

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION
REGULAR MEETING
MAY 13, 2008
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center, 1175 E. Main Street
- II. **ANNOUNCEMENTS**
- III. **APPROVAL OF AGENDA**
- IV. **CONSENT AGENDA**
- A. Approval of Minutes
1. April 8, 2008 Planning Commission Meeting
2. April 8, 2008 Hearings Board Meeting
3. April 22, 2008 Water Resources Study Session/Workshop
- V. **PUBLIC FORUM**
- VI. **SPECIAL PRESENTATION**
- Southern Oregon University Intern Project - Special report on photo inventory of riparian areas
- VII. **TYPE III PLANNING ACTION**
- A. **PLANNING ACTION: 2007-01313**
APPLICANT: City of Ashland
DESCRIPTION: *A proposed Chapter 18.63, Water Resource Protection Zones added to the Ashland Land Use Ordinance addressing wetland and riparian area protection, and revisions to Chapter 18.62 Physical and Environmental Constraints regarding Riparian Preservation Lands.*
- VIII. **UNFINISHED BUSINESS**
- A. Planning Commission Rules
- B. Appointment of third member of Hearings Board for June through August
- IX. **OTHER**
- A. Planning Commission Powers and Duties (AMC 2.12)
- B. Planning Commission Annual Retreat
- X. **ADJOURNMENT**

**CITY OF
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

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**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
REGULAR MEETING
MINUTES
APRIL 8, 2008

CALL TO ORDER

Chair John Stromberg called the meeting to order at 7:05 p.m. at the Ashland Civic Center, 1175 E. Main Street, Ashland, OR.

Commissioners Present:	Council Liaison:
John Stromberg, Chair Dave Dotterer	Cate Hartzell, Council Liaison, absent for quasi-judicial item, arrived at 8:25 p.m. for Type III PA
Tom Dimitre	Staff Present:
Mike Morris	Bill Molar, Community Development Director
John Fields	Maria Harris, Planning Manager
Pam Marsh	Derek Severson, Associate Planner
Melanie Mindlin	Richard Appicello, City Attorney
Absent Member: Michael Dawkins, excused	Sue Yates, Executive Secretary

ANNOUNCEMENTS

Molnar said the Council passed the Ashland Land Use Ordinance amendments (second reading) and the ordinance will go into effect July 1, 2008. The Council also passed (second reading) of the Planning Commission's Powers and Duties.

Molnar announced that Sue Yates will be retiring at the end of April.

The Commissioners will be receiving an e-mail with three possible dates for the May retreat. Choose a date and return the e-mail.

APPROVAL OF AGENDA – Dimitre/Dotterer m/s to approve the agenda. Voice Vote: The agenda was approved.

CONSENT AGENDA

Approval of Minutes

March 11, 2008 Planning Commission Meeting - Fields/Dotterer m/s to approve the minutes. Voice Vote: Approved.

PUBLIC FORUM

COLIN SWALES, 461 Allison Street, discussed the Downtown Design Standards concerning the Administrative Variance for balconies. He showed a photo of the old Ashland Hotel from 1911. It had a balcony/arcade all along the front of the building. It is similar to what is seen in Jacksonville. The historic balcony/arcade extends out into the public right-of-way, assuming the front of the building is the property line. He believes this would be a great way for the City to make use of the valuable public right-of-way space and enhance the Downtown. He recommended the Commission look at the Sanborn map for Downtown for 1911 to see how the Downtown developed. He would like to have this type of development reviewed if there is any chance of amending the Downtown Design Standards. Not only does the arcade/balcony enhance the possibilities of upper story restaurants or sitting out over the street, but would also provide shade and a covering in the rain for pedestrians.

TYPE II PUBLIC HEARINGS

PLANNING ACTION: 2008-00182

SUBJECT PROPERTY: 500 Strawberry Lane

APPLICANT: McLellan, Robert & Laura

DESCRIPTION: Request for Outline Plan Approval to allow a six-lot, five-unit subdivision under the Performance Standards Options Chapter for the property located at 500 Strawberry Lane. The application also requests a Physical & Environmental Constraints Review Permit for Development of Hillside Lands, a Tree Removal Permit to remove 13 trees six-inches in diameter at breast height (d.b.h.) or larger, and an Exception to Street Standards to allow the applicants to end street improvements at the driveway of Lot 5 rather than extending them to the southern boundary of the project.

The hearing was closed at the last regular meeting, deliberation continued, and the record was left open for seven days at which time the applicant was given seven days to submit a response to any written submissions.

Ex Parte Contact/Bias/Conflict of Interest/Site Visit

Fields walked all the way up and around the property. He noticed the public trail system and the slope of the land. Morris reported that Mrs. Dimino asked him who did the cabinets in the McLellan house. Dimitre, Mindlin, Marsh, Dotterer and Stromberg had no site visit or ex parte contacts.

STAFF REVIEW OF ISSUES

1. On-street parking on Hitt – The number of homes to be accessed from Hitt Road will increase from five to eight. There is a parking demand generated by users of the trail system who currently park in the private driveway near the existing gate and along Hitt Road. (Refer to Staff Report Addendum dated April 8, 2008 for more details.) Staff believes there are options readily available to address the additional parking demand. The applicant has offered to provide an additional visitor parking space on each of the proposed lots. Staff believes the Commission could require the applicants provide for additional on-street spaces with parking bays between the driveways for Lots 2 and 4 and/or near the proposed relocated gate. A Condition has been proposed to require that the Final Plan submittal identify additional on-street parking spaces on Hitt Road.

2. Application of lot coverage – The flexibility inherent in the intent of the Performance Standards Options can be applied to lot coverage in terms of the subdivision site as a whole in order to protect natural features of the site while providing architectural creativity. Staff believes this application of lot coverage provides for the greatest protection of the natural environment.

3. McLellan's participation in the LID (issue raised by Dimino's). Severson met with Jim Olson, Interim Public Works Director, and found the McLellan's participated for a two lot potential and paid \$8,280. According to the City Attorney, this cannot be reassessed by the Planning Commission's Condition because ORS specifically prohibits reassessment.

Staff still believes the application is relatively straight-forward. The Commission will need to determine what degree any increase in on-street parking demand generated by the subdivision needs to be addressed in the Conditions and at Final Plan submittal.

Mindlin questioned the 22 foot road width and 20 foot clear. Molnar said eventually, if the Fire Department sees a need, No Parking signs will be installed.

Severson tried to leave some flexibility in the Condition (5j) to allow the applicants to submit a proposal after they look into all the options at Final Plan submittal to demonstrate the most efficient way of providing additional parking. Stromberg summarized that the Staff Report Addendum has proposed five spaces (one on each lot), four spaces (two in each parking bay). Severson reiterated that the applicant needs to explore that number and placement and review at Final Plan. There may be other options available to the applicant. Molnar said they are also looking at adequate fire protection for that area. Severson noted that the property beyond the improved road is City property and one private lot that is an extremely sloped lot.

Dimitre wondered how many parking spaces are needed to meet adequate City facilities. Severson did not have a specific, but thought in addition to the five additional private spaces the two bays would be adequate. He reminded the Commission an Exception to Street Standards has been requested. Molnar explained that each house is required to have two spaces and the applicants are adding a third. There is no specific requirement for on-street parking in this zoning district.

Stromberg said there is a limitation on the amount of on-street parking for those who drive up to that area to use the trail. What is the City's responsibility? Severson said that is the balance the Commission has to find. Molnar said the trailhead exacerbates the potential for a problem, but Staff does not believe they can place that burden on this applicant.

Morris wondered why we were allowing the road to end at the driveway and not bring it up to at least to the end of Lot 5 with half street improvements to the start of the open space. Severson said in evaluating it, the cut slopes would be impacted by sidewalk improvements. If the Exceptions are merited on one set of slopes, it's equally merited in this area. He did not see a reason to have the road come up further. He thinks the applicants are proposing to have the road go a little past the drive to allow either parking or turnaround.

Dotterrer noted the whole issue seems to revolve around safety and adequate access for fire apparatus. Appicello said that's why the code acknowledges the use of bays and specifically where they are safe to locate. Equal or superior transportation will be provided with this Exception.

Dotterrer said a Condition was added to accept the Tree Commission's recommendation. Do we have the authority to ask the applicant to take care of mistletoe in the oak trees? Severson does not think we can require mitigation on every tree. We can require mitigation of the 18 inch tree that is to be removed and when Lot 5 develops we would look at the tree removals proposed as part of the Hillside Development Permit and look at mitigation based on the entire disturbance proposed. With regard to the mistletoe, Severson said the Condition states "...where consistent with City standards."

COMMISSIONERS' DELIBERATIONS AND MOTION

Mindlin believes the Commission should require as much parking as they can get. If there are areas that aren't as steep and bays will fit in, we should ask for it. Marsh agreed.

Dotterer did not feel extending the street beyond Lot 5 makes good sense. He would go along with a couple of parking bays. The applicant didn't create this situation.

Morris said even though the applicants have proposed moving the gate up 20 feet, he thinks 50 to 60 feet up the existing road (and widening the road for turnaround area) would be appropriate. He can't remember a time when there was just a road that ended. Fields said there is no way to put a 30 foot cut up that road. It's just too steep.

Severson said he thought the applicants would be widening Hitt Road to the gate to match the existing improvement to the gate.

Morris/ Fields m/s to approve PA2008-00182, with wording to Condition 5j as follows: That in addition to the third off-street parking space proposed to be provided on each of Lots 1-5 by the applicants, the Final Plan submittal shall also identify four parking bay spaces to be provided on Hitt Road near the relocated gate and between driveways 2 and 4. The gate will be moved to the end of the improvements and Hitt Road to the southern extent of the street improvements. The gate needs to be located sufficiently beyond the bay for the parking space to function as a parking bay. Hitt Road shall be widened to the gate. Roll Call: The motion carried unanimously.

Approval of Findings – Morris/Marsh m/s to approve the Findings according to the approved motion. Roll Call: The Findings were unanimously approved.

The Commission took a five minute recess. Councilor Cate Hartzell arrived at 8:25 p.m.

TYPE III PLANNING ACTION

PLANNING ACTION: PA2007-01318

SUBJECT: An ordinance amending the Ashland Municipal Code Land Use Ordinance concerning special [arterial] setbacks and associated street standards.

APPLICANT: City of Ashland

DESCRIPTION: The proposed amendments to the Special Setback Requirements expand the exception from the 20-foot front yard requirement for properties abutting arterial streets to include all properties abutting Lithia Way. The current ordinance has an exception to the 20-foot front yard requirement for properties zoned C-1-D which applies to the lots on the south side of Lithia Way. The proposed amendment would also include the lots on the north side of Lithia Way in the exception from the 20-foot front yard requirement. Additionally, the proposed amendments to the Street Standards Handbook specify that the minimum width for a commercial tree well is five foot by five foot, and that the minimum required sidewalk width on arterials in the Downtown Design Standards Zone is ten feet.

STAFF REPORT

Harris did a brief slide show that explained the information in the Staff Report. The proposed amendments have two pieces: 1) Review to Special Setback Requirements, and 2) Some revisions to the Street Standards.

1. Special Setback Requirements – Currently there is an Exception to the 20-foot front yard requirement for properties in the C-1-D zone. The new language expands that to the C-1 properties abutting Lithia Way. That means the Exception will apply to both sides of the street.
2. Revisions (or clarifications) to the Street Standards
 - a. Commercial parkrow minimum width is five feet.
 - b. Tree grate size of five feet by five feet.
 - c. Structural soil required in hardscape parkrow
 - d. Ten-foot wide sidewalk is minimum width on arterial streets in the Downtown Design Standards zone.

What does this mean? Harris showed a photo of Lithia Way. Under the proposed ordinance, as new buildings developed on the south side of the street, the required sidewalk and tree well improvements would be required. On the north side (Post Office side), a 20 foot setback to the building from the property line would be required. Staff has estimated the property line is approximately seven feet back from the curb line. Both sides of the streets should match so the buildings could be placed adjacent to the back of the sidewalk with a standard and commercial parkrow installed.

Harris showed some photo renderings to help the Commissioners visualize what the ordinance would mean. The result of the amendment is to get a Main Street development pattern on the north side of Lithia Way. The official downtown boundary is established in the Downtown Plan adopted in 1988. That includes both sides of Lithia Way. That was reaffirmed during the Downtown Designs Zone development in 1998.

Benefits of the amendment:

- Support the urban principles currently captured in the Comprehensive Plan and the Site Design and Use Standards.

- Preserve downtown character by maintaining the continuity in the established building pattern.
- Provide consistency with the Site Design and Use Standards, Transportation Element and TSP.
- Provide clear direction for land use application process.

Staff Recommendation: That the Planning Commission recommends approval to the City Council.

Harris noted that when they talked about this in January, Staff had presented a different draft ordinance package. They heard quite a few concerns during and after that presentation about that approach being complex and confusing. Tonight's draft is more straight-forward.

Marsh asked what Staff's sense is of the other arterials that have been left undiscussed. Ultimately, Harris believes it would be good to look at Ashland Street because it, along with Lithia Way, has the highest percentage of undeveloped lots. She reminded the Lithia Way process has taken about nine months. Marsh believes it is important not to lose sight of how we were going to look at all the arterials and we go back and pick it up where appropriate.

Stromberg referred to Page 22 of the Street Standards under Street Design Standards concerning the parkrows. It states seven to eight feet on both sides, hardscape parkrow with street trees planted in wells shall be used in commercial areas. It doesn't say anything about reducing the size of the parkrow. Harris said she believes the intent was to use the City specification for the tree grate all along. It used to be four by four feet and recently changed to five by five feet.

Dimitre asked how the sidewalk on the south side of the street compares to what is proposed. Fields said the width in front of the Jasmine building is ten feet, six inches from curb to building. Dimitre said the five-and-a-half feet remaining does not give pedestrians much room to pass. Harris said the ten foot measurement is from the commercial parkrow to the face of the building so that would be a clear ten feet in width in addition to the parkrow.

Dimitre asked if we approve this amendment tonight, how does this impact previously approved projects that may not have been built out yet? Harris said this amendment would not apply to an already approved project. Dimitre further asked if there is a way for applicants to come back and ask for an amendment to an earlier approval. Molnar said we are talking about one of the first applications on Northlight that set the building back roughly 27 feet from the curb. They could propose a modification to their design through a public hearing according to the ordinances on the books.

Molnar said the Design Standards encourage public spaces in front of the building. Through the process we might be looking at a transitional setback if the contrast in the building line along Lithia Way is too stark.

