

MINUTES

Lane County Planning Commission
Board of Commissioners Conference Room—125 East 8th Avenue
Eugene, Oregon

June 2, 2009
5:30 p.m.

PRESENT: Lisa Arkin, Chair; Robert Noble, Vice Chair; Todd Johnston, Tony McCown, Nancy Nichols, Howard Shapiro, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commission; Kent Howe, Stephanie Schulz, George Ehlers, Lane County Land Management Division; Karl Morgenstern, Brad Taylor, Eugene Water & Electric Board; David Richey Denise Kalakay, Lane Council of Governments; Nick Kraemer, Cody Evers, Bob Parker, Roger Hamilton, University of Oregon Community Planning Workshop.

ABSENT: Steve Dignam, Lane County Planning Commission.

Ms. Arkin convened the work session of the Lane County Planning Commission (LCPC) at 5:30 p.m.

Those present introduced themselves.

PUBLIC COMMENT

There was no one present wishing to offer comment.

WORK SESSION

1. Approval of Minutes

April 7, 2009

Mr. Siekiel-Zdzienicki referred to page 2 of the minutes and corrected the first sentence in paragraph 9 to read (italicized text added): “City of Eugene City Attorney Kathryn Brotherton said the West Eugene Parkway (WEP) was different than the other projects on the list and was not being removed because it had *not* been completed.”

Mr. Siekiel-Zdzienicki referred to page 4 of the April 7 minutes and corrected the first sentence in the motion to read (italicized text added, struck text deleted): “. . .moved that the Lane County Planning Commission recommend that the Lane County Board of County Commissioners, rebased on the findings of consistency. . .”

Mr. McCown, seconded by Mr. Siekiel-Zdzienicki, moved to approve the April 7, 2009, minutes as amended. The motion passed unanimously, 8:0.

April 21, 2009

Ms. Arkin referred to page 4 of the April 21 minutes and asked that sentence 5 in paragraph 5 be changed to read "She saw ~~not~~ no reason to split the lot. . ." She also asked that sentence 7 in the same paragraph be amended to read "She was *not* troubled about the home since it would be a permitted use. . ."

Mr. Sullivan, seconded by Ms. Nichols, moved to approve the minutes of April 21, 2009, as amended. The motion passed unanimously, 8:0.

May 5, 2009

Ms. Nichols referred to page 6 of the May 5 minutes and offered the following correction: "Ms. Nichols understood the State planned to cut back Measure 57 and reduce the number of people incarcerated and *asked* how it impacted Junction City's plans."

Mr. McCown, seconded by Mr. Shapiro, moved to approve the minutes of May 5, 2009, as amended. The motion passed unanimously, 8:0.

2. McKenzie River Riparian Protection Study

The commission was joined by Karl Morgenstern and Brad Taylor of the Eugene Water & Electric Board (EWEB); David Richey and Denise Kalakay of the Lane Council of Governments (LCOG), and Bob Parker, Roger Hamilton, Nick Kraemer, and Cody Evers of the University of Oregon's Community Planning Workshop. Ms. Arkin reminded the commission of the tie between the presentations members would hear and the commission work plan item related to riparian protection.

The presenters provided information on EWEB's McKenzie River Riparian Study and the Community Planning Workshop's analysis of the Lane County Development Code. On behalf of EWEB, Mr. Morgenstern presented information on the riparian study. He identified the scope of existing and proposed development, discussed non-point source pollution threats in the McKenzie basin, and described the scope of the McKenzie River Septic System Assistance Project. Commissioners asked questions clarifying the information presented.

Mr. Morgenstern noted that a bill passed in the 2007 Oregon Legislature had provided EWEB with the ability to assist the owners of failing septic systems. Ms. Arkin suggested that Florence could take a similar approach.

Mr. Morgenstern overviewed EWEB's monitoring efforts in the watershed and shared some summary data that demonstrated the impacts of septic cluster areas. He discussed the septic system inspections conducted by EWEB, which identified 37 systems in need for repair or replacement. He confirmed, in response to a question from Mr. Noble, that age was a factor in

system failure. He shared data on systems inspected and pumped in watershed sub areas and a map showing drinking water source protection areas in Lane County. Mr. Noble asked about compliance and access to properties. Mr. Morgenstern said there was initial skepticism on the part of residents, but since the effort was voluntary it was generally accepted.

