difficult situation to do the City's business.

Items of Interest from Commissioners

Commissioner Spevak: NPR had an article about electric vehicles that quoted BPS EV Ready Project staff Ingrid Fish.

Commissioner Bell: I've been thinking about the issue of businesses leaving the downtown core and how this body can work to remove zoning barriers to adaptive reuse of these buildings.

Chair Routh: I would like us to vote to approve the Cully TIF District recommendation letter. Commissioner Gittemeier **moved** to approve the letter. Commissioner Thompson **seconded** the motion.

Y9 – Bachrach, Bell, Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson

Director's Report

Director Donnie Olivera gave updates on several changes happening at BPS.

BPS Organizational Updates

- BPS Organizational Additions
 - Graffiti Removal Program
 - Digital Justice
 - Franchise and Utility
 - Mt Hood Cable Regulatory Commission
- Hiring: We are going through an unprecedented growth spurt of hiring 26 new staff in various stages of the hiring process.
- Policy Updates: Happening in the following areas
 - PCEF
 - Housing Production Resolution
 - Renewable Fuel Standard Update
 - Surveillance Technology
 - EV Ready Code Policy
 - S2HC2
 - Floodplain Resilience
 - Residential Waste Franchise Review
 - Building Performance Standards

Commissioner Magnera: What are you doing to ensure this growth at BPS is sustainable and actually adding to the capacity of the Bureau?

Olivera: Some of the growth is one-time funding and we are being strategic about how to direct the new staffing resources. There are challenges to having one-time funding and we are trying not to create new programs that we are unable to implement and follow-through or create unfunded mandates.

Commissioner Spevak: Is the Housing Production Resolution expected to yield Title 33 updates?

Olivera: We're developing the resolution as an aspirational goal. There will be Title 33 changes as part of this, some of which will be wrapped into RICAP and other projects that are already in the pipeline.

Chair Routh: With the surveillance technology, how many bureaus does that entail and is it an ongoing project?

Olivera: This is a policy and a program, so once the policy is in place the expectation is that there will be a programmatic component that assesses all new technology and what data is being collected.

Commission Update

- Next Steps:
 - November 8 & 22: PSC Planning Commission Code Amendments
 - December: Planning Commission Recruitment
 - January: Commission Coordinator Start Date
 - February: Announcement of Working Group Members
- Sustainability Commission: There have been a lot of questions about how we're moving forward with the Sustainability Commission. Once we have the Chief Sustainability Officer we can start to work on getting that commission up and running.
 - We hope that PSC members will give us your intentions about whether you would like to continue on the Planning Commission or apply for the Sustainability Commission.
 - We hope there will be some continuity with the PSC and the PC
 - For commissioners interested in being on the SC, you will have a seat on the working group to establish the SC

Commissioner Thompson: Is it an either/or for commissioners? Does opting to be on the PC preclude participation with the SC?

Olivera: We are working from the assumption that it would be either/or.

Spevak: This process is going faster than expected, I think it's good the discussions about the Sustainability Commission are happening after we know what's happening with the charter amendment proposal. I hope that careful consideration is given to where the SC ends up within the City.

Consent Agenda

Consideration of:

- Minutes from the October 11, 2022, PSC meeting

Commissioner Thompson **moved** to adopt the minutes and *Commissioner Magnera* **seconded** the motion.

Y9 – Bachrach, Bell, Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson

Proposed Vacation of SW Greenleaf Court east of SW Greenleaf Drive (RWA #9234)

Briefing / Hearing / Recommendation: Lance Lindahl and Claudia Echeverria (PBOT)

Presentation

Street Vacation Area Proposed:

- Unimproved portion of SW Greenleaf Court
- Will create two dead end segments of public street
- Steep elevation changes make it very unlikely that there will be future street improvements at this location

Stated Reason for Vacation

- To consolidate property to provide for a private, gated driveway
- Driveway is currently within the public ROW and petitioner reports that confused drivers often get stuck and need help getting turned around

Conditions of Approval

- BDS is requiring a replat
- BES is requiring a 15-foot wide easement for an existing sewer line and manhole

Commissioner Thompson: How far down can someone drive down the ROW?