Molnar reflected on what we did before we created the Street Standards (before 1999). There were just two provisions in the code (Subdivision and Performance Standard) that referred to a couple of street standards with a footnote "standards variable based on specific situations." Streets were done internally between Public Works and Planning by looking at the order of the street such as zoning, how much parking, etc. There were no Exceptions ever needed because it was done through discussions with the professional engineering staff. Then we adopted the section that provided for Exceptions. We've gotten hung about where street improvements were built to what was on the books at the time. As we have redevelopment, how do the new standards apply? For a couple of years, there was some learning how to work with the new process. Molnar said it was never anyone's intention to do anything intentionally.

PUBLIC HEARING

COLIN SWALES, 461 Allison, said neither the Zucker Report nor Siegel Report led the Council to ask the Planning Commission to deal with this issue. He does not know why the Planning Commission is dealing with this now. Stromberg said the Planning Commission has the independent authority to initiate changes in the Land Use Ordinance. The direction the Council gave was to form a committee that Fields, Morris and Stromberg were on to only process those parts of the Siegel Report that were non-policy items.

The drawings in the PowerPoint presentation showed a 15 foot parkrow and sidewalk throughout the Lithia Way corridor. Swales said the whole of the street wall on the south side of Lithia Way has been moved forward right up to the property line with an inadequate sidewalk. The Commission did point out that to move the curbs would be a multi-million dollar job. The curbs on the front of the Northlight property have been removed this week and he doubts this was a multi-million dollar job.

The ordinance provision reads: "In order to protect and benefit the health, safety and welfare of existing and future residents of the City, it is necessary to modify the setback as relates to certain arterial streets, namely Lithia Way. It's apparent from the Staff Report that the reason this is being changed is to allow more development on the north side of Lithia Way, specifically for the Northlight property. Swales thought it should read: "In order to protect and benefit the wealth and profits and welfare of the existing and future private developers of the City..." He cannot see a downside if the ordinance change is not approved.

JEROME WHITE, 253 Third Street, is speaking as an architect and citizen. He heard from a local builder that back in the 1960's when this ordinance was created, they were trying to address light and air due to smog from logging trucks and mills in town. The arterials were congested before the freeway went in. He thinks this ordinance tried to address this problem. We don't have that problem now. He is looking forward to clear standards – a standard that addresses the street front and an ordinance that doesn't harken back to some former issue that no longer exists. The Downtown Plans consistently have said to build to the property line.

Planners from the state came to Ashland to speak last year and told the attendees that it would be a disaster to have a 20 foot setback all along Lithia Way and to have the plaza space. An occasional mid-block setback is a good thing. He would like the Commission to approve the amended ordinance and move on.

RON ROTH, 6950 Old 99 South, stated he has worked in downtown Ashland for over 31 years and has been involved with different issues downtown. He is supportive of this new ordinance. It makes a lot of sense to have this setback. The existing buildings such as the Post Office and the Copeland buildings were not set back 20 feet.

GEORGE KRAMER, 386 N. Laurel, congratulated Staff on this change. He applauded the Commission for jumping in and doing Lithia Way first. This is a good change to make sure whatever gets built on Lithia Way will be the right thing. The old language is old planning. The 20 foot setback is a car oriented standard. What we enjoy about North Main and the downtown has to do with the street wall and the zero setback.

He works as a design consultant. They design standards that require buildings to have zero setback. People don't like vacant land. A couple mid-block plazas work. Lithia Way needs to reflect a traditional downtown pedestrian core. He is supportive of the proposed compromise. It will provide the flexibility of building designs and still provides for adequate public amenities.

MIKE HAWKINS, 500 Oak Street, Jacksonville, OR, asked for explanation of the setback. Harris said currently the setback is 20 feet from the property line. The proposed amendment says you don't have to do a 20 foot setback from the front property line. Hawkins had no other comments.

MARK KNOX, 700 Mistletoe Road, believes this proposed ordinance is a positive contribution to Ashland's primary streetscapes. He believes it will provide clear and objective criteria on which to base their decisions. The current ordinance is a remnant from the automobile era and does nothing to enhance the pedestrian environment. What is the goal of anyone opposing this ordinance? The ordinance amendment is sound planning practice, not developer driven. He would like to see an amendment to the Table 1 footnote allowing an option for a planter bed similar to East Main Street. It provides a simple amenity and provides seating and additional landscaping and a more human scale experience.

Stromberg closed the public hearing.

COMMISSIONERS' DELIBERATION AND MOTION

Marsh/Dotterrer m/s to approve the draft ordinance revisions regarding arterial setbacks on Lithia Way and refer them to the City Council. Marsh said clearly there is a great deal of ambiguity and dysfunction around the current arterial setbacks. It's the Planning Commission's job to address those kinds of gaps in the ordinances and to make clear to applicants what we are looking for.

Marsh continued that the change in the setbacks on Lithia Way have several distinct advantages. They provide consistency on Lithia Way. Inconsistency causes people to feel uncomfortable on the street. The change will allow us to provide a pedestrian environment that feels safe and provides an enclosure to people using the street. We will be implementing an appropriate commercial environment. If we want buildings in the core of our downtown areas that relate to pedestrians and have retail uses in them that mimic the type of commercial development we have on Main Street, we need to allow those buildings to hug the public sidewalk. Do we want offices in the bottom floor of the downtown core?

Is the proposal a wide enough sidewalk? She would like to get rid of the whole concept of a hardscape parkrow and move toward the kind of concept presented by the planners from the state. She would like to see a width of sidewalk and within that sidewalk we have certain zones – furniture zone by the curb, passage zone in the middle. We are looking at a 15 foot sidewalk with trees in it. It's a broader street than on Main Street and it's hard to argue that it should be any broader than it is laid out. We have a good proposal that we've discussed for a year, and Marsh hoped the Commissioners will join her in approving it.

Dotterrer appreciates White and Kramer filling in the history. Two standards for two sides of the street are not balanced. He likes the idea there is flexibility to applicants and yet still having a good streetscape.

Dimitre wondered how we get plaza areas if the buildings are less than 10,000 square feet. Molnar said it's not a hard and fast requirement but there is a standard that we encourage hardscape and people areas in the Detailed Site Review Zone in the Downtown.

It is identified as an amenity.

Dimitre is more interested in deferring this ordinance change until we get a Downtown Plan, and will vote against the change.

Fields believes sidewalk width is a little too wide, but we can live with it. He likes the sidewalks on the south side because it is idiosyncratic and has character. Talking about developing better transportation systems, etc. means having densities that will support it. We want to see concentrated commercial areas that have a mixed use of residential above them that encourage people to live, work and support public transportation that changes the way we move ourselves around and how we live. What makes downtowns interesting is the urban part of our lives that create interest and excitement, economy and jobs. What Staff has proposed is a simple solution and a tiny step. He favors the change.

Morris would like to see this go forward. Everywhere you go and anyone you talk to from downtown planners to Siegel to ODOT, the streetscape and activity is generated by the narrower sidewalks and the buildings built to the street. He much prefers the energy created compared with walking in Medford where it is spread out and open. He believes we need to allow Staff to use the Downtown Design Standards to break up the masses.

Stromberg has resisted doing away with the 20 foot front yard for a long time. He has put a lot of time and effort into getting the City Council to do what he thinks is a badly needed Downtown Plan. He has been discouraged by the City Council's unwillingness to commit itself and commit the resources to do something the downtown and City greatly needs. He can no longer in good faith hold out on the 20 foot front yard that he does not think is appropriate for this area. He may still vote against it because he doesn't want to shrink the sidewalk and parkway as part of the deal.

Molnar talked with Donn Todt, Parks Department. He told him the Planning Commission had been discussing tree grates. Todt told Molnar that soil amendments are what make the difference to trees. The tree grate size won't make that much difference.

Stromberg said Siegel gave us language to fix the front yard setback. Also, all yards abutting arterial shall be no less than 20 feet. He believes we should make that correction. And, recommend to the Council that they rescind the complex interpretation they made a couple years ago to deal with the problem.

Stromberg added that he did not understand in the Downtown Design Standards it says there should be a zero setback between the either the sidewalk or the property line. He thinks it should be a zero setback from the sidewalk as prescribed by the Street Standards. It seems we are perpetuating an ambiguity.

Molnar said that would be easy enough to clear up.

Mindlin asked if we want to allow for planter boxes. Molnar did not think the standard precludes us from looking at that. We need to come up with a standard to allow for those items that improve the pedestrian environments that could be included through a City encroachment permit

Roll Call: The motion carried with Dotterer, Marsh, Morris, Fields, Mindlin voting "yes" and Stromberg and Dimitre voting "no."

Hartzell agreed with Stromberg that the Downtown Plan is important. She wants to make sure we are stewards of the public space. In giving space to a private building, we must ensure that we are getting a quality of exchange on the public space that is left.

OTHER

There will be a Water Resources Protection Zone Workshop on April 22nd at 7:00 p.m. at the Council Chambers.

ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

*Respectfully submitted by,
Susan Yates, Executive Secretary*

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
HEARINGS BOARD
MINUTES
APRIL 8, 2008

CALL TO ORDER

Commissioner John Fields called the meeting to order at 1:35 p.m. at the Ashland Civic Center, 1175 E. Main Street, Ashland, OR 97520.

Commissioners Present:

John Fields
Melanie Mindlin
John Stromberg

Absent Members:

None

Council Liaison:

Cate Hartzell, (Council Liaison does not attend Planning Commission meetings in order to avoid conflict of interest.)

Staff Present:

Derek Severson, Associate Planner
Angela Barry, Assistant Planner
Amy Anderson, Assistant Planner

APPROVAL OF MINUTES

March 11, 2008 Hearings Board Minutes – Approved as written.

TYPE I PLANNING ACTIONS

PLANNING ACTION: *PA2008-00338*

SUBJECT PROPERTY: *600 Siskiyou Boulevard*

APPLICANT: *Laura Bixby Fox*

DESCRIPTION: *Request for a Modification of an existing Conditional Use Permit and Site Review for the establishment of an office use for the property located at 600 Siskiyou. No physical alterations to the site are proposed.*

This action stands approved.

PLANNING ACTION: *PA2008-00316*

SUBJECT PROPERTY: *339 Morton St.*

APPLICANT: *Jason Eaton*

DESCRIPTION: *Request for a Conditional Use Permit for an Accessory Residential Unit for a property located at 339 Morton Street.*

This action stands approved.

PLANNING ACTION: *PA2008-00080*

SUBJECT PROPERTY: *750 Roca St.*

APPLICANT: *Kerry KenCairn*

DESCRIPTION: *Request for a Modification to an approved building envelope and Physical and Environmental Constraints Permit to locate a home on Hillside Lands and Severe Constraint Lands and for development in the floodplain for a property located at 750 Roca Street.*

This action stands approved.

PLANNING ACTION: *2008-00183*

SUBJECT PROPERTY: *167, 185 and 203 North Mountain Avenue*

APPLICANT: *Havurah Friends Investment Group, LLC*

DESCRIPTION: *Request for Final Plan Approval to allow a 12-lot, 15-unit subdivision for the properties located at 167, 185 and 203 North Mountain Avenue. Requests for: the modification of a previously approved Site Review and Conditional Use Permit (#2001-0039) for the Havurah Jewish Synagogue; Site Review approval to construct a two-story, six-unit residential building; a Tree Removal Permit for the removal of one nine-inch diameter pine tree from Tax Lot #1701; and a boundary line adjustment with Tax Lots 1600, 1701, 1800 and 1700 were included in the Outline Plan Approval PA #2007-01398.*

This action stands approved.

TYPE II PUBLIC HEARINGS

PLANNING ACTION: *2008-00355*

SUBJECT PROPERTY: *140 Central Avenue*

APPLICANT: *Lois Van Aken*

DESCRIPTION: *Request for a Conditional Use Permit and Site Review approval for a two unit Travelers Accommodation for the property located at 140 Central Avenue. The application also includes a Variance request to not pave the existing driveway off of Central Avenue due to the proximity of the driveway improvements to a large Cedar tree.*

Site Visits or Ex Parte Contacts

Mindlin is a personal friend of the applicant, but does not feel it affects her ability to make an impartial decision. Fields and Stromberg had no site visits or ex parte contacts.

STAFF REPORT

Anderson gave the staff report.

PUBLIC HEARING

Lois Van Aken spoke as the applicant. The driveway will disturb the cedar tree.

COMMISSIONERS' DISCUSSION AND MOTION

Stromberg/Mindlin m/s to approve the action. Voice Vote: Unanimously approved.

APPROVAL OF FINDINGS

Stromberg/Mindlin m/s to approve the Findings. Voice Vote: Unanimously approved.

UNFINISHED BUSINESS – Adoption of Findings, Orders & Conclusions

Planning Action 2008-00035, Oak Street, Cleo Smith

Mindlin/Stromberg m/s to approve the above-noted Findings. Voice Vote: Unanimously approved.

ADJOURNMENT - The meeting was adjourned at 1:49 p.m.

Respectfully submitted by,
Angela Barry, Assistant Planner

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
STUDY SESSION/WORKSHOP
APRIL 22, 2008

CALL TO ORDER

Chair John Stromberg called the meeting to order at 7:05 p.m. at the Ashland Civic Center, 1175 E. Main Street, Ashland, OR.

Commissioners Present:	Council Liaison:
John Stromberg, Chair Dave Dotterer	Cate Hartzell, Council Liaison, present
Michael Dawkins	Staff Present:
Mike Morris	Bill Molar, Community Development Director
John Fields, left the meeting at 7:30 p.m.	Maria Harris, Planning Manager
Pam Marsh	Derek Severson, Associate Planner
Melanie Mindlin	Sue Yates, Executive Secretary
Absent Member: Tom Dimitre	

APPROVAL OF REVISED AGENDA

Stromberg asked that "Presentations" be included first on the agenda. Dawkins/Dotterer m/s to approve the revised agenda. Voice Vote: Approved.

SPECIAL PRESENTATIONS

Departing Commissioners Olena Black (served since 2003) and John Fields (served for ten years) were recognized and thanked for their extraordinary years of service to the community while on the Planning Commission. Sue Yates, Executive Secretary for the Planning Department, retiring after 21 years of service was warmly recognized and presented with an engraved set of wind chimes that can be used by her in perpetuity to remember her wonderful friends, past and present, on the Planning Commission.

{Short recess for cake}

ADDITIONAL AGENDA REVISIONS

Follow the Water Resource Protection Zone presentation with Revised Planning Commission Rules. Dawkins/Dotterer m/s to approve the revised agenda. Voice Vote: Approved.

WORKSHOP

ORDINANCE AMENDING ASHLAND MUNICIPAL CODE, LAND USE ORDINANCE (ALUO) REGARDING CHAPTER 18.63 WATER RESOURCE PROTECTION ZONES

PLANNING FILE: 2007-01313

Presentation by Bill Molnar

Molnar stated about 1800 notices were sent to property owners around or adjacent to wetlands and stream areas. Tonight is an opportunity for the Planning Commission and Staff to listen to citizens' concerns and questions. Molnar invited anyone with questions specific to their property and how the ordinance might affect the use of their property to come into the Planning Department or arrange a site visit.