Mr. Johnston asked if there were enforcement mechanisms available for failing septic systems. Mr. Morgenstern said yes, but EWEB did not use them. EWEB had used grant money to replace failing systems and was attempting to secure more resources to underwrite the costs of more system testing and replacement. He confirmed, in response to a question from Ms. Nichols, that many residents had been willing to replace their own systems without assistance as they realized it was part of their investments in their homes. He noted that sampling had occurred in the dry season but sampling was also planned for fall 2009.

Mr. Parker provided an overview of the Community Planning Workshop's analysis of the Lane County Development Code as it affected drinking water in the McKenzie basin. He described the historical development patterns in the basin and briefly overviewed the permit review methodology using some actual examples. He noted the high level of development in the flood zone and flood plain. He shared data about some of the variance requests received by Lane County over the last two years.

Mr. Parker concluded his presentation by sharing some summary analysis results, suggesting that the code and permitting practices allowed and in some cases encouraged development in riparian areas and flood zones, resulting in threats to water quality, habitat, and structures, as well as increased staff time and cost for permit reviews, and which also had a domino effect that resulted in additional permit applications to address other regulatory issues and more variance requests. A single property could have been the subject of between 15 to 30 permit applications.

Responding to a question from Mr. Siekiel-Zdzienicki regarding permitting modifications that could have been avoided, Mr. Parker suggested that the question was how to mitigate the impact of existing development and the impacts of new development, such as land parcelization. He noted that Hood River, Oregon, prevented the creation of a lot that required a modification to the setback requirement for hardship purposes.

Mr. Morgenstern discussed some of the implications and long-term trends based on climate warming trends that he anticipated would result in wetter winters and drier summers. He shared digital elevation models of the basin to demonstrate improved mapping and noted other water quality projects currently underway. He distributed a list of those projects.

Mr. Morgenstern reviewed next steps in the process, which included securing standing for EWEB in development processes and a request to the Board of County Commissioners to establish committees to review the County's development code.

Responding to a question from Mr. Sullivan, Mr. Howe said a code review was no longer on the staff work plan, but could be added if the commission and Board of County Commissioners chose to raise it in priority.

Mr. Sullivan suggested the commission recommend to the Board of County Commissioners that it hear the presentation due to the importance of the McKenzie River as a community water source. Mr. Howe concurred, and suggested that the commission also give staff an opportunity to provide its perspective as well.

Ms. Arkin suggested that the PowerPoint presentations be attached to the minutes.

Mr. Sullivan suggested that staff include a timeline in the project to focus the Board of County Commissioners' discussion.

Mr. Shapiro wanted the timeline to be associated with the severity of the problem. Mr. Parker said the analysis focus was on preserving water quality in the basin. He said there was evidence that development had an impact on water quality, and the question was how much more development it would take to create problems that interfered with EWEB and the fish habitat. Mr. Parker suggested that if the community relied on state and federal standards to protect the river, "it was already gone at that point." He said the river supplied both drinking water to EWEB customers and was a world class fishery, lending urgency to the analysis. Mr. Parker did not see regulatory avenues that would stop development because of the rights of development that existed, but he thought there were best practices that were worth having discussion about at the commission level. He suggested a combination of regulatory and incentive-based programs might be the ultimate solution. Mr. Shapiro asked that the presenters come back for more discussion.

Ms. Arkin asked how property owners secured permission to place revetment in the river. Mr. Howe said that below the ordinary high water mark, the Division of State Lands (DSL) regulated the issue and permitted revetment, and if the property was above the ordinary high water, the property owner must seek a modification to the riparian setback requirement. That process could possibly also involve the DSL depending on the location of the property. Mr. Howe reviewed the Lane County process and said it was not an easy thing to do. Mr. Morgenstern asserted that he was seeing a lot of emergency revetment placed with the intention to save houses, and those permits are approved fairly quickly. The property owner was supposed to follow up and "close the deal" but he did not know how often that actually happened.