Lindahl: Not far, the driveway is only on a small portion of the ROW. On the other end there is a long stretch of unimproved ROW. Because of steep grade changes, there is little likelihood the ROW could even be improved with a pedestrian accessway since it would have to be a stairway.

Hearing

Chair Routh opened the public hearing at 5:55 pm

Danelle Isenhardt: I'm with Emirio Design. I'm working on the replat applications for the petitioner and I'm here to support the proposal and answer any questions.

Chair Routh closed testimony at 5:58 pm

Commissioner Gittemeier: I'm curious if this will have any impact on the tree canopy at this site.

Lindahl: Urban Forestry reviewed the proposal and they came back with no concerns. After the street vacation, the trees will be subject to the Tree Code.

Commissioner Thompson: I was under the impression that people were driving down the ROW and getting stuck, but based on the maps and staff comments, it seems that it's not really possible for anyone to drive down there, so can you clarify?

Lindahl: Sure, to clarify drivers can drive to the edge of the street vacation area and end up in the petitioner's driveway. To mark it as an area not safe to drive would be to put up a gate or fence, which isn't allowed currently because it's public ROW.

Commissioner Spevak **moved** to approve the street vacation and *Commissioner Magnera* **seconded** the motion.

Y8 – Bell, Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson

EV Ready Code

Work Session / Recommendation Sandra Wood, Phil Nameny, Ingrid Fish (BPS)

Sandra Wood introduced the project. This follows up on the briefing of two weeks ago. We will be discussing the proposed amendments in the memo that was sent to you last week.

Phil Nameny provided some background on the project and introduced the potential amendments. We did follow up on some of the questions from the last session about the electrical code and live electrical connections and safety and also how Title 33 parking lot landscaping and Title 11 regulations interact in relation to this proposal. We did not include that in the memo but we followed up with commissioners after the hearing.

Disclosures:

- *Commissioner Bell:* I would like to disclose that though my job I have worked with PGE on developing an EV strategy, so I would like to recuse myself from the vote. (*Upon further discussion and clarification, Commissioner Bell did not recuse himself from the vote but did make the disclosure.*)
- *Chair Routh:* I was part of a group that advocated to the state rulemaking committee to remove parking minimums.
- *Commissioner Magnera:* I sat on the Climate Friendly and Equitable Communities Rulemaking Advisory Committee.

The amendments:

1. **Allow EV chargers and equipment in a portion of perimeter parking lot landscaping**

We originally proposed that all of the equipment must be located outside of the perimeter parking lot landscaping. We heard from commissioners at the work session that there was interest in seeing some more flexibility. We've made a change to allow the chargers and equipment to encroach into the landscaping area up to two feet. This entailed making several changes to the code (see memo for detailed code changes).

Commissioner Spevak made a **motion** to adopt the amendment. *Commissioner Thompson* **seconded the motion**.

Y7 – Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson | Abstention 1 – Bell

2. **Include e-bike chargers in the list of nonconforming cost exemptions**

The Proposed Draft included a provision within the nonconforming upgrade chapter that exempted the installation of EV chargers and equipment from being calculated into total project costs for the purpose of assessing nonconforming upgrades. PSC members suggested including electric bike installations in this exemption. The code language includes an amendment to the section 33.258.070. The area that is altered from the staff proposal has been shaded in the memo.

Commissioner Gittemeier made a **motion** to adopt the amendment. *Commissioner Spevak* **seconded the motion**.

Y7 – Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson | Abstention 1 – Bell

3. BPS technical amendment re: car sharing spaces providing EV chargers

At the time of the original proposal, the outcome of the State’s Climate Friendly and Equitable Communities rulemaking was still in flux. Staff had proposed an additional requirement for car sharing spaces to be electrified to reduce minimum parking requirements. Since the time of the proposal, the City anticipates that it will remove all minimum parking requirements to conform with the new state rules. As a result, this section of code would be removed. Staff has proposed to eliminate this new requirement from the EV Ready Code Project, as it would only be in place for 3 months. The language proposed to be removed is on page 39 of the Proposed Draft. The code in the memo is shown for illustrative purposes because no amendments to the current Zoning Code are necessary (other than the re-lettering shown in shaded font).