Molnar gave a PowerPoint presentation that will be included in the record.

PUBLIC COMMENTS & QUESTIONS

ROYCE DUNCAN, 1065 Paradise Lane, expressed the following comments:

1. He will submit technical questions in writing (ordinance redundant in places)
2. Look at ordinance through the eyes of the individual homeowner.
3. What is justification for the increased buffers? The mapped areas for the riparian make up only one to two percent of the area of Ashland. Look at runoff from City as a whole from roofs, yards, gardens, streets, storm sewer, and what could possibly be in the buffer that is more polluting than 99 percent of the rest of the City's runoff?
4. What are unintended consequences? Taking away usage of private property. If the homeowner can't use it, will they lose interest in maintaining it? Will blackberries take over in those buffer areas?
5. The more we control property owners, the more we alienate ourselves from pulling together as a community.

6. What other values are we compromising? Are we excluding human use? He would like to see natural drainage areas more heavily used by humans.
7. More property will fall under the existing non-conforming use and will be subject to process and fees if they make modifications to their homes.
8. Larger lots will be able to split less. Works against our infill policy.
9. He is opposed to “native” plants (not referring to the channel or noxious and invasive plants).
10. Fencing is a standard human right. Make a provision for open fencing a certain distance from the creek with openings for small animals to pass through.
11. Do we really want to exclude the use of mechanical equipment?

RICK VEZIE, 446 Walker Avenue, said “water feature” is not defined in the ordinance.

HILLARY TIEFER, 565 Wrights Creek Drive, asked for clarification of the following: Land use process for reduction of the protection zone – Would developers be exempt if they have already bought land for development in the future? Molnar said it would not be exempt from the ordinance. The primary purpose for adding the reduction section is an understanding that existing developed lots with single family homes developed previously might not have planned in accordance with the proposed ordinance, therefore, it allows for some opportunity to reduce the requirement, with mitigation required.

BARRY PECKHAM, 303 Oak Street, asked for clarification of “top of bank.” What are the natural banks of a stream? Molnar said they have tried to provide a definition that a lot of communities have used and rely for some flexibility. Staff has discussed this option rather than going to a more objective standard that is very simple for a property owner to figure out (go to center line of creek). The problem with the objective standard is that more or even less regulation might occur. Dawkins commented that it seems Ashland Creek is the only creek that has a problem with top of bank. Most secondary and intermediate streams are clearly way below stream bank.

Peckham stated he would rather have a more concrete definition.

TERRY CLEMENT, 290 Grandview Drive, made the following comments:

1. More regulations, more hurdles to cross. Would like a package of how ordinance is applied.
2. Doesn't trust Staff's information. – difficult getting to Planning Director and Planning Manager. Feels forced to hire a professional.
3. Would like a written determination from the City giving the go ahead.

Molnar responded there is a pre-application process whereby an applicant is given a package of how the ordinance is applied.

TRENT STOY, 955 Grandview Drive, lives out of the City Limits and in the Urban Growth Boundary. Molnar said the ordinance would not apply to him unless his property is annexed into the City. His land would be subject to County regulations. Story's other questions and comments follow.

1. Who has ownership of the resources? Molnar said, generally, the property owners have ownership. The ordinance would not require a property owner to dedicate the property to the public.
2. Wants to maintain his property rights.
3. Who pays for implementation of the proposed ordinance? Molnar said this ordinance would not require the City to increase Planning Staff. Individual applications for some of the activities or reductions would trigger a land use application and our fees are based on approximately 75 percent of the time it takes to Staff to process it and go through a decision-making process.

RICHARD LUCAS, 1621 Peachey, said his properties border Paradise Creek. Lucas expressed the following concerns:

1. Why are changes necessary if there are going to be unintended consequences? Property owners with established pieces of property should not fall under the new ordinance.
2. By requiring 30 foot center stream, 20 foot top of bank could make his property unbuildable.
3. He has a conservation easement on his property. Molnar said a conservation easement is used over an area to manage a certain area of the creek. The conservation easement does not necessarily line up with the parameters of this ordinance.
4. If a neighbor on the other side of the creek likes to play with hydrology and ends up moving the creek a little, Lucas doesn't have a problem with that, but if it impacts his setback, then he would have a problem with it.
5. He does not agree with the requirement for specific plantings within the buffer zone. He and others have cleaned up their properties and they take pride in it. If they have too many regulations and restrictions, the buffer areas will

become blackberries again. Encourage and educate property owners to plant local varieties, but don't tell them they can't plant certain things.

GRAHAM SHELDON, 70 Water Street, owner of Ashland Creek Inn, stated he is generally in favor of the ordinance. What happens if there is a flood and a structure such as a deck is removed? Would they be allowed to put the deck back in the same place again? Molnar said the bigger question is under those circumstances, we do have situations in town where historic development, whether appropriate or not, extended structures far too close to the stream. Should they be allowed to do that again or should there be some review and an opportunity to back it off and bring back the creek environment. Molnar will do more work on this.

FRED WALTER, 770 Walker Avenue, had an application that required him to build 65 feet from the creek. His waterway is a five foot culvert. With the new ordinance would he have an opportunity to reduce his setback to 20 feet? Molnar asked Walter to set up an appointment to come see him.

RICK LANDT, 468 Helman Street, was a member of the Technical Advisory Committee a few years ago when this ordinance process began. He expressed his concerns as follows:

1. The proposed ordinance is lengthy and in places tries to be a one-size-fits-all. Oftentimes we won't be protecting lower top of bank on one side of the creek while protecting a lot more on the higher top of bank side. That is not addressed in the ordinance. He has an alternative approach.
2. Incorporate the way protection for the floodplain occurs. The riparian zone follows closely to the floodplain.
3. Non-conforming uses. Some are problematic for the long-term. What are we trying to get for our future? He gave examples.
4. Don't hurry the ordinance. It is better to do it right than get it off the checklist.
5. Definition of the protected area. It should be clear so anyone is able to make the measurement. Use the center of creek and throw out the other language. Subtract distance for elevation gain. We already have a well-defined floodplain and it may be that would be another way of defining it.
6. Is there evidence that using local native plants are an advantage? He challenged that requirement. It isn't always easy to obtain local plants.
7. He would favor taking a look at "use of machinery" section.

RICHARD DAVIS, 1335 Seena Lane, said the properties in his neighborhood (lower Roca Creek) have ten foot setbacks from top of bank. Perhaps up the hill would need a different standard. By increasing his setback another ten feet, he'll lose 3600 square feet of buildable area. He encouraged the Planning Commissioners to visit the affected neighborhoods.

BILL RICHEY, 675 Carol Street, said he has a ten foot easement and had questions. Molnar said he would meet with Richey.

OLENA BLACK, 2110 Creek Drive, had the following comments and questions:

1. TID ditches use the riparian corridors to return water to Break Creek.
2. Delineate TID leakage.
3. Are we allowing storm drainage to create high water events for downstream users?
4. No safe place for kids to play by increasing the setback.

NEXT STEPS

Stromberg stated that Staff will take into account what has been heard this evening. The Planning Commission will need to review the rationale for why we are doing this. Dotterrer said he would like to know what is dictated by state and federal regulations. Marsh plans to walk a lot of properties before the next meeting, and asked for a map.

PLANNING COMMISSION RULES

Stromberg noted the Planning Commissioners have all been provided with a copy of the proposed Planning Commission Rules. They are not discussing tonight. It is required to have the Rules presented at a public meeting 14 days prior to making a decision. Stromberg noted three changes:

1. The existing Rules call for an election of officers the first meeting in May. We have two new commissioners coming on and he would like to consider moving that to the first meeting in June.
2. Quorum. There is a conflict with the Powers and Duties Section of Chapter 2 of the AMC. In order to pass a recommendation on an ordinance change, the Commission has to have five affirmative votes. That language will be incorporated into the Rules.
3. They will formally adopt the ability to extend public hearings to 10:30 p.m.

The Rules will be discussed at the next meeting.

ADJOURNMENT – The meeting was adjourned at 9:45 p.m.

*Respectfully submitted by,
Sue Yates, Executive Secretary*

Memo

DATE: 5.5.08

TO: Ashland Planning Commission

FROM: Maria Harris, Planning Manager

RE: Draft Chapter 18.63, Water Resource Protection Zones
May 13 Planning Commission agenda item

Question:

1) Does the Planning Commission wish to direct staff to revise the draft Chapter 18.63, Water Resource Protection Zones ordinance to address Commission concerns and continue the public hearing to a future date?

Staff Recommendation:

Staff recommends the Planning Commission review the key issues and options included in this memo, and provide staff direction regarding modifications.

Background:

April 22 Public Workshop

Oregon state law requires a written notice to be mailed to property owners when a proposed land use regulation may affect the use of their property. As a result, approximately 1,800 notices were mailed to property owners that have properties containing or located near wetlands and streams in Ashland. At the April 22, 2008 Public Workshop, approximately 40 people attended, and thirteen people asked questions and made comments regarding the draft ordinance. A summary of the comments and questions from the April 22 Public Workshop is attached. Additionally, several written comments have been received in the Planning Division office, and are also attached.

Key Issues and Options for Draft Water Resources Ordinance

Staff identified five key issues raised by participants of the April 22 Public Workshop and in written comments to the Planning Division that can be addressed by modifications to the draft ordinance. The concerns expressed thus far are focused on the proposed Stream Bank Protection Zones, rather than the Wetland Protection Zones. Each of the key issues is summarized below, with options for addressing each issue. Additionally, there were a variety of broader scope comments concerning the purpose, property rights, water resource stewardship, fish and wildlife habitat, the application process and the legislative process.

1. Top of Bank Definition

The draft ordinance defines the top of bank as “ *the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate upland areas. In the absence of physical evidence or where the top of each bank is not clearly defined, the two-year recurrence interval flood elevation may be used to approximate the top of bank, or the line of non-aquatic vegetation, whichever is most landward.*” The top of bank is an important definition because the Water Resource Protection Zone is measured from the top of bank as shown in the table below. The Stream Bank Protection Zone is the regulated area, and is intended to include the stream, associated riparian area and a buffer.

Stream Bank Protection Zones	
Stream Classification	Protection Zone
Riparian Corridor - fish-bearing streams with average annual flow less than 1,000 cubic feet per second.	50 feet from top of bank
Local Streams - all other non-fish-bearing streams with average annual flow less than 1,000 cubic feet per second.	30 feet from top of bank, or 40 feet from center of stream, whichever is greater
Intermittent & Ephemeral Streams - may only flow part of the year or only during and after a rain event.	20 feet from top of bank, or 30 feet from center of stream, whichever is greater

It is important to note that the top of bank definition is most critical in the streams classified as Riparian Corridors. This is because the protection zone is measured from the top of bank for Riparian Corridors where as the protection zone for Local Streams and Intermittent and Ephemeral Streams is measured from the top of bank or the center line.

○ **Comments Received**

Comments received included concerns with a one size fits all approach, the top of bank definition shouldn't be subjective, a suggestion to use the floodplain for the protected area, a suggestion to use the center line to measure the buffer area and the need for anyone to be able to measure the buffer area.

○ **Options**

Staff believes the comments about the top of bank definition represent the range of approaches available for determining the protection zone. On one end of the spectrum is a clearly identifiable point such as the center line of the stream. On the other end of the spectrum is an on-site field study such as a determination of the edge of the riparian vegetation. Each approach and the variations in-between involve tradeoffs between the ease in applying the standard and the specificity of the buffer area to the particular stream. Listed below are a variety of approaches used throughout Oregon, and the benefits and constraints associated with each approach. The discussion below is focused on the Riparian Corridor streams.



- a. **Center Line of the Stream** – the protection zone is measured from the center line of the stream. For example for the Riparian Corridor, the protection zone could be measured horizontally 65 feet from the center line of the stream.
- Measurable basis for standard.
 - Relatively easy to measure on a map, although would most likely require a professional surveyor to document the accurate center line.
 - Treats both sides of a stream the same, regardless of topography and riparian vegetation.
 - On larger creeks and creeks with wide ravines, may not incorporate all of the riparian area.
 - May not meet the State’s “safe harbor” requirements. The safe harbor approach allows local governments to follow a prescribed path of regulations to protect significant water resources in order to receive an expedited approval of the local government’s proposed ordinance.
- b. **Bankfull Stage** - the protection zone is measured from the two-year recurrence interval flood elevation.
- Measurable basis for standard.
 - Would likely require a civil engineer to determine the two-year recurrence interval flood elevation and a professional surveyor to locate the bankfull stage and corresponding protection zone.
 - Treats both sides of a stream the same, regardless of topography and riparian vegetation.
 - On larger creeks and creeks with wide ravines, may not cover all of the riparian area.
 - If protection zone is measured 50 feet from the bankfull stage for Riparian Corridors, the protection zone meets the State’s “safe harbor” requirements.
- c. **Ordinary High Water Mark** - the protection zone is measured from the line or scour mark to which seasonal high water rises annually characterized by a clear, natural line on the bank impressed by water.
- Discretionary basis for standard.
 - May require a professional surveyor to locate the ordinary high water mark and corresponding protection zone.
 - Treats both sides of a stream the same, regardless of topography and riparian vegetation.
 - On larger creeks and creeks with wide ravines, may not cover all of the riparian area.
 - May not meet the State’s “safe harbor” requirements.
- d. **Top of Bank** - the riparian buffer is measured from highest point at which the bank meets the grade of the surrounding topography characterized by an abrupt or noticeable change from a steeper to a less steep grade and by a noticeable change from topography or vegetation shaped by the presence or movement of water and transition from an aquatic ecosystem to a terrestrial or upland ecosystem.



- Discretionary basis for standard.
 - Would require a professional surveyor to locate the riparian buffer, or an on-site verification by planning staff.
 - Typically confirmed by a staff determination. If there is disagreement on the location of the top of bank, applicant is required to hire a natural resource professional and/or a civil engineer to support argument for a different top of bank location.
 - Treats each side of the stream site specifically, taking into consideration topography and riparian vegetation.
 - In most cases protection zone will include all of riparian area.
 - May not meet the State's "safe harbor" requirements.
- e. **Combination Approach** – the more traditional top of bank approach described above which uses topography to determine the top of bank plus a fall back option in case the top of bank is unclear. This is the approach included in the draft ordinance. If the top of bank is not clearly defined, the measurement for the protection zone is made from the bankfull stage, or is the line of non-aquatic vegetation, whichever is greater.
- Combination of discretionary and measurable standard. By using bankfull stage as an option, the draft uses a measurable standard for unclear cases.
 - Would require a professional surveyor to locate the protection zone for most applications. However, applications involving single-family residences on lots existing prior to the ordinance have the option to use an on-site verification by planning staff.
 - For Riparian Corridors, if the top of bank is not clearly defined, the applicant may be required to hire a natural resource professional and/or a civil engineer to determine the bankfull stage and line of non-aquatic vegetation.
 - For Local Streams and Intermittent and Ephemeral Streams, option to use center line of stream provides a measurable standard as an option.
 - Treats each side of the stream site specifically, taking into consideration topography and riparian vegetation.
 - In most cases protection zone will include all of riparian area.
 - May not meet the State's "safe harbor" requirements.
 - **Option:** Staff believes the following revisions to the definition of Top of Bank may address concerns regarding the subjectivity of using "natural banks".

