



Community Development

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PLANNING COMMISSION AGENDA
December 15, 2010 – REGULAR PUBLIC HEARING
7:30 p.m. City Council Chambers

1. CALL TO ORDER
2. ROLL CALL
3. ITEMS TO BE ADDED TO THE AGENDA
4. APPROVAL OF MINUTES
 - October 20, 2010 Regular Public Hearing
 - October 20, 2010 Joint Public Hearing
 - November 10, 2010 Special Public Hearing
 - November 17, 2010 Regular Public Hearing
5. OLD BUSINESS
 - A. DUFFIE/VR INVC – CONDITIONAL USE PERMIT (CUP 2-10)/VARIANCE (V 7-10)/SITE DESIGN REVIEW (SDR 1-10) FOR DRIVE THRU RESTAURANT AT THE CORNER OF GATEWAY AND OSWALD
 - B. DELIBERATIONS: CITY OF COTTAGE GROVE – COMPREHENSIVE PLAN MAP AMENDMENT (MCPA 3-10) TO AMEND COMPREHENSIVE PLAN LAND USE MAP TO EXPAND URBAN GROWTH BOUNDARY
6. NEW BUSINESS
 - C. CITY OF COTTAGE GROVE – ROW RIVER NATURE PARK MASTER PLAN (MPD 1-10). Applicant is seeking to adopt the Row River Park Master Plan. (Map No. 20-03-26 TL 2000, Map 20-03-27-40 TL 1400, Map No. 20-03-34-11 TL 100, Map No. 20-03-35 TL 1500)
 - D. ELECTION OF OFFICERS FOR 2011
7. INFORMATION REPORT FROM STAFF
8. AUDIENCE PARTICIPATION
9. COMMISSION COMMENTS
10. ADJOURNMENT

NOTE: Cottage Grove complies with state and federal laws and regulations relating to discrimination, including the Americans with Disabilities Act of 1990 (ADA). Individuals with disabilities requiring accommodations should contact Cindy Blacksmith at (541) 942-3349 at least 48 hours prior to the hearing.

**CITY OF COTTAGE GROVE
PLANNING COMMISSION**
Minutes of the Regular Public Hearing
December 15, 2010

CALL TO ORDER

Chair Devine called the meeting to order at approximately 7:30 p.m. in the Sinclair Room at City Hall.

ROLL CALL

Recording Secretary Cindy Blacksmith called the roll. The following were:

Present: Planning Commission Chair George Devine, Commissioners Michael Cowan, Jeremie Eckstine, Lindsey Haskell, Michael LaBorde, Larry Nichols and Mindy Roberts

Absent: None

Staff Present: Community Development Director Howard Schesser, City Planner Amanda Ferguson, City Attorney Sean Kelly, and Recording Secretary Cindy Blacksmith

Staff Absent: None

News Media Present: None

ITEMS TO BE ADDED TO THE AGENDA

None.

MINUTES

Commissioner LaBorde stated that during the October 20, 2010 regular meeting he wanted the minutes of that meeting to be changed to reflect that he voted in favor of and not against application SDR 2-10 (Cascade Home Center).

IT WAS MOVED BY COMMISSIONER HASKELL AND SECONDED BY COMMISSIONER COWAN TO APPROVE THE MINUTES OF THE REGULAR PUBLIC HEARING OF OCTOBER PLANNING COMMISSION – Regular Public Hearing December 15, 2010, Page 1 of 19

20, 2010 AS CORRECTED (LaBorde "no" vote be changed to "yes" vote on SDR 2-10) AND TO APPROVE THE MINUTES OF THE JOINT PUBLIC HEARING OF OCTOBER 20, 2010, THE SPECIAL PUBLIC HEARING OF NOVEMBER 10, 2010 AND THE REGULAR PUBLIC HEARING OF NOVEMBER 17, 2010 AS PRESENTED.

Vote on the motion was as follows:

VOTE	Commissioner Cowan	Commissioner Eckstine	Commissioner Haskell	Commissioner LaBorde	Commissioner Nichols	Commissioner Roberts	Chair Devine
AYES	X	X	X	X	X	X	X
NAYES							
ABSTAIN							

Staff advised that this hearing had been advertised and publicized and notices posted as required by law. It was asked that any correspondence received be noted as a part of the item on the agenda.

Ex Parte Contact

None

OLD BUSINESS

Duffie/V R Inc/Jack in the Box – Conditional Use Permit (CUP 2-10)/Variance (V 7-10)/Site Design Review (SDR 1-10) for Drive Thru Restaurant at the Corner of Gateway Blvd and Oswald

The applicant proposes to develop the two lots at the corner of Gateway Blvd. and Oswald West Avenue as a unified development site for a Jack in the Box restaurant on Tax Lot 600 (on corner) and a future drive-thru coffee shop (possibly Starbucks) north the Jack-in-the-Box on Tax Lot 603. The applicant has submitted concurrent Type III applications for a Conditional Use Permit (CUP 2-10), a Variance (V 7-10) a Site Design Review (SDR 1-10) .