Commissioner Thompson made a **motion** to adopt the amendment. *Commissioner Spevak* **seconded the motion**.

Y8 – Bell, Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson

Vote on full EV Ready Code package:

Commissioner Thompson made a **motion** to adopt the Proposed Draft as amended.

Commissioner Larsell **seconded the motion**.

Y8 – Bell, Gittemeier, Larsell, Magnera, Routh, Sheoships, Spevak, Thompson

Floodplain Resilience Plan

Work Session: Jeff Caudill and Sallie Edmunds (BPS), Kaitlin Lovell (BES), Jason Butler-Brown and Nancy Thorington (BDS)

Presentation

Jeff Caudill introduced the project. This follows up on the hearing of September 27.

FEMA Biological Opinion (BiOp) – Additional Background: Includes the Portland Combined Flood Hazard Area (See map)

- Plan Purpose/Goals
 - Maintain access to floodplain and disaster relief funds
 - Reduce future flood risk
 - Expand habitat for endangered species
 - Continue implementation of City's *Floodplain Management Update Work Plan*
- FEMA BiOp– Reasonable and Prudent Alternative Elements
 - The Reasonable and Prudent Alternative is comprised of 6 elements. I will highlight some of the more pertinent ones
- Element #3: Implement FEMA program standards to better identify and map flood and flood-related erosion hazard areas
- Element #4: Revise FEMA's regulatory floodplain management criteria to avoid, minimize, and mitigate the adverse effects of floodplain development on habitat functions and processes
- Element #5: Collect and report floodplain development information for all NFIP participating communities

FEMA Timeline: See attachment. Only the elements in orange will be brought before the PSC.

Commissioner Larsell: How is it going to be communicated that there are many separate elements to the larger City Work Plan for this work. As we've seen here and at the hearing, not everyone understands that the Title 33 work is part of a larger plan.

Diefenderfer: Thanks for challenging us to communicate this better. We're coordinating with the EOA team to communicate how to message how these projects work together and to place them in a broader context.

Caudill: It's also important not to overwhelm people – it's one of the challenges of this project. Thanks for the recommendation.

Commissioner Thompson: On the topic of the EOA, a lot of the testimony had to do with coordination of the work in the industrial lands and this work. What is the timing of the EOA process?

Diefenderfer: One of the things that's impacted the EOA schedule is staffing. There's no hard and fast deadline for the EOA and our goal is to complete that work by the end of 2023.

Thompson: So, there will be a discussion draft coming to the PSC before it goes to City Council?

Diefenderfer: This is a policy document so it won't be going to City Council for a vote, but it will be coming to the PSC for review prior in late spring.

Edmunds: Tom Armstrong provided a response on the timeline of the EOA. We expect to get to City Council with the EOA in 2024.

Magnera: I want to go back to the hearing and the concerns that testifiers had about the process and timeline. I encourage the City to find better and more accessible venues to engage the community.

Routh: We were exploring that and working with BPS Community Engagement staff and the CIC to find ways to make this more accessible

Sheoships: I think this is important and well-intentioned work, but there's more that could be done. I'm concerned about the tree replacement requirements. Many of the communities I'm a part of would like to see the Willamette reforested. I think there are parts of this plan that follow too closely to the status quo.

Potential Effects of the Plan Proposal: See PowerPoint and table showing parcels effected by zoning designation.

Examples: See PPT for site plans of example proposals.

Gittemeier: In terms of mitigation banking, if there is environmental degradation, the mitigation is 1:1 e.g., mitigate an equal amount, correct?

Caudill: We're not really changing that with this plan. One change is where the mitigation occurs. For off-site mitigation it is 1.5:1 since we have less control on how the mitigation happens offsite.

Magnera: How are species that return to the same locations accounted for? How do you think about migration patterns and how mitigation banks are used to maintain those patterns?

Kaitlin Lovell: I work with BES on this project and work on endangered species compliance. One of the challenges with this work is just how much we know/don't know. A lot of the habitat in the Willamette is shallow water habitat, and there are specific technical habitat needs that are being assessed.