Top of Bank - means the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate upland areas the first major change in the slope of the incline from the ordinary high water level of a water body. A major change is a change of ten degrees or more. If there is no major change within a distance of 50 feet from the ordinary high water level in the absence of physical evidence



or where the top of each bank is not clearly defined, the two-year recurrence interval flood elevation may be used to approximate the top of bank, or the line of non-aquatic vegetation, whichever is most landward.

f. City-Wide Top of Bank Survey – Survey and map the top of bank on all streams, and adopt with draft ordinance.

- Provides clear delineation of top of bank with adoption of ordinance.
- Potential for disagreement with top of bank delineation initially and after adoption of the map and ordinance.
- Would require a multi-disciplinary team to survey and map top of bank.
- Additional funds and time required to perform survey of approximately 20 streams.
- May not meet the State’s “safe harbor” requirements.

2. Local Native Plant Species Requirement

The draft ordinance defines local native plant species as “*those plant species appropriate to planting in or adjacent to a Water Resource that are native species indigenous to Jackson County. Local native plant species are adapted to the elevation, weather, soils and hydrology of the area; will support the desired structures, functions, and values of the water resource; and once established require significantly less maintenance than non-native species.*” Native plants are required to be used in newly disturbed or planted areas within Water Resource Protection Zones. Non-native landscaping in Water Resource Protection Zones that is in place prior to the adoption of the ordinance is allowed to remain in the protection zones, but can not be expanded within the zone.

o Comments Received

Comments received included opposition to the native plant requirement, concern that if property owners can’t use the buffer area for lawn area or play area they will lose interest in maintaining the area, and concern that need to show the requirement for “local source” native plant material has benefit.

Note: The requirement for local source native plant species in not included in the draft ordinance. Local source native plant species are plant species originating from stock collected from wild native plants within approximately 75 miles of the planting site. Local source native plant species were included in an early draft of the ordinance, but have been replaced with local native plant species. Local native plant species are native species indigenous to Jackson County, but are not required to originate from local stock.

o Options

a. **Percentage of non-native vegetation** – Add language allowing a percentage of the protection zone to be planted in non-native vegetation in newly disturbed or planted Water Resource Protection Zones. There would also be a requirement that the non-native vegetation be located at the most upland portion of the buffer area,



presumably closer to the residence or building, noxious and invasive plants could not be used and trees six inches diameter at breast height could not be removed.

3. Landscape Maintenance in Water Resource Protection Zones

The draft ordinance regulates landscape maintenance in the Water Resource Protection Zones. In Stream Bank Protection Zones, non-native, noxious or invasive vegetation removal is permitted with non-power assisted equipment, and requires a planning approval for removal with power-assisted machinery. Non-power and power assisted equipment is defined in the draft ordinance as follows.

Power Assisted Equipment or Machinery

1. *“Non-power Assisted Equipment” means equipment or machinery operated by hand or operated by electricity or battery power.*
2. *“Power Assisted Equipment” means equipment or machinery other than Non-Power Assisted Equipment.*

The intent of regulating vegetation removal is to control activity with machinery that may irreparably damage the native vegetation and disturb the grade in the water resource and the protection zone. Generally, allowing non-native vegetation removal with hand-held equipment as an exempt activity will control most damage to the Stream Bank Protection Zone.

o **Comments Received**

Comments received included concern about cutting weeds or blackberries by hand being cumbersome, suggestion to have a pound requirement to target backhoes and tractors, concern about removing hazard trees without a chainsaw and concern about allowing use of weed eaters in protection zones because they cut all plant material low to the ground including native saplings.

o **Options**

- a. **Impact of weed eaters on native vegetation** – To address cutting vegetation close to the ground and thereby killing or stunting native vegetation, add language to the exemption for removal of non-native vegetation prohibiting the use of weed eaters in the steeper sloped area from the stream to the top of the bank.
- b. **Weed control in larger flat areas** - To address weed control in larger flat areas adjacent to streams, add language to the exemption for removal of non-native vegetation allowing the use of weed eaters and mowers in the portion of the protection zone upland of the top of bank that is characterized by an abrupt or noticeable change from a steeper to a less steep grade.

4. Nonconforming Structures and Activities

The draft ordinance requires a planning approval for the replacement of an existing structure in a Water Resource Protection Zone provided that structure is rebuilt within the original



footprint and additional surface area is not disturbed. An existing building located within or partially within a Water Resource Protection Zone is considered a nonconforming structure because the passage of Chapter 18.63 would prohibit new construction in Water Resource Protection Zones.

The intent of the required planning approval is to review nonconforming structures and determine if there is a way to lessen the impact on the Water Resource Protection Zone in the rebuilding of the structure. Outside of the downtown plaza, the most common intrusion into floodplains and Water Resource Protection Zones are outbuildings, decks, patios, retaining walls, and landscape and lawn areas. These items do not necessarily require building permits and sometimes do not meet current Development Standards for Riparian Lands in Chapter 18.62. Sometimes, these nonconforming activities and uses are not legally established. If a structure is not legally established, it may be appropriate to require the replacement further upland or outside of the Water Resources Protection Zone.

o **Comments Received**

Comments received included a concern regarding the replacement of a deck if a natural hazard such as a flood damages or destroys the structure, concern regarding the replacement of buildings on the plaza in the downtown if destroyed by a man made or naturally occurring disaster, the ability to maintain access on Calle Guanajuato since it is located in a riparian area and a concern questioning if nonconforming structures and activities should be able to stay in place, especially lawns and patios.

Note: Access on Calle Guanajuato to the rear of the properties on the plaza is not changed or restricted by the draft ordinance.

o **Options**

- a. **Total exemption for nonconforming structures** - Add language exempting rebuilding of nonconforming structures destroyed by fire or natural hazard.
 - A disadvantage of this approach is it gives equal treatment to those structures that were legally established and those that were not legally established.

- b. **Exemption for legally established nonconforming structures** - Add language exempting rebuilding legally established nonconforming structures destroyed by fire or natural hazard.
 - A disadvantage this approach is it requires the property owner to demonstrate the structure is legally established, and this makes the requirement difficult to administer. Demonstrating that the structure was legally established gets more difficult as the structure gets older.



- c. **Exempt buildings and retain planning approval for other structures** - Add language exempting allowing rebuilding nonconforming structures if destroyed by fire or natural hazard if the structures are residences or commercial buildings. Revise language to require a planning approval for replacement of nonconforming accessory buildings, decks, patios or retaining walls.

5. Nonconforming Lots and Previously Approved Building Envelopes

The draft ordinance requires a planning approval for new development (e.g. driveways, utilities, buildings) to be located in a Water Resource Protection Zone on lots created before the effective date of the ordinance. There are two types of available approvals for lots that are created before the ordinance. A Water Resource Protection Zone Reduction process allows a reduction of up to 50 percent of the protection zone when it can be shown the application of the full protection zone on the lot makes it unbuildable. If a proposal can not meet the protection zone reduction requirements, a Hardship Variance is the second type of planning approval available for lots created before the effective date of the ordinance. The state requires that the ordinance include a procedure for a hardship variance for existing lots that are rendered not buildable by the application of the ordinance.

There are likely to be existing lots that will not meet the requirements of the draft ordinance, and therefore would have a nonconforming status. Additionally, there may be lots that can not be further divided if the draft ordinance is put into effect. However, it is important to note that there are existing floodplain and riparian regulations currently in place in Chapter 18.62. There are existing lots that do not conform to the current floodplain and riparian regulations, and the current regulations impact the divisibility of some properties. Ashland, Bear, Clay, Emigrant, Hamilton and Kitchen creeks have 100-year floodplain studies with delineated boundaries that generally include a width that incorporates the riparian area. The streams in the proposed Local Stream classification are currently protected with a setback of 20 feet from the top of the bank which is increased by 20 to 30 feet in the proposed ordinance, and the streams in the proposed Intermittent and Ephemeral Streams classification are currently protected with a setback of ten feet from the top of the bank which is increased by ten to 20 feet in the proposed ordinance.

- o **Comments Received**

Comments received included a concern that the buffer areas will make more properties nonconforming, a concern that the protection zones will impact the ability to split off new lots, a concern about the overlap with existing conservation easements and the impact of the protection zone on previously approved driveway and building envelope locations.

- o **Options**

- a. **Previously approved driveway exemption** - Add language exempting construction of new driveways in Water Resource Protection Zones if approved prior to the effective date of the ordinance.



- A disadvantage of exempting previously approved driveways is that this may forgo the opportunity to use an improved stream crossing (e.g. a bottomless crossing vs. a culvert) and/or the opportunity to reduce the impact of the driveway surface on a Water Resource Protection Zone.
- b. **Previously approved building envelope exemption** - Add language exempting construction of new structures on vacant lots in building envelopes located in Water Resource Protection Zones if the building envelope was approved prior to the effective date of the ordinance.
- A disadvantage of exempting previously approved building envelopes is that this may forgo the opportunity to reduce the impact of the land disturbance from construction on the Water Resource Protection Zone. In some cases, building envelopes are generously sized using the minimum setbacks, and could be further coordinated with the building design to better fit the natural features of the site.

Planning Commission Options:

Commission may direct staff to modify the draft Chapter 18.63, Water Resource Protection Zones concerning the key issues identified in this memo.

Commission may direct staff to modify the draft Chapter 18.63, Water Resource Protection Zones concerning the key issues identified in this memo and additional issues identified by the Commission.

Attachments:

Summary of Comments and Questions from April 22 Public Workshop
Written comments received by Planning Division (9)



Comments and Questions

Water Resource Protection Zones Ordinance

From April 22, 2008 Planning Commission Workshop

Purpose

- What are buffer areas protecting- questionable what they are doing
- There are so many ways water gets polluted before it gets to Bear Creek – will buffer area really improve water quality given small percentage of Ashland's total area
- Focus on wildlife and aquatic habitat and not on human use – these are never going to be wilderness area
- Need to answer why are the (proposed) changes necessary?

Stream Bank – Top of Bank

- What is natural bank in top of bank definition?
- As a property owner, don't want top of bank definition to be subjective
- Should have staff make a determination in writing
- Told by previous planning director had to be 65' from Paradise Creek, divided lot with this setback, do I have to go another 50' feet now?
- Don't like one size fits all approach – doesn't address when stream is steep on one side and flat on another
- Suggest coordinating floodplain with riparian protection area because on steep side riparian vegetation doesn't go much higher
- Anyone should be able to make the measurement (for the buffer area)
- Difference between the riparian vegetation line and bankfull stage is big different in some places, 50 to 100 feet)
- Suggest use center line for Riparian Corridors, subtract distance for elevation gain
- Existing setback of 10 feet from Roca Creek works fine
- If require another 10 feet from Roca Creek, can't build on 3,600 square feet of property
- What is setback from piped drainage ditch?

Landscaping and Maintenance in Protection Zones

- If people can't use buffer area (e.g. for lawn area, play area), they loose interest in it and won't take care of it
- Against native plant requirement
- Cutting weeds by hand is too cumbersome, more appropriate to have pound requirement targeted at back hoes and tractors
- Somebody is going to tell you that you can't plan a rhododendron next to the creek, but it is ok if it is already planted
- Don't like native plant list, shouldn't be told what to plant on the property, but ok with noxious plant list
- Need peer review evidence that local source native plants have a benefit

- Agree with weed eaters being prohibited from use because cut off everything including saplings
- Conversely, should be able to remove hazard trees with chain saw

Fish and Wildlife Habitat

- Focus on wildlife and aquatic habitat and not on human use – these are never going to be wilderness area
- Don't want a dystopia where we think about just human rights, Southern California is an example of that

Nonconforming Structures

- What happens if by a flood or act of God a deck in the flood plain comes out? Can replace it exactly as it is?
- Not sure that nonconforming structures and activities should be able to stay in place, for example lawns and patios

Nonconforming Lots or Previously Approved Building Envelopes

- By applying buffer areas will make more properties become nonconforming, subject to new fees as make changes to properties
- Larger buffer areas will impact the ability to split off lots which works against infill policy
- What about existing conservation easements?

Application Process

- Something new is always popping up, regulations are always changing
- Reduction (of protection zone) requires that property owners still have to hire professionals to prepare materials, the average homeowner can't do it
- Trying to get answers is pretty tough and expensive

Property Rights

- Who owns the resources?
- As property owner, I should be able to do what I want with my property
- Theme that is developing – property rights and personal rights
- Need to look at from perspective of individual homeowner

Stewardship

- Spent a lot of time cleaning cars and trash out of creek, everyone I know with creek property takes good care of property
- Don't really think Ashlanders want to tear into creeks

Legislative Process

- How is the city going to pay for it – who is going to administer?
- What is the hurry? More important to do well than to get it done and off checklist

Misc.

- Redundancy in writing
- People should be able to fence property across creeks with areas for small animal passage
- Lower Paradise Creek is identified on draft map as water feature – what does that mean?
- How will impact properties outside the city limits, but in the UGB
- Everyone understands and accepts existing standards
- Counting wetland and riparian areas as open space in high density developments results in not getting usable open spaces, no safe places for children to play



Maria Harris Planning Mgr.
 Ash. Dept. / Community Dev
 20 E. Main St.
 Ash. OR 97520

RECEIVED
 DEPARTMENT

APR 1 11:41 AM

Community Development
 City of Ashland

Dear Maria and the City of Ashland,
 As president of IPCO Development and owner of approx 13 acres through which Hamilton Creek flows, I reject any ordinance that puts any additional regulation on our land use.

We've spent much time and expense on this creek issue & done extensive flood-plane studies to establish our parameters.

That is done public accept no more.

With Tal comments, we have cut out and tons of black berries and tons of our creek area free flowing at all times and through all the floods that have occurred in the 40 years we have owned our land.

I understand and abide by existing restrictions that we have negotiated with the City of Ashland. If there is a questionable "use", we will confer, but I won't accept any regulation that would ~~more~~ restrict the use of one more inch of our property.