Ms. Arkin said Senate Bill 77 required the DEQ to develop a list of bio-accumulative toxins that existed in the state's surface water. She said the list was released the day before, and the DEQ had identified 140 persistent cumulative pollutants. She said the problem was a statewide problem involving several State agencies, and was not just a local problem.

Responding to a question from Mr. Johnston, Mr. Morgenstern indicated he would let the commission know when materials were available on line.

Responding to a question from Ms. Nichols, Mr. Howe said that Lane County processed each application for modification on its merits and referrals were sent to the appropriate State agencies, to EWEB, and to surrounding property owners for comment. Staff weighed the setback issues and property rights. The County attempted first to protect the riparian zone but sometimes life safety issues and road locations played a role. Mr. Sullivan applauded the fact the process was not prescriptive. Ms. Nichols asked if the County could reduce building size. Mr. Howe

said that touched on the criteria. In regard to the issue of a variance versus modification, a modification for the riparian zone was based on a practical difficulty test, which was different from the test for a variance, which is based on an analysis for an unduly restrictive burden. The Board has made it clear to staff that there was a balancing act involved. The County noticed its final decision on proposals to all surrounding properties and involved agencies and gave those parties an opportunity to appeal. Mr. Howe conceded that the ordinance was not perfect but it attempted to strike a balance between private property rights and the public's interest. He indicated he would provide more context regarding the issue to the commission in the future.

Ms. Arkin said she recently heard a presentation from Gordon Grant of Oregon State University regarding water quantity and recommended that he be invited to present to the commission as well.

Ms. Arkin thanked Mr. Parker and Mr. Morgenstern.

3. Climate Leadership Initiative

Mr. Hamilton presented a PowerPoint presentation on the initiative entitled *Framework for Futures Project*, which provided an overview of the effect of climate change on the water supply in Oregon, with a focus on Oregon waterways. Commissioners asked questions clarifying the information presented.

Mr. Sullivan noted Representative Peter DeFazio's opposition to decommissioning dams. He asked if the presentation supported decommissioning dams. Mr. Hamilton said that the question was not easy to answer with a yes or no. He noted the recent decommissioning agreement reached in regard to the Klamath Basin area and the relatively small megawatts involved that suggested the agreement was not going to be significant in regard to power production. He believed that the harm to the fish from water releases heavy with algae during the summer months was justification for decommissioning. Mr. Sullivan recalled that Representative DeFazio had discussed his views on the radio and had presented several logical reasons for his position. He wanted to hear more about those views and raised the issue because of the fact of the two dams on the McKenzie River and Representative DeFazio's position that decommissioning the dams would have more impact on the fishery than the project changes made by the Army Corps of Engineers within the last ten years.

Ms. Arkin observed that studies indicated a growing number of pharmaceutical drugs were entering the water through septic and sewer systems.

Mr. Noble referred to the data Mr. Hamilton presented that showed a drop in snow pack and asked if the analysis included an assumption of a higher average temperature that caused that drop. Mr. Hamilton said that the temperature was assumed to go up by five to ten degrees by the end of the century, depending on the elevation and latitude; the global average was two to four degrees hotter.

Ms. Arkin thanked Mr. Hamilton for his presentation.

4. Report

Mr. Noble indicated his intent to bring the commission information at its June 16 meeting about possible revenue options for long-range planning and planning commission support. Mr. Howe updated the commission on the budget actions taken by the Board of County Commissioners to direct tipping fee revenues to Land Management. The commission agreed it still wanted to have the discussion of revenues identified by Mr. Noble.

Responding to a question from Mr. Noble, Mr. Howe indicated he would prepare one of his periodic summaries of the results of the commission's recommendations to the Board of County Commissioners.

Mr. Noble reported that the Board of County Commissioners asked the chair and vice chair to report quarterly in person.

Ms. Arkin adjourned the meeting at 8 p.m.

(Recorded by Kimberly Young)