Drive-through restaurants such as Jack in the Box or coffee shops are listed as Conditional Uses in the Commercial Tourist District, hence the need for this application.

The applicant has submitted an application to request a variance to Chapter 2.3.180 Commercial Districts – Special Use Standards to include the following specific standard which is designed to control the scale and compatibility of drive through uses:

- A. *Drive-up/Drive-In/Drive-Through Uses and Facilities. When drive-up or drive-through uses and facilities are allowed, no driveways or queuing areas shall*

*be located between the building and a street. See Figure 2.3.180.A(1).
Walk-up only teller machines and kiosks may be oriented to a street or placed adjacent to a street corner.*

The applicant has submitted an application to request a variance to this standard for the Jack in the Box restaurant, as they propose to locate the proposed Jack in the Box drive-up window driveway and queuing land adjacent to Oswald West Avenue on the south side of the lot.

The Site Design Review will only be applicable to the Jack in the Box, as the coffee drive-thru tenant is not solidified (nor is their final architectural design).

OPEN PUBLIC HEARING

Alfred: Good evening members of the Commission. Roger Alfred of Perkins Coie, 1120 NW , Portland, OR. I am here on behalf of the applicant. We also the architect Mr. Duffie and also Bret Fox, the developer of the project. We weren't sure exactly what the order of events was going to be here. We thought maybe there would be a preliminary staff report so we nonetheless can go ahead and give you an overview of the project so you know exactly what is being proposed. I think Mr. Fox will probably like to start with that.

Devine: Okay, so you're going to be the speaker on behalf of the proponents?

Alfred: Well, we do have three of us that maybe can better answer one question over another.

Schesser: Basically, all three are representing the applicant.

Devine: So we'll (unable to understand) okay that's fine.

Schesser: Correct.

Fox: Is his question (unable to understand) if that's okay.

Devine: I understood what he was saying. I just wanted to make sure we get into a longer proceeding.

Fox: Understand. We won't make it longer but each of us may better versed in it to answer a question.

Devine: So state your name and address.

Fox: My name is Bret Fox with Thomas Fox Properties and we actually have offices in Medford at 190 North Ross Lane and in Salt Lake City, Utah at 515 West Pickett Circle. In . . . we're very excited and eager to get to work and develop this property. It has

unique qualities that presented some challenges to us. Most of those come from . . . it is a very small and intimate site and it consists of two tax parcels and we'd like to make the best and efficient use of both parcels. So, we really looked at a number of . . . layouts and possible site design and plans and sort of thing, but we really worked hard to be able to get the two sites to work together with each other and share features when they could in order to best develop the sites. From talking with possible tenants the possible that would like to be there we definitely got a lot more response from food and restaurant users and know that those are really the types of businesses that would really like to be located on that property. So . . . I think I'll let our architect say a few words.

Duffie: Hi, my name is John Duffie of John David Duffie Architect, in Medford, Oregon. I think Bret pretty much laid it out. We came up with a site plan that we feel is the most efficient and best use of both lots and we worked together with planning and we think we can up with the most efficient . . . addressing the code and the code addresses issues of safety and circulation and making sure that we don't have a concrete paved community here. So we make sure we get enough landscaping. One of the primary issues that we had to deal with was egress. So to best design the both lots and share we decided to share the parking . . . the parking lot and the driveway. So we are able to use one driveway per lot and have a through way that is shared by both. That way we don't have separate driveways and the with all the various ways that we tried to come up with solutions to meet the code with regards with the drive through. This . . . we kept coming back to this everything else was less efficient. We ended up having more paving, more circuitous routes for moving cars and people from one lot to the next and from the streets to the lot and out of the lots. So . . . with that I'll guess I'll open it up for questions.

Devine: Does anyone have a question for him?

Nichols: I do. The only thing I was worrying about would (unable to understand) did there seem to be any traffic problems with the additional left turns and people? A lot of people are going to be coming in from the freeway into this property and the adjoining one and the other property once developed, the other tax lot, was there any extra thought to these people coming in and then making (unable to understand).

Duffie: Making a left turn coming out of Oswald onto Gateway you mean?

Nichols: Yeah or in and out of the . . . I see you have an exit here also that

Duffie: Yes, they're both in and out, they are egress in and outs from each driveway.

Nichols: (unable to understand) as far as develop the extra traffic from the additional (unable to understand) coming out and turning left with additional traffic waiting to turn in? I was wondering if that was

Duffie: It was thought about and the feeling is that this particular use is compatible with the use of all the activity on that street.

Nichols: (unable to understand) just the additional.

Duffie: There will be a

Nichols: To get back say on the freeway or wherever.

Duffie: There might be some conflict in a high peak traffic time. There might be some waiting that would be less convenient than if the site was used as a residential site. But I think any kind of commercial use on that lot would involve additional traffic and so that could possibly be an inconvenience in peak hours. But it wasn't something that raised a red flag that we thought was prohibitive or made this a difficult thing to address.