I must comment that I find it ironic that Ashland feels it should control our creeks and streams and does nothing to contribute monetarily or physically towards their maintenance. This will



RECEIVED

APR 1 2008
M.H.
2,

City of Ashland
Community Development

affect alot of Ashland land owners in a very negative manner and devalue their property if it gets out of hand. Please consider what you're doing to your citizens as you attempt to maintain "open space" as you "infill" the city limits. We live next to a National Forest - don't get carried away.

Sincerely,

Zach Rombacher
IPCO Development
640 Tolman Creek Rd
Ashland, OR 97520

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APR 2 2008

City of Ashland
Community Development



Maria Harris Planning Mgr.
Ash Dept./Community Dev.
20 E. Maia St,
Ash OR 97520

RECEIVED

M.H.
APR 1 2008 1.

City of Ashland
Community Development

Dear Maria and City of Ashland,

I am owner of home at 1370 Tolman Crk Rd Ashland, Map 391E 23BA 00100, CODE 508 has 5.72 acres in Jackson County jurisdiction and CODE 501 has 1.49 acres along the frontage of Tolman Crk Rd and is within the Ashland city limits,

Today, March 29, 2008 I recieved a "notice of public hearing" regarding Chapter 18.63 Water Resource Protection Zone in Planning File 2007-01313. I will try to attend these meetings, but from past experiences I realize that these hearings are just part of the process to pass "the ordinance", so I must reject in writing any regulations that "affect the permissible uses of my property."

For over 30 years I have owned and maintained this property. I have cleaned out all the blackberries, dead brush, and rat infested frontage of my property and for all these years have maintained the creekway (Hamilton) in a parklike manner.

Tolman Creek Road is, in my area, owned and maintained by Jackson County. With their help I have kept my section of the creek flowing smoothly and efficiently. I repair cave-ins, washouts, and obstructions that cause problems for those below me. I keep trees off power lines and help

APR 2 2008

2.

City of Ashland
Community Development

maintain the Talent Irrigation system, which has some important gates and valves on my part of the creek.

I have created a pond along this creek that is nice, but because I created it, and because without my maintainace and because my property (501) could be split into city lots someday, I feel it is my right to fill it in; or leave it. Also in regards to the prospect, someday, that city lots could be created and that my property is designated possible urban growth later, I reserve the right to Tolman Crk. Rd access the same as everyone else on this road; and that would be with and adequate culverted driveway.

My property is used as a small rural farm, zoned that way, with animals grazing on it and hay grown on it in a well managed manner. The City Of Ashland has never cared enough to check my creek and certainly done nothing to maintain it as I have. I would appreciate being left alone to manage my area as I wish and to keep existing options to culvert access to Tolman Creek Road. I want

to be free to manicure along the creek as I have for 30 years. If there will be any restrictions on me regarding this ordinance I formally request notification for my review and acceptance.

I am trying to make it as clear as possible, to say that I request that I am notified clearly of anything the City of Ashland does that regulates my property use. I also will not accept any regulation without full disclosure of what any "regulations" mean and how it will affect my property.

You should do this to every property owner concerned. It would alleviate lots of headache and heartache in the future for everyone. The "norm" is to "get it done", this is a big deal, do it correctly - PLEASE!

Sincerely,

Zach Bombardier

1370 Tolman Crk Rd
Ashland, OR 97520

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M.H.
APR 2 2008

April 8, 2008

Maria Harris
Planning Manager
City of Ashland
Department of Community Development

Dear Ms. Harris,

This letter is concerning the Water Resource Protection Zones in Ashland. I own a lot located at 510 Granite Street that the proposed Water Protection Zone would greatly adversely effect. The prior owners, whom I purchased the lot from, and myself have spent approximately \$15,000 - \$20,000 in City of Ashland fees and costs to private consultants to develop a building envelope of approximately 1800 square feet to build a home on. I am currently, and have been working with a home designer to design a home on this lot for approximately the past six (6) months and we are now very close to finalizing the plans.

Due to the Water Resource Protection Zone Proposal, I would have to start over with all new costs, because the zoning on this particular ½ acre lot only allows for building on 7% of the total square footage of the lot. I received a variance on August 14, 2007, from the Ashland Planning Department to add approximately 400 square feet to the lot coverage because without it (when the square footage of the driveway, garage and walkway, etc. are subtracted) there would have been very little square footage to build a home on. I am trying to build a home that will blend in with the neighborhood, not a house that will just be vertical. This was the second variance for this lot. The first variance was granted to remove the shared drive from the total square footage that could be built on.

This is the proposed footprint of the house for the lot at 510 Granite Street. (Please refer to attached drawing.)

There will be no building on the street or creek side of this lot. All the building will be on the other side. Parking will consist of parking strips (each approximately the width of a tire) rather than a large concrete parking driveway.

The Water Resource Protection Zone Proposal appears that it would extend 12 feet into the parking area which would reduce the square footage of the house. That will then necessitate me going back to the Ashland Planning Department to request another variance which I see as grossly unfair, after I just requested and received a variance in August 2007, less than nine months ago.

If you have any questions, please give me a call at 488-8149.

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APR 11 2008

Sincerely,



Terry W. Clement

SITE SURVEY

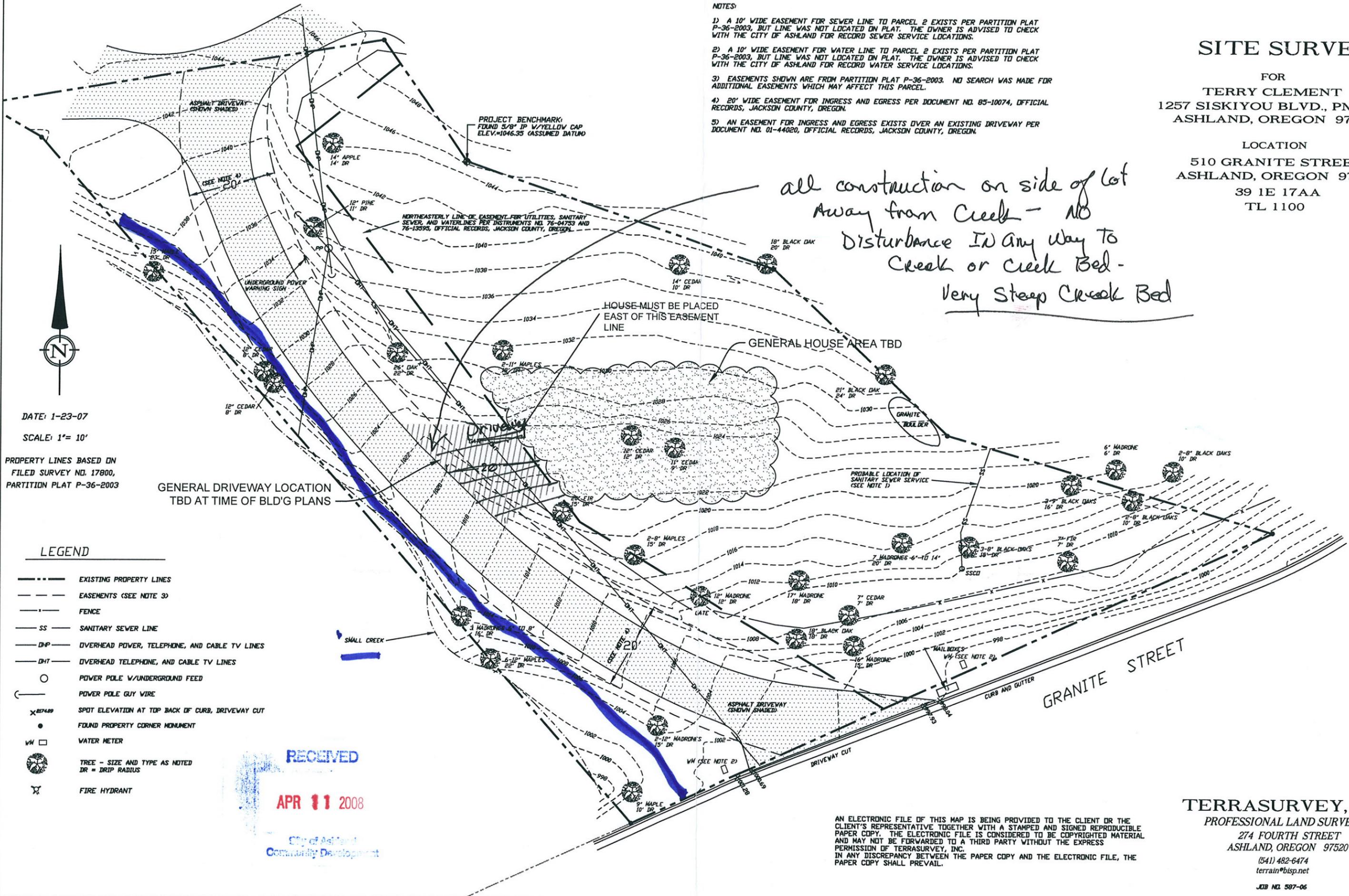
FOR
TERRY CLEMENT
 1257 SISKIYOU BLVD., PMB 69
 ASHLAND, OREGON 97520

LOCATION
 510 GRANITE STREET
 ASHLAND, OREGON 97520
 39 1E 17AA
 TL 1100

NOTES:

- 1) A 10' WIDE EASEMENT FOR SEWER LINE TO PARCEL 2 EXISTS PER PARTITION PLAT P-36-2003, BUT LINE WAS NOT LOCATED ON PLAT. THE OWNER IS ADVISED TO CHECK WITH THE CITY OF ASHLAND FOR RECORD SEWER SERVICE LOCATIONS.
- 2) A 10' WIDE EASEMENT FOR WATER LINE TO PARCEL 2 EXISTS PER PARTITION PLAT P-36-2003, BUT LINE WAS NOT LOCATED ON PLAT. THE OWNER IS ADVISED TO CHECK WITH THE CITY OF ASHLAND FOR RECORD WATER SERVICE LOCATIONS.
- 3) EASEMENTS SHOWN ARE FROM PARTITION PLAT P-36-2003. NO SEARCH WAS MADE FOR ADDITIONAL EASEMENTS WHICH MAY AFFECT THIS PARCEL.
- 4) 20' WIDE EASEMENT FOR INGRESS AND EGRESS PER DOCUMENT NO. 85-10074, OFFICIAL RECORDS, JACKSON COUNTY, OREGON.
- 5) AN EASEMENT FOR INGRESS AND EGRESS EXISTS OVER AN EXISTING DRIVEWAY PER DOCUMENT NO. 01-44020, OFFICIAL RECORDS, JACKSON COUNTY, OREGON.

*all construction on side of lot
 Away from Creek - NO
 Disturbance IN any way to
 Creek or Creek Bed -
 Very Steep Creek Bed*



DATE: 1-23-07

SCALE: 1"= 10'

PROPERTY LINES BASED ON
 FILED SURVEY NO. 17800,
 PARTITION PLAT P-36-2003

LEGEND

- EXISTING PROPERTY LINES
- - - EASEMENTS (SEE NOTE 3)
- - - FENCE
- SS --- SANITARY SEWER LINE
- DWP --- OVERHEAD POWER, TELEPHONE, AND CABLE TV LINES
- DHT --- OVERHEAD TELEPHONE, AND CABLE TV LINES
- POWER POLE W/UNDERGROUND FEED
- POWER POLE GUY WIRE
- X SPOT ELEVATION AT TOP BACK OF CURB, DRIVEWAY CUT
- FOUND PROPERTY CORNER MONUMENT
- WM □ WATER METER
- TREE - SIZE AND TYPE AS NOTED
 DR = DRIP RADIUS
- ⊕ FIRE HYDRANT

RECEIVED

APR 11 2008

City of Ashland
 Community Development

AN ELECTRONIC FILE OF THIS MAP IS BEING PROVIDED TO THE CLIENT OR THE CLIENT'S REPRESENTATIVE TOGETHER WITH A STAMPED AND SIGNED REPRODUCIBLE PAPER COPY. THE ELECTRONIC FILE IS CONSIDERED TO BE COPYRIGHTED MATERIAL AND MAY NOT BE FORWARDED TO A THIRD PARTY WITHOUT THE EXPRESS PERMISSION OF TERRASURVEY, INC. IN ANY DISCREPANCY BETWEEN THE PAPER COPY AND THE ELECTRONIC FILE, THE PAPER COPY SHALL PREVAIL.

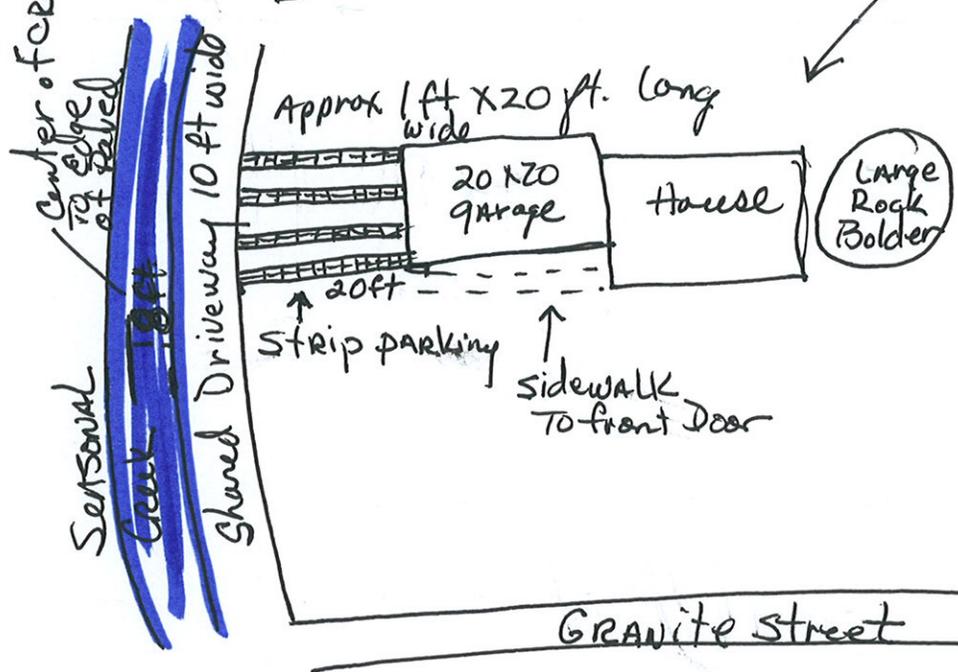
TERRASURVEY, INC.
 PROFESSIONAL LAND SURVEYORS
 274 FOURTH STREET
 ASHLAND, OREGON 97520
 (541) 482-6474
 terrain@bisp.net
 JOB NO. 587-06

All Building on other side of creek w/ 10 ft. paved Driveway in Between

Center of creek - 8 ft center of creek to Edge of Drive.
 - Creek (Seasonal) 8 + 10 = 18 ft.