Sheoships: I think we need to focus in on Johnson and Tryon Creeks since so much of the Willamette floodplain in the city has been altered and many streams have been piped. These waterways are so important because they are some of the few natural habitats remaining.

Public Testimony Summary:

Testimony – 53 pieces of testimony total

- 46 written
- 5 oral at the hearing
- 2 both oral and written

Comments

- Climate change response is critical

- Include all Discussion Draft components
- Expedite work in industrial areas/complete EOA work faster
- Slow project until more from FEMA

Routh: If there is a need for delay in our proceedings, what are the impacts of that?

Diefenderfer: Our approach is to work with you and allow time for questions and understanding. But I want to point out that there was a lot of testimony to keep this project moving forward. Any delay would mean push this out for adoption. We do have a little bit of time and we hope we can work through and address questions and concerns in that timeframe.

Spevak: I think we can work on digging into whether issues being raised could be addressed with amendments or if they are larger recommendations for the City to tackle.

Columbia Corridor Non-Industrial Lands: We removed some of the industrial lands and Columbia Corridor lands since they will be covered in the Columbia Corridor industrial lands e-zone project. That project is taking a similar approach as the E-zones project. It will be evaluating new/modified 'e' zones. Some land is likely to be added to the Environmental Protection overlay. In that case, we don't want to be making changes now and then have that project come along in a short time later with more restrictive changes.

Spevak: My concern is that, if these lands are deserving of higher protection and we delay, then those lands could be developed in the meantime. However, seeing your table of where the lands are located, it appears that most of it is OS and much of it would be undevelopable, so this may not matter too much. In the areas that would potentially be 'p' zone, most is OS and none of it is in CE.

Caudill: You are probably correct, but it's hard to say offhand what is or isn't developable. It seems that the R10 areas might be a little more concerning.

Sheoships: Where did the 170-foot riparian buffer come from?

Caudill: That came from the BiOp. It came from an analysis of the size of mature trees and ensuring that activity in the area of the tree is low-impact.

Magnera: Would any of the potential development have to go through a NEPA?

Caudill: The only time something would trigger a NEPA review is for federal action or on federal land. There might be other types of permits that might require mitigation for impacts, but it wouldn't be NEPA.

Gittemeier: Is it a federal action to give FEMA back insurance? Would that then trigger NEPA?

Lovell: There is a NEPA action going on now that is a programmatic action addressing that. There may be some mapping work that happens at the federal level, but I don't think that has a separate NEPA action.

Butler-Brown: I manage the Site Development Section of BDS. I don't think there is a need for a separate NEPA process in that case.

Diefenderfer: I want the commissioners to understand that *Butler-Brown* and *Lovell* are sharing for informational purposes only. The information they are sharing does not directly relate to the action before you, but is meant to answer questions that were raised by commissioners.

Brown-Brown: I want to provide some background on the building code updates.

- Existing Title 24 Chapter 24.50 Requirements
 - Apply to Metro Title 3 map – this currently includes 100-year floodplain and the 1996 flood extent map
 - "Balanced cut/fill" or a 1:1 ratio for excavation to fill placement
 - 1:1 ratio applies to all floodplain
- Building Code Updates: FEMA BiOp directives:
 - Require excavation for fill and structures
 - Increase excavation to offset development along the river
 - High hazard area (the floodway and 10-year floodplain) – 2:1
 - Riparian buffer area and undeveloped floodplain – 1.5:1
 - Excavation required in remainder of the floodplain – 1:1
- See illustrations in PPT to explain cut and fill

Nancy Thorington: Title 24 Chapter 24.50 – Current project schedule

- Now through 2022 – scoping
- Early 2023 – engagement and outreach
- Proposed code amendments will be available for public review prior to City Council hearing
- Spring 2023 (target) City Council hearings and adoption – hopefully catch up with the Title 33 work

Routh: To make sure I have this clear- the Title 24 and Title 33 amendments will go to City Council at the same time?

Diefenderfer: We hope to see the Title 24 amendments catch up, depending on the scoping of that work.