Haskell: When you . . . where are you designating the drive through since you really won't see it? Do you have a sign going?

Duffie: Yes and we are planning on submitting a comprehensive sign plan. But typically these developments have lighted signs low to the ground that have arrows that say "Thank You" or "Enter Here" or "Drive Through Here" with arrows and it becomes very clear upon entry from the street onto the property and the signs will guide you right to the drive through.

Haskell: Looking at your plan where they come off Gateway and turn right into the lot, if you're driving in between the two businesses you really don't see the drive through behind that building so . . . you do . . . you plan on a sign right there with an arrow?

Duffie: Yes.

Haskell: So if somebody is not going to commit to going around the back

Duffie: Exactly

Haskell: thinking they're going to go back out on Oswald

Duffie: Right

Haskell: Okay

Duffie: Yeah and those are probably really small

Haskell: They are

Duffie: and you probably can't see the little probably 1/16 inch line that represents the

Haskell: Modern technology has allowed me to read. Okay thank you.

Duffie: Your welcome.

Devine: Anything else? Thank you. Is there anyone else in the audience wishing to speak in favor of this item? Seeing none, is there anyone wishing to speak against this item?

Kim O'Dea: Kim O'Dea, Law Office of Bill Kloos, 375 West 4th, Eugene, 97401. I have handouts (attached as Exhibit A). Let me first say I'm so pleased to be in front of the Planning Commission on an issue not related to the Speedway. It's been forever. I represent the adjacent property owners to the north and I'm going to keep this short and sweet and kind of make more of a bucket list so that we're not here all night long.

The first issue I want to address is that the applicant filed this application fairly early on, several months ago, and it was rolled and then it was rolled again and staff never received a waiver from the 120 day processing timeline. So here we are in front of you pretty far in the process and you can pretty much bet that no matter what the Planning Commission decides, there is going to be an appeal to the City Council. And, based on my calculation of the 120 days, there's . . . it's going to be quite impossible to get to front of the Planning or in front of the Council and also get through the Council process within that 120 days. So this may very well end up in a mandamus proceeding in front of Circuit Court without some sort of waiver. So, consider that. You might ask the applicant to give you that waiver so we're not up against that timeline so if anybody needs any additional time it's available for review. Right now we're up against the wall so I just wanted to point that out.

The proposed property line adjustment that, let me back up a second, there's a property line adjustment that was filed early on in this and that property line adjustment is the basis for these three applications. So if you look at your site plans all of them are premised on the property line adjustment and the configuration of the lots are based on approval of the property line adjustment. That property line adjustment was denied as a Type II application. There's a provision in your Code that says you cannot file the same or similar application within one year. The applicant turned around within several weeks and re-filed the property line adjustment application. That application should not have been accepted and definitely can't be processed and approved. There's a provision in the Code for allowing that to happen if facts have changed or if there's been a change in policy at the City. Facts have not changed. This is the same property line adjustment application for the same line with the same stuff. The only fact that has changed is the applicant actually took the time to address the approval criteria the second time around and that is not . . . that provision is intended to ensure that this type of stuff can't happen. That you can't file a skinny application, as we call them, and then turn around and file it again and again and again until you get it right. That's what that whole provision in the Code is for. There's also not been a change in City policy. City policy is approve applications that comply with the Code.

That policy is the same. The only difference again is that the findings were buffed up the second time around. So that application shouldn't have been accepted and can't be processed. Because it's the underlying basis for the staff report and for the applicant's materials for the variance, the CUP and the site review, it's kind of impossible to approve the stuff that's in front of you tonight. That's a change, either the applications need to be modified. Obviously new findings need to be made or at least the new analysis needs to be a finding. Or maybe it needs to be denied and resubmitted a year later – that's something for you to decide. But right now the underlying basis of the three applications in front of you does not exist and cannot exist at least for another year. That's the first issue.

The second issue is that the application has requested a variance and the case law is pretty clear on what rises to the level of getting a variance. Variance standards are pretty similar, they change a little bit, they add a little bit through fluff and design flaws are not what the variance provisions are intended to get at. The variance provisions are intended to get at site specific problems. All of the problems that the applicant has with the site, are not site specific. The site is flat. The site has access. The site has no natural features that we know of. It's easy to develop, but it's just not easy to develop with what the applicant wants to put there. That's not a basis for a variance. The variance is very specific to the site itself and so I'm not going to slog through all the variance criteria. It's all laid out for you and the applicant doesn't comply with any of them. Without the variance obviously the applications in front of you can't be approved.

And then, finally, you get to the nuts and bolts of the review under the code provisions and I'm going to just instead of taking of up your time. Oh my gosh I went through days, that's a lot of standards to go through. Here's my bucket list. The problems with the application fall into two buckets. One is there are standards in the code that are applicable that were not addressed and