All Construction ON side of lot away from Creek

only Real Flat area to Build on



All Developing Approx 18 ft from center of creek (past Drive) OR Top of Bank to far edge of pavement (Drive) Approx 11 ft.

30 ft.
 - 18 ft.

 12 ft into building envelop

OR
 20 ft.
 - 11 ft.

 9 ft. into building envelop

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APR 11 2008

City of Astoria
 Community Development

maria Harris
Planning Manager
City of Ashland

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RECEIVED

APR 16 2008

11:00 AM 2008

City of Ashland
Community Development
Community Development

4-10-08

Ref.: ALUO-CHAPTER 18.63
WATER RESOURCE PROTECTION
ZONES

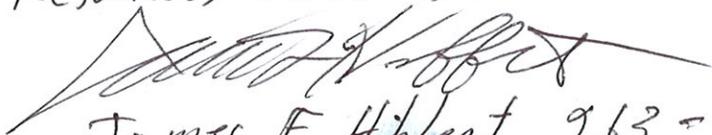
I am unable to attend either the WORKSHOP (4/22)
OR the Public Hearing (5/13). I have read the
ORDINANCE. I

I have paid taxes on all of my Lot (Tax Account
10050311 @ 263 Oak St., Ashland, OR.) for 28 years
with expectation to build on it. It is R-2 Multiple
Family Dwelling.

This land use regulation would take up to 3,400
sq. Ft. (24.5%) of Reducing my ability to build in
the future.

I consider this "taking" - There fore I should be
compensated under "Eminent Domain".

Please record my objection to Chapter 18.63 Water
Resources Protection ZONES.



James F. Hibbert, 263 - Oak St., Ashland, OR, 97520
541-482-9525

RECEIVED

From: Royce Duncan
1065 Paradise Lane, Ashland
488-4101
April 21, 2008

APR 22 2008

City of Ashland
Community Development

Review of Proposed Water Resources Protection Ordinance

This is a diligent first draft that with some revisions will provide an adequate ordinance for commercial and larger residential projects. I appreciate the difficulty of crafting an ordinance that can address all conditions, however there appears to be at least one major stake holding group who would not be well served as this is currently written. I am speaking of the individual homeowners and parcels that abut the secondary and intermittent drainages. When imposing regulations over an existing urban fabric we risk disrupting elements that have made Ashland the wonderful community that it is.

COMMENTS: STRUCTURE OF THE ORDINANCE

Question: Why are there so many terms that refer to nearly the same area? Except for minor nuances, they appear to be somewhat redundant. This also causes too much repetition of verbiage in the permitted and non-permitted activities sections. It makes the ordinance cumbersome and much longer than necessary. Can they be consolidated?

For example: What is the applicable ordinance difference between a **Stream Bank Protection Zone** and a **Riparian Area** and a **Riparian Buffer** or a **Riparian Corridor**?

Riparian area

Riparian buffer

Riparian Corridor

Stream Corridor

Stream bank protection zone

Water resource protection zone

Wetland Protection Zones

Wetland Buffer

POINT OF VIEW OF THE FOLLOWING COMMENTS:

- Please consider the following comments from the point of view of the **individual property owner**. These comments do not apply to commercial development or larger residential developments which currently receive considerable discretionary review and may be appropriately held to a slightly different standard.
- These comments apply predominately to the stream protection zones and less directly to the wetland areas.

FUNCTIONAL ISSUES

Buffer areas: (justification)

- The stated goal of the ordinance is for water resource protection.
- Conceptually, all drainage in Ashland runs a short distance + - north and ends in Bear Creek
- The mapped riparian areas for the subject drainage systems represent + - 1 to 2% of the city area.
- **Issue:** All runoff from roofs, yards, gardens, driveways, streets and city storm drain systems for the remainder of the city either drain immediately into these natural drainage channels or are piped and end up in Bear Creek. Why would we assume there is any difference or increased threat of pollution runoff from the property 30 to 40 feet adjacent to these creeks and drainage areas. More likely they will have much less pollution runoff than the other 99% of the city area. The buffer areas are imposing a land use restriction that has no justification. We are therefore basing a portion of this ordinance on a **false premise.**

Buffer areas: (unintended consequences-maintenance)

As I read this draft, all of the following would be prohibited:

- Gardening and garden structures
- Barbeque, sports equipment, developed seating areas
- Children's play equipment
- Fencing for any purpose including protected child play area or pet area
- Basically all normal residential yard uses.
- **Issue:** Most planning failures are not because of the initial purpose of the regulation, but are caused by the **unintended consequences.** With this draft, we are eliminating all normal residential uses from the buffer areas on effected properties. This may lead many residents to no longer value these areas and they will no longer provide the necessary maintenance. In a few years these areas would potentially turn into 60 to 80 foot wide blackberry thickets, as are some of the creek frontages, which are currently not used by the residents. We the citizens of Ashland are now receiving free maintenance of these areas. We should encourage these owners to continue maintenance by allowing them the normal residential use, with perhaps a few exceptions such as: A: No buildings or structures within 20 feet of the drainage. B: No use of chemical fertilizers within 10 to 15 feet of the drainage area

Buffer areas: (unintended consequences-homeowner increased administrative cost)

- If the large buffer areas do not provide any water quality benefit, then they will needlessly cause many more existing nonconforming structures to be subjected to special review processes and considerable additional cost when they are modified.

Buffer areas: (unintended consequences-infill policy)

- The larger buffer area will also make fewer lots containing riparian areas available for division. This would appear to work against the current infill policy.

ETHICAL OR MORAL ISSUES

Property rights:

- The poor environmental stewardship of the past has led to a polarizing of opinion on environmental policies. We often see a push for the most restrictive legislation without thoughtful consideration whether it is the most desirable policy or if it violates other values that we hold dear. I am concerned with the fundamental issue of fairness. In the proposed draft, we the citizens are confiscating a portion of the basic property rights of 1 to 2% of our property owners. If we do this, we should be absolutely sure we are doing a very large public good. As noted above, the buffer zones may be of questionable value. The sanctity of control of our homes and property is a basic American belief. The more we eat away at this the less community and citizen cooperation and participation we will have.

Clarifying our goals: (why do we value these creek areas)

In the goals section of the draft, items G and J, are listed that this ordinance is for the benefit of "human use, fish and wildlife" and for "human-nature interactions". In our enthusiasm for fish and wildlife, we seem to often leave out the human. This is not intended as a challenge to environmental efforts of which I am a supporter. I am also a strong supporter that we integrate the natural beauty around us into our urban fabric. The drainages and waterways that pass through our city are opportunities to experience this natural beauty and we should encourage their use and protection.

- Natural areas within a city are unique in their own way. They are not, cannot and should not be thought of as wilderness. They are an opportunity for the integration of wildlife, humans and the natural environment.

- **Human use:** The above concept leads me to seriously question the proposal to significantly restrict the human recreational uses within these areas. We should be able to craft an ordinance that would protect the natural ecosystem within the stream banks and yet not remove all human use from the area.
- **Native plants:** Consistent with the belief that these drainage and stream areas are not wilderness; I do not think the proposal to use only native plant species is appropriate. We might encourage their use because they are well suited to the soils and climate, but humans tend to enjoy many other species of plants, trees and shrubs. If beautifying these areas with plants of their own choosing is what will encourage residents to care for, enjoy and maintain these areas then, with the exception of noxious and invasive plants, that would appear to be the appropriate choice. There may be the counter argument that nonnative plants will require fertilizer that will be drained or washed into the waterways. I would support a restriction on the use of chemical fertilizer within a prescribed distance to the drainage.
- **Fencing:** For the protection of children or pets or their own security, many residents will wish to fence in their property. If we are to preserve the normal rights of property ownership, fencing will need to be addressed. I would propose that where perimeter lot fencing comes within 5' of the top of bank of the stream, that the fencing must be an open type of fencing (wire) that would permit the passage of small animals at ground level (possibly a min. 6' x 6" mesh)

OTHER ISSUES:

Use of power tools:

- Under the heading of **Non-native Vegetation Removal and Fuel Reduction** is the statement that these may be removed only with "non-power assisted equipment (i.e. hand operated or electric or battery powered)". If this were April fools day we could all have a good laugh, but if this was a serious intention then try to picture later this summer when the Fire Marshall comes and says that your half acre of tall grass needs to be cut and you must do in with a 19th century hand scythe(or a 1000 foot extension cord on your electric weedwaker).
- You might also consider the inconsistency that it appears that the neighbor with a pre-existing lawn can continue to mow his riparian area with a rider-mower.

RECOMENDATIONS:

1. Allow the normal residential use ^{UN} of the riparian areas with the following exclusions:
 - A: No buildings or structures within 20 feet of the drainage.
 - B: No use of chemical fertilizers within 10 to 15 feet of the drainage area
2. Apply the tree ordinance protection for major trees (over 6" dia.) within 15 to 20 feet of the centerline of the creek.
3. Make the reference to native plants a suggestion only and restrict only noxious and invasive plants.
4. Permit perimeter lot fencing to cross riparian areas with provision for small animal passage.
5. Revise the reference to power tools to a more appropriate method, such as –limiting equipment over 500 lb.
6. Regarding ordinance structure:
 - Reduce the number of terms used if they do not address a unique condition that is applicable to the ordinance requirements.
 - Use the reference method (as used in the Uniform Building Code, Uniform Fire Code, etc.), to avoid repetition of paragraphs and other verbiage. List only the unique elements in any section. For all others use “see section xxx”



Richard F. Davis
1335 Seena Ln.
Ashland, OR 97520



488-6947

Comment Sheet

Water Resource Protection Zones

Draft Ordinance

City of Ashland
Public Workshop April 22, 2008



Issues and Concerns

List your three top issues or concerns regarding the draft Water Resource Protection Zones ordinance.

1. By extending the protection zone on Roca Creek (ephemeral stream) to 20 ft. from top of bank I am being denied ~~me~~ 3600 sq. ft. of usage on my property you are being
2. for future construction. The present standard is more than adequate.
3. See the neighboring homes as testimony, that 10 ft. setback is adequate.

Comments



Mr. and Mrs. Richard Davis
1335 Seena Ln.
Ashland, OR 97520-1381



If you need additional
City of Ashland, Depa
Street Address: 51 Wi
Mailing Address: 20 E
541.488.5305 • fax 541

FENTR
MAX L



work
City
Plan
The
book-

Q
W

map loss



WRPZ Ord.

City of Ashland Planning Exhibit	
Exhibit	- - -
PA#	
Date	4/23/08 Staff. <u>MS</u>



RECEIVED

MAY 01 2008

City of Ashland
Field Office Coun

Ashland Planning Dept./Community Development
Regarding changes to Ashland municipal Code 18.63.060

It has come to my attention that while trying to update the riparian areas within Ashland you have omitted a crucial addition to the ordinance that owners on the Plaza strongly needs to have included. There is no mention in the revised ordinance as to what will occur if there is a major disaster or destruction to our buildings caused by flooding, fire, earthquake or any other man made of naturally occurring disaster. It is obvious that this needs to be address with our unquestionable right to rebuild this preexisting historical area in a similar or like non-conforming fashion. To help and cooperate with the Cities these concerns and issues needs resolution. There may be those that say of course we would be allowed to rebuild within this riparian area but we have watch one too may battles concerning land rights within Ashland and now must insist on a satisfactory addition to the code that would eliminate our concerns. I am quite sure there are those on the City Council that would insist we not rebuild within the riparian setback if given the choice to do so. Any inability to rebuild and replace what "is" after a disaster would be totally unacceptable.

It should also be noted that the privately owned property on the Plaza does not stop at the rear of our buildings but extends into what the City is considering the riparian area and alley. This area is used for access and convenience for businesses as well as fire trucks, emergency vehicles, garbage collection, City maintenance and repairs. We would like the acknowledgement by the City that after 160 years of perpetual use we are entitled to accessing our private property at the rear of our buildings and the city will not to restrict our access.

Maybe someday the needed survey will occur that was never done when the property was gifted specially to the City of Ashland in 1970 under a Downtown Improvement HUD Grant, not to be sold, transferred or used for commercial purposes with the specific purpose stated being that of helping existing downtown businesses. There appears to be conflicts as to what is and is not actually under the jurisdiction of the Parks Department in the alley.

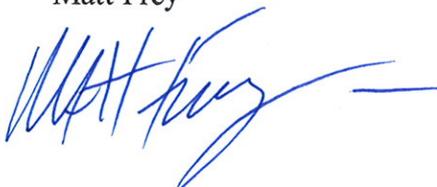
Well now for a little tongue in cheek questioning--How does the mayor and code enforcement officer rationalize issuing an encroachment permit allowing a chosen few the right to sell on public sidewalks without a business license? Please look up the Cities definition of an encroachment permit then look at the crafters on the sidewalks outside of the designated Park's area selling and blocking public sidewalks. Why??

Oh! I never got an answer as to why the City continue to hang the crafters banners to promote their **private for profit businesses** on the light poles in the Park every year for free. I want to have you do this for me!!! OK?

Please keep me advised and informed.

Thank you for your time and consideration

Matt Frey

 — 5-1-08



70 Water Street, Ashland, Oregon 97520
541.482.3315

May 5, 2008

Members of the City of Ashland Planning Commission

To Whom it May Concern:

I am the owner of Ashland Creek Inn, located at 70 Water Street. My property is bisected by Ashland Creek, and as such would be substantially impacted by the proposed Water Resources Protection Zones ordinance. My primary concern is with the ambiguity of the code toward structures within the proposed zone which would become nonconforming.

A fundamental tenet within urban planning is that buildings have a much longer lifespan than zoning codes. A building may last over 100 years, as my building has, while zoning codes change on a much more rapid scale. Therefore, a method of protecting the property owner from these constant shifts in zoning code is inherent in all municipal codes. This protection usually takes the form of an exception for structures that were within code when constructed, but have since been damaged or destroyed through no fault of the owner. In such cases, the owner is allowed to repair or replace the structure without planning action. Ashland's own, newly adopted, municipal code contains such protection for nonconforming structures (Section 73, 18.68.090).

During the Planning Commission meeting of April 22, 2008, Bill Mulnar suggested that the new Water Resources Protection Zones code would strip property owners of their rights to rebuild a nonconforming structure without a new planning action. Since a new planning action may require an older structure to meet new zoning codes, this is a significant reduction in property rights. It would create a second class of properties and structures that would have lower rights than those outside this zone. In our case it would be tantamount to a legal taking or condemnation of the property by the city.

I would urge you to require that the new Water Resources Protection Zones code be modified to include language protecting basic property rights for property owners within the newly created zone. Specifically, I would suggest the following changes.