Thompson: I have much reticence about this piece of the project. It has been explained to me the differences between the building code and the zoning code and how the processes to update each are different, but I heard in the testimony that folks are concerned that this is where the real teeth of project are. I question why it was in the discussion draft in the first place? I think it created a lot of confusion and false expectations. I'm not sure I have a clear recommendation of what we do about this, but I want to express how I'm feeling.

Gittemeier: I agree with what Commissioner Thompson. Where are the teeth in the Title 33 amendments?

Caudill: The Title 33 amendments are focused on ensuring that there is floodplain habitat. Title 24 is addressing floodwater conveyance and flood storage capacity in conjunction with development as well as floodproofing buildings. Mitigation banks are important for both Title 24 and Title 33.

Gittemeier: So, won't there be equal environmental concern with the Title 24 changes? Am I misunderstanding this and the testimony about this?

Diefenderfer: Title 24 is about ensuring development doesn't cause more displacement of water. The testimony talking about the cut/fill is highlighting how important that is. As long as the Title 24 work continues and the mitigation banks are set up, then we are on the right track. We need to remember that we are trying to balance a lot of competing interests.

Gittemeier: What I'm getting is that the testimony seemed to be concerned that the Title 24 changes would have the greatest environmental impacts but there is no real opportunity for public comment on that.

Diefenderfer: I think what we heard in the testimony was that we need to move forward to make sure we have the regulations in place for better environmental protection. What I heard in the testimony was that the changes being addressed in the different titles are part of a larger whole that needs to work together.

Caudill: The relationship between the two titles is that title 33 still lays out the mitigation for what you need to do when you add fill and how they habitat is dealt with when there is cut/fill. The engineering of the cut/fill and conveyance of water is Title 24. The habitat and its preservation/mitigation is dealt with in Title 33.

Lovell: Mitigation Banks are projects that restore properties for the purpose of providing improved ecological function. The restoration and protection of these areas generate transferrable mitigation credits, that can be used to offset specific types of impacts (wetlands, streams, etc.) resulting from development of other sites. Bank projects are approved and regulated by agencies at the federal, state, and sometimes local level; once approved, credits are generated as milestones are met, and released by regulatory staff. These differ from In Lieu Fees because mitigation bank projects are built and approved prior to the development impact.

One way of understanding Title 33 is to consider what happens to fish when there is a flood. You also need to consider where the water goes when there's a flood – conveyance back to the river channel.

For mitigation, you have to go through a hierarchy to try and avoid the impacts, but if not, then mitigation – either on-site or off-site on land the developer owns or has legal control.

The mitigation banking is for areas that have been restored and a developer can essentially go buy a piece of it. But mitigation banking takes a long time to get up and running. There are some Portland Harbor sites that have flood storage mitigation capacity but not habitat mitigation.

Mitigation Banking in Portland:

- Extensive due diligence to date: There is demand, we have a site lined up, and the financial risk is moderate.
- Eastbank Crescent/OMSI site has progressed: concept design assessed, appraisal shows banking as highest best use, OMSI incorporated the concept into its master plan, extensive Tribal engagement.

Mitigation Next Steps:

1. How does the City finance the bank?
2. How do we structure the organization within the city?
3. What are the equity components to this?

Sheoships: I think the history of environmental mitigation has environmental justice implications. In terms of mitigation, how are you dealing with maintenance and care over time.

Lovell: We're creating a system that has differential ratios on-site vs. off-site. We've seen in the past that there have been a lot of problems. What we're doing here is creating permanent protections – conservations and legal restrictions. The cost also includes an endowment for long-term maintenance.

Routh: Seeing as we're over time, is there a good stopping point here?

Caudill: What's remaining are the staff recommended amendments. They are in the Memo Attachment B. Commissioners can review and we can dive in at the next session.

Diefenderfer: To Commissioner Spevak's comments earlier, the next step is to see if there are commissioner amendments. Are there any proposed amendments now?

Routh: We could also be teasing out amendments at the PSC Officer's Briefing. Perhaps we can start there and prepare to discuss at the next briefing.

Routh: We will continue this discussion at our November 22 PSC meeting.

Adjourn

Chair Routh: Adjourned the meeting at 8:23 pm.

Submitted by JP McNeil