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MAY 5 2008

City of Ashland
Community Development

Section 18.63.060, subsection 8 should be modified to include the following section:

Repair or Replacement of a Nonconforming Structure. An existing nonconforming structure within or partially within a Stream Bank Protection Zone may be repaired or replaced in conformance with code section 73, 18.68.090.

The removal of rights to rebuild a nonconforming structure after significant damage would place an undue burden on property owners within this zone that is not required of those outside of it. I am hopeful that this is not the intent of the Planning Commission, and that the protections currently in Ashland municipal code will be included in the proposed zone.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'G. Sheldon', with a long horizontal flourish extending to the right.

Graham Sheldon, Owner
Ashland Creek Inn
70 Water Street
Ashland, OR 97520
482-3315

RECEIVED

MAY 5 2008

City of Ashland
Community Development

From: lloyd haines <lloydmhaines@yahoo.com>
To: <harrism@ashland.or.us>
Date: 5/5/2008 12:27:58 PM
Subject: Proposed water resource ordinance modification

Dear Maria,

Please consider this testimony to be presented at the May 13, 2008 Planning Commission meeting. Specifically, this testimony relates to the item agenda concerning the proposed Water Resource Protection Zoning Ordinance.

My address is 96 North Main Street, suite 202, Ashland, and I represent the owners of 47, 49-59, 82/84, 88-92 1/2 and 96 North Main Street, as well as 31 water Street, Ashland.

I notice an omission in the proposed ordinance that will affect most, if not all of the above listed properties, as well as most, if not all of the downtown Historic buildings on or near the Plaza. The omission relates to rebuilding the structures in the event of fire, earthquake, flood or other disaster.

Specifically, the ordinance does not protect the RIGHT of the property owner to REBUILD a legal preexisting non-conforming use in the event of destruction of the property. This is totally unacceptable because if the right to rebuild is left to the discretion of a building or planning official, the entire plaza and surrounding area could not conform to the proposed flood/riparian ordinance and therefore might not be rebuilt.

The downtown historic properties, on and around the plaza, are unique and make Ashland what it is. Although they are old and cannot conform to the proposed ordinance, nonetheless, they must be preserved and be rebuilt if destroyed. If they cannot be rebuilt for whatever reason, Ashland would lose its character and flavor.

Please consider this comment when considering the ordinance and incorporate language that protects the downtown buildings in the event of damage or destruction.

Thank you for your consideration.

Best regards,

Lloyd Matthew Haines

DAVIS HEARN
SALADOFF BRIDGES
ATTORNEYS AT LAW

JACK DAVIS
CHRISTIAN E. HEARN*
SUSAN VOGEL SALADOFF‡
JENNIFER A. BRIDGES
C. CASEY WHITE*
JODEE L. SCOTT

* Also Admitted to Practice in CA
‡ Also Admitted to Practice in DC, MD, PA and NJ

SAM B. DAVIS - Retired
SIDNEY E. AINSWORTH (1927-2003)
DONALD M. PINNOCK - Retired
DAVID V. GILSTRAP - Of Counsel

Established 1953

A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455
www.davishearn.com

May 5, 2008

Via email transmission (harrism@ashland.or.us)

**Ashland Planning Commission
City of Ashland Department of Community Development
Planning Division
51 Winburn Way
Ashland, OR 97520**

**RE: Draft Water Resource Protection Ordinance
Proposed Ashland Land Use Ordinance Chapter 18.63
Repair/Replacement of Legal Nonconforming Uses/Structures**

Dear Ashland Planning Commissioners:

Following the Planning Commission's April 22 workshop on the draft Water Resource Protection Ordinance (Proposed ALUO Chapter 18.63), I was contacted by Graham Sheldon of Ashland Creek Inn, and other Ashland citizens concerned about potential unintended consequences if the current draft Water Resource Protection Ordinance (proposed ALUO Chapter 18.63) is not refined to ensure that repair or renovation of existing legal nonconforming structures is permitted, particularly in the event of fire, flood, or natural disasters.

First, most -- if not all -- of the commercial buildings along Ashland Creek (e.g. the Plaza) could not be built under today's version of the Ashland Land Use Ordinance ("ALUO"). They are nonconforming structures, yet provide a pivotal element of historic charm and aesthetic ambiance to our City's downtown core. After the 1997 New Year's Day Flood, the historic buildings on the Plaza were repaired and renovated -- but not expanded. However, under the language of the current draft of the Ashland Water Resource Protection Ordinance, repair or replacement of nonconforming structures following a fire, flood, or natural disaster is not guaranteed.

Second, Ashland's ordinance provision relating to nonconforming uses and structures should continue to be consistent across all zoning districts in the City. Today, *ALUO 18.68.090* which provides this consistency, stating:

“(3) A nonconforming structure may be enlarged, reconstructed or structurally altered if its footprint is not changed in size or shape.” *ALUO 18.68.090(A)(3)*.

Third, *ALUO 18.63.060(A)(8)(a)* – (Exempt Activities and Uses within Stream Bank and Wetland Protection Zones; Structure Maintenance and Expansion) – should be amended to include “**repair and reconstruction**” of existing nonconforming structures, in addition to the “**continued, used and maintained**” language in the current draft Ordinance. *ALUO 18.63.060(A)(8)(a)*. For consistency, the same language should be inserted in *18.63.060(B)(4)(a)*, pertaining to Wetland Protection Zones.

Fourth, addressing the legitimate right of Ashland citizens to repair or replace of structures damaged by fire, casualty, flood, or natural disaster is an important element of Oregon land use law which should be incorporated into the new Ashland Water Resource Protection Ordinance.

Lastly, I present some talking points below to provide a brief background as to the importance of adding repair and reconstruction to the new draft Ordinance.

DEFINITION

- “A ‘nonconforming use’ refers to one that was lawful before a zoning ordinance was enacted and that, as a result, may be maintained afterwards, even though it does not comply with the ordinance.” *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc.*, 296 Or. App. 292 (2006), citing *Polk County v. Martin*, 292 Or. 69, 74 (1981).
- Most people simply refer to nonconforming uses and structures as “grandfathered in”.

PUBLIC POLICY SUPPORTING NONCONFORMING USES IN OREGON

- **1947 legislative recognition.** In 1947, the Oregon Legislature recognized the right of existing uses and structures to continue on land, despite later-enacted land use regulations which might otherwise render them illegal. The 1947 Legislature specifically recognized the authority of county planning commissions to prepare and submit to county governments drafts of ordinances designed to wisely regulate development plans, through the imposition of zoning and land use regulations, while allowing existing uses to continue, "although not in conformity with such zoning regulations." *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc.*, 206 Or. App. 292 (2006) -- citing *Oregon Compiled Laws Annotated*, section 86-1106 (1947).
- **Basic fairness.** "State and local land use laws have changed drastically over the past thirty years. Many times a landowner establishes a legal use on his or her property, only to have the land use laws change, making such use illegal. Although the use was legal at its inception, changes in land use laws make the original use on the property a 'nonconforming' use." *Aguilar v. Washington County*, 201 Or. App. 640, 649 (2005).
- **Takings concerns.** While a "nonconforming use" is contrary to the provisions of a zoning ordinance, it is allowed to continue because to eliminate it upon adoption of a new or amended zoning ordinance would constitute a taking without compensation. *Bergford v. Clackamas County*, 15 Or. App. 362 (1973).

SOURCES OF OREGON LAW RE NONCONFORMING USES/STRUCTURES

- ORS 215.130 (5) through (11). (counties only).
- Local ordinances (cities and counties).
- Oregon case law (Oregon appellate and LUBA opinions interpreting application of ORS 215.130 and various local ordinances to a variety of factual scenarios).

ORS 215.130 (5) - (11)

- **The pivotal statute.** *ORS 215.130* has been repeatedly amended during eight legislative sessions since 1961, most recently in 1999. The majority of cases addressing nonconforming uses in Oregon's counties center on analysis of *ORS 215.130*, and its application to local ordinances and the facts of particular cases. Only subsections (5) through (11) relate to nonconforming uses. Cities are free to develop their own ordinance provisions relating to nonconforming uses and structures, but most city ordinances impose criteria which are generally similar to those imposed by *ORS 215.130 (5) -(11)*.
- **Transfer of ownership.** Transfer of ownership does not affect the legality of a nonconforming use or structure. *ORS 215.130 (5)*.
- **Use must be legal when first commenced.** The nonconforming building, structure or use must have been lawful under the land use regulations in effect when constructed or committed to use. *ORS 215.130(5)*. "Not just any use that may have existed at the time the zoning ordinance or regulation went into effect may be continued – only lawful uses at that time." *Aguilar v. Washington County, 201 Or. App. 640, 645 (2005)*.
- **Alteration of use.** First, alteration of a nonconforming use must be allowed by a county when necessary to comply with a regulatory agency's legal requirement demanding the alteration. Second, a county may not place conditions upon the continuation or alteration of a use when it is necessary to comply with state or local health or safety requirements. Third, maintenance necessary to keep the

existing structures associated with the nonconforming use in good repair must be allowed. *ORS 215.130 (5)*.

- **Restoration or replacement of use.** Restoration or replacement of a nonconforming use is be permitted when the restoration is necessitated by fire, casualty, or natural disaster. However, such restoration must be commenced within one year of the damage. *ORS 215.130 (6)*.
- **Abandonment of use.** A nonconforming use may not be resumed after a period of interruption or abandonment, unless the resumed use complies with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption. *ORS 215.130 (7) (a)*.
- **Applications for verification or alteration.** Except for alterations necessary to comply with regulatory requirements under *ORS 215.130 (5)*, or restoration after a casualty under *ORS 215.130 (6)*, applications for the verification or alteration of a nonconforming use must be processed initially as an administration decision under *ORS 215.416*, without a public hearing under *ORS 215.416 (11)*. *ORS 215.130 (8)*.
- **Definition of nonconforming use alteration.** Alteration of a nonconforming use includes a change in use of no greater adverse impact to the neighborhood; and a change in the structure or physical improvements of no greater adverse impact to the neighborhood. *ORS 215.130 (9)*.

LOCAL ORDINANCES ADDRESSING NONCONFORMING USES AND STRUCTURES GENERALLY

- **Counties.** Counties may adopt ordinance provisions which "refine or amplify" *ORS 215.130*. However, the local ordinance provisions must remain consistent with the state statute. *Marquam Farms Corp. v. Multnomah County, 147 Or. App. 368, 380 (1997)*.

- **Cities.** Most cities have ordinance provisions setting forth the criteria applied to nonconforming uses. Like the county ordinances, the language and requirements of the city codes differ from city to city.¹ Again, city ordinances need not comply with the requirements of ORS 215.130 (5) through (11), since the text, context, and legislative intent of the statute indicate that its application is limited to counties. *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc., 206 Or. App. 292, (2006)*. However, most city ordinances track the criteria set forth by the state statute.

OREGON CASE LAW ADDRESSING NONCONFORMING USES AND STRUCTURES

- Oregon's appellate courts and LUBA decisions generally confirm the following points of law.
- **ORS 215.130 applies only to counties, not cities.** Cities are free to enact and enforce their own nonconforming use ordinance provisions, without regard for the criteria in ORS 215.130, which applies only to counties. *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc., 206 Or. App. 292 (2006)*.
- **ALTERING / EXPANDING NONCONFORMING USES AND STRUCTURES:**
 - Maintenance necessary to keep a nonconforming structure in good repair is allowed. ORS 215.130 (5). However, expansion or alteration is not the same as repair or maintenance. *Leach v. Lane County, 45 Or. LUBA 580 (2003)*.
 - Changes to nonconforming uses are allowed outright if necessary to meet the requirements of regulatory agencies, as well as to comply with health and safety regulations. ORS 215.130 (5).
 - Other expansion or alteration of nonconforming uses "may" be allowed if the proposal meets the "no greater adverse impact on the neighborhood" test. ORS 215.130 (5) and (9); *Gibson v. Deschutes County, 17 Or. LUBA 355 (1990)*; *Leach v. Lane County, 45 Or*

LUBA 580 (2003).

- **DISCONTINUANCE OF NONCONFORMING USE.**
 - Nonconforming use status is lost if the use is discontinued. ORS 215.130 (7) (a) states that a nonconforming use may not be resumed after a period of interruption or abandonment, unless the resumed use complies with zoning regulations at the time the use is resumed. However, it does not delineate what time period of such interruption, discontinuance, or abandonment is required. In order to make the standard more objective, many city and county ordinance provisions specify that a one year period of discontinuance constitutes abandonment, but some provide for two years, while others provide that only six months of non-use constitutes abandonment of the nonconforming use.
 - On the issue of "partial abandonment," the cases vary greatly depending on the facts. However, the general rule is that if certain uses are eliminated while uses continue, the nonconforming use status only preserves the right to continue the remaining activities. *Rhine v. City of Portland, 120 Or. App. 308 (1993).*

- **Ashland Land Use Ordinance Section 18.68.090 - Nonconforming Uses and Structures**

"A. A non-conforming use or structure may not be enlarged, extended, reconstructed, substituted, or structurally altered, except as follows:

 1. When authorized in accordance with the same procedure as provided in Conditional Use Chapter 18.104, a nonconforming use may be changed to one of the same or a more restricted nature.
 2. When authorized in accordance with the same procedure as provided in Conditional Use Chapter 18.104, an existing structure may be enlarged, extended, reconstructed, or structurally altered, except that a Conditional Use Permit

need not be obtained to enlarge or extend a single-family home in the residential district, provided that the addition or extension meets all requirements of this Title.

3. A non-conforming structure may be enlarged, reconstructed or structurally altered if its footprint is not changed in size or shape.

B. Discontinuance. If the nonconforming use of a building structure, or premises ceases for a period of six (6) months or more, said use shall be considered abandoned; and said building, structure, or premises shall thereafter be used only for uses permitted in the district in which it is located. Discontinuance shall not include a period of active reconstruction following a fire or other result of natural hazard; and the Planning Commission may extend the discontinuance period in the event of special unique unforeseen circumstances.

C. Reactivation. A non-conforming use, which has been abandoned for a period of more than six (6) months may be reactivated to an equivalent or more restricted use through the Conditional Use and Site Review process. In evaluating whether or not to permit the reactivation of a non-conforming use, the Planning Commission, in addition to using the criteria required for a Conditional Use Permit and Site Review, shall also use the following additional criteria:

1. That any improvements for the reactivation of the non-conforming use to an existing non-conforming structure on the site shall be less than fifty (50%) percent of the value of the structure. The value of the structure shall be determined by either the assessed value according to the Jackson County Assessor or by an independent real estate appraiser licensed in the State of Oregon. Personal property necessary for the operation of the business or site improvements not included in the structure shall not be counted as improvements under this criteria.

2. An assessment that the traffic generated by the proposed use would not be greater than permitted uses on the site. In assessing the traffic generated by the proposed use, the Planning Commission shall consider the number of vehicle trips per day, the hours of operation, and the types

of traffic generated; i.e., truck or passenger vehicle. The Planning Commission shall modify the Conditional Use Permit so that the operation of the non-conforming use is limited to the same traffic impact as permitted uses in the same zone.

3. That the noise generated by the proposal will be mitigated so that it complies with the Ashland Noise Ordinance, Chapter 9.08.170, and also that it does not exceed the average ambient noise level already existing in the area, as measured by this standard.

4. That there will be no lighting of the property which would have direct illumination on adjacent uses and that there would be no reflected light from the property greater than the amount of reflected light from any permitted use in that same zone.

5. In a residential zone the findings must further address that such reactivation will further implement Goal VI, Policy 2, Housing Chapter of the Ashland Comprehensive Plan.

6. Nothing herein shall apply to non-conforming signs, which are governed by the provisions of Section 18.96.150 of this Code. (Ord. 2406 S1, 1986)

D. Building or structure: Nothing contained in this Title shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been issued and construction has commenced prior to the adoption of the ordinance codified herein and subsequent amendments thereto, except that if the designated use will be nonconforming, it shall, for the purpose of subsection (B) of this Section, be a discontinued use if not in operation within two (2) years of the date of issuance of the building permit. " *ALUO 18.68.090.*

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Ashland Planning Commission
May 5, 2008**

CONCLUSION

Adding the terms "repair and replacement" to *ALUO 18.63.060(A)(8)(a)* and *18.63.060(B)(4)(a)* will assist in avoiding both unintended consequences and takings issues which may arise in the future.

Thank you for your consideration of these points.

Sincerely,
DAVIS, HEARN, SALADOFF & BRIDGES, P.C.

Chris

Christian E. Hearn, OSB # 911829
chearn@davishearn.com

cc: Graham Sheldon, Ashland Creek Inn

VIII. UNFINISHED BUSINESS

**PLANNING COMMISSION RULES ¹
GOVERNING THE CONDUCT OF ITS BUSINESS**

Annotated to show ~~deletions~~ and **additions** to the sections being modified. Deletions are ~~lined through~~ and additions are **in bold and underlined**.

1. **Meetings.** The number of Planning Commission, hereinafter referred to as "commission", meetings per month and a schedule of meeting dates shall be established and may be altered or changed at any regularly scheduled meeting. Two regular meeting dates are established each month on the second and fourth Tuesdays at 7 p.m. in the Council Chambers.

1.1. Public hearings shall conclude at 9:30 P.M. and be continued to a future date to be set by the commission, unless the commission by a two-thirds vote of those present, extends the hearing(s) for one-half hour until 10:00 P.M. **and for an additional half-hour until 10:30PM, if desired,** at which time the commission shall set a date for continuance. ~~and shall proceed with the balance of the agenda.~~

1.2. All meetings shall end no later than 10:00 p.m., unless the commission by two-thirds vote of those present extends the meeting for one-half hour until 10:30 p.m. at which time the commission shall set a date for continuance of the agenda items not acted upon.

1.3. Additional meetings may be held at any time upon the call of the chair or by a majority of the voting members of the commission or upon request of the city council following at least twenty-four hours' notice to each member of the commission.

2. **Quorum.** Five (5) members of the commission constitute a quorum. A simple majority of the quorum present determines the action on any motion, question, ordinance, or resolution. **The recommendation to the City Council of any amendment to the Land Use Ordinance or Comprehensive Plan shall be by the**

¹Section 2.12.050 of the Ashland Municipal Code authorizes the Commission to adopt rules for its government and procedure, consistent with the laws of the state. These rules are adopted under such authority.

affirmative vote of not less than a majority of the total members of the commission.

3. **Election of Officers.** ~~The commission at its first regular meeting~~ **In June** May of each year **the Commission** shall elect a chair and first and second vice-chairs. The recording secretary shall be a member of the Community Development Department staff.

4. **Duties of Officers.** The duties and powers of the officers of the commission shall be as follows:

4.1 The Chair Shall:

4.1.1. Preside at all meetings of the commission.

4.1.2. Call special meetings of the commission.

4.1.3. Sign documents of the commission.

4.1.4. See that all actions of the commission are properly taken

4.2. First Vice-Chair. During the absence, disability, or disqualification of the chair, the first vice-chair shall exercise or perform all the duties and be subject to all the responsibilities of the chair.

4.3. Second Vice-Chair. During the absence, disability, or disqualification of the chair and first vice-chair, or at the request of the chair, the second vice-chair shall exercise or perform all the duties and be subject to all the responsibilities of the chair.

4.4. The recording secretary shall:

4.4.1. Keep the minutes of all meetings of the commission in an appropriate minute book.

4.4.2. Give or serve all notices required by law.

4.4.3. Prepare the agenda for all meetings of the commission.

4.4.4. Be custodian of commission records.

4.4.5. Inform the commission of correspondence relating to business of the commission and attend to such correspondence.

5. Scheduling Council Matters. Matters referred to the commission by the city council shall be placed on the calendar for consideration and action at the first meeting of the commission after such reference.

6. Rules of Order.

6.1 *Robert's Rules of Order* shall generally govern the commission in all cases not otherwise provided for by these rules by ordinance or by state law. Failure to strictly follow *Robert's Rules of Order* shall not be cause to void or otherwise disturb a decision or action of the commission.

6.2 The commission may set time limits for speakers, providing equal opportunity for opponents and proponents, while enabling the commission to finish business scheduled before the commission. ~~Time limits shall be noticed in advance to provide speakers with an opportunity to prepare presentations and/or written testimony to supplement oral presentations.~~ The chair may set the order of speakers and changes to agenda order as needed to conduct business before the commission.

6.3 Reconsideration. The commission may reconsider matters brought before the commission as set forth below.

a. The staff liaison, applicant or any interested party may request reconsideration of the vote after the public record has been closed, but prior to adoption of the final order (findings, conclusions and order) by providing evidence to the community development director that a factual error occurred through no fault of the party asking for reconsideration, which in the opinion of the director, might affect the decision before the commission. Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the commission an opportunity to respond to the issue precludes a reconsideration request.

- i. Such request shall be at least fifteen (15) days prior to the commission's next regular meeting.
- ii. If the director is satisfied that an error occurred crucial to the decision, the director shall schedule reconsideration with notice to participants of

the matter before the commission. Reconsideration shall be scheduled before the commission at the next regularly scheduled meeting.

- iii. The commission shall first decide, by motion, whether to reconsider the matter and if so, the limits of reconsideration and testimony. Unless agreed to by a majority, reconsideration shall be limited to the portion of the decision affected by the facts not raised during the open public hearing and record.
- iv. Regardless of who files the request for reconsideration, if the applicant has not consented to an extension of the time limits (120 day rule) as necessary to render a decision on the reconsideration, the reconsideration shall be denied by the director.

b. Any member of the commission who voted in favor of the decision may move to reconsider the decision at the next regular scheduled meeting. If the motion is seconded the commission ~~will~~ **shall** vote on whether to reconsider. If the commission votes to reconsider, the process outlined in 6.3a.iii above shall be followed.

7. Procedure. Hearings shall be conducted as set forth in Ashland Municipal Code and Oregon Law, and the commission shall adopt and make available to the public the City of Ashland Public Hearings Format for Land Use Hearings as adopted by the commission.

8. Hearings Board. The conduct of the Hearings Board shall be governed by applicable sections of these rules, specifically, sections 6, 7, 9, 10 and 11.

9. Voting. Voting on quasi-judicial matters ~~to~~ **shall** be by oral **roll call** vote and the order of voting ~~to~~ **shall** be rotated. Voting on other matters may occur by voice vote unless an oral vote is requested by the commission.

10. Public Disclosure. Any member of the commission who has a conflict of interest or a bias on any matter that is on the commission agenda shall voluntarily excuse

themselves, vacate the member's seat and refrain from discussing and voting on such items as a commissioner.

11. Absence at Hearing. Except as provided below, only those members of the commission present at the hearing may act on a planning action. Any commissioner absent for any part of the hearing on an action may act if the commissioner reviews the record of the hearing and all of the documents submitted at the hearing(s) prior to participating in any deliberations or decisions.

12. Notification of Absence². Each member of the commission who knows that the member will not be able to attend a scheduled meeting of the commission shall notify the Community Development Department **and Planning Commission Chair** at the earliest possible opportunity, and, in any event, prior to 5 p.m. one (1) day in advance of the date of the meeting. The community development director shall notify the chair of the commission in the event that the projected absences will produce a lack of quorum.

13. Vacancy. The vice-chair shall succeed the chair if the chair vacates the office before the term is completed. The vice-chair shall serve the unexpired term of the vacated office. A new vice-chair shall be elected at the next regular meeting.

14. Amendments. These rules may be amended at any meeting of the commission by a majority of the commission, provided that the text of a proposed rule change and scheduled consideration date is announced at a commission meeting at least fourteen (14) days prior to the meeting where the rule change is to be considered, and provided further that notice of such proposed amendment is given each member in writing at least fourteen (14) days prior to the meeting.

² Section 2.12.035 provides:

² **Terms of office--Attendance.** All appointed Commissioners shall be expected to attend regularly scheduled Planning Commission meetings, study sessions, and Hearings Board meetings, when applicable. Any Commissioner having two (2) unexcused absences in a six (6) month period shall be considered inactive and the position vacant. Any Commissioner not attending a minimum of two-thirds (2/3) of all scheduled meetings shall be considered inactive and the position vacant. Attendance shall be reviewed by the Commission during the regularly scheduled meetings of January and July, with recommendations sent to the Mayor and Council for replacement, if necessary."

Adopted by the Planning Commission on the 13th day of May, 2008.

John Stromberg, Chair
Ashland Planning Commission

IX. OTHER

Chapter 2.12

CITY PLANNING COMMISSION

Sections:

- 2.12.010** City Planning Commission - Created.
- 2.12.020** CITY PLANNING COMMISSION - (Repealed by Ord. 1833, 1974)
- 2.12.030** CITY PLANNING COMMISSION - Terms of office--Vacancies.
- 2.12.035** CITY PLANNING COMMISSION - Terms of office--Attendance.
- 2.12.040** Elections of officers-Annual report.
- 2.12.050** Quorum-Rules and Regulations.
- 2.12.060** Powers and Duties-Generally.
- 2.12.070** CITY PLANNING COMMISSION - (Repealed by Ord. 1833, 1974)
- 2.12.080** CITY PLANNING COMMISSION - Funding--Gifts and bequests.

Section 2.12.010 City Planning Commission - Created.

There is created a City Planning Commission of nine (9) members, to be appointed by the Mayor and confirmed by the City Council, to serve without compensation, not more than one (1) of whom may reside within three (3) miles outside the City limits. The Mayor shall be an ex officio, non-voting member of the City Planning Commission.

(Ord 2950, amended, 04/01/2008)

Section 2.12.020 CITY PLANNING COMMISSION - (Repealed by Ord. 1833, 1974)

Section 2.12.030 CITY PLANNING COMMISSION - Terms of office--Vacancies.

Successors to the original members of the City Planning Commission shall hold office for four (4) years. (Ord. 1833, 1974)

Section 2.12.035 CITY PLANNING COMMISSION - Terms of office--Attendance.

All appointed Commissioners shall be expected to attend regularly scheduled Planning Commission meetings, study sessions, and Hearings Board meetings, when applicable. Any Commissioner having two (2) unexcused absences in a six (6) month period shall be considered inactive and the position vacant. Any Commissioner not attending a minimum of two-thirds (2/3) of all scheduled meetings shall be considered inactive and the position vacant. Attendance shall be reviewed by the Commission during the regularly scheduled meetings of January and July, with recommendations sent to the Mayor and Council for replacement, if necessary. (Ord. 2505, 1989)

Section 2.12.040 Elections of officers-Annual report.

The Commission, at its first meeting, or as set forth in the Planning Commission bylaws, shall elect a Chair and a Vice-Chair, and shall appoint a Secretary who need not be a member of the Commission, all of whom shall hold office at the pleasure of the Commission. The Secretary shall keep an accurate record of all proceedings, and the City Planning Commission shall, on the first day of October of each year, make and file a report of all its transactions with the City Council.

(Ord 2950, amended, 04/01/2008)

Section 2.12.050 Quorum-Rules and Regulations.

Five (5) members of the City Planning Commission constitute a quorum. The Commission may make and alter rules and regulations for its government and procedure, consistent with the laws of the state and shall meet at least once every thirty (30) days. The recommendation to the City Council of any amendment to the Land Use Ordinance or Comprehensive Plan shall be by the affirmative vote of not less than a majority of the total members of the commission.

(Ord 2950, amended, 04/01/2008)

Section 2.12.060 Powers and Duties-Generally.

A. The Planning Commission is the appointed citizen body with the primary responsibility of providing recommendations to the Mayor and City Council regarding the overall direction of land use planning. The Commission reviews and makes recommendations regarding comprehensive land use planning and fosters mutual communication on land use issues. The Commission is responsible to the City Council for making recommendations on land use plans and policies that are coordinated with other City plans, policies, and functions.

B. The Planning Commission shall have the powers and duties to:

1. Periodically review the Comprehensive Plan and make recommendations to the City Council on public processes, studies, and potential revisions to the Plan. Work in conjunction with other City citizen advisory commissions, boards, and committees to ensure coordination of various elements of the Comprehensive Plan.
2. Render quasi-judicial decisions on land use applications and appeals of administrative land use decisions as prescribed by the Ashland Code and Oregon state law.
3. Conduct public hearings and make recommendations to the City Council on planning issues and legislative changes to land use regulations and ordinances.
4. When needed to implement City goals and policies, meet with other planning bodies in the region on issues that affect City land use planning. Make recommendations to the City Council on regional land use issues in general.
5. Foster public awareness and involvement in all aspects of land use planning in the community.

C. Except as otherwise set forth by the City Council, the Planning Commission may exercise any or all of the powers and duties enumerated in ORS 227.090 et. seq., as well as such additional powers and duties as are set forth herein.

(Ord 2950, amended, 04/01/2008)

Section 2.12.070 CITY PLANNING COMMISSION - (Repealed by Ord. 1833, 1974)

Section 2.12.080 CITY PLANNING COMMISSION - Funding--Gifts and bequests.

The City Council may annually budget such sums, and authorize the employment of consulting advice and/or necessary staff to carry out the powers and duties delegated to the City Planning Commission and its subcommittees set forth in this chapter. The Commission may receive gifts, bequests or devises of

property to carry out any of the purposes of this chapter, which shall be placed in a special fund for the use of said Commission. (Ord. 1720, S9, 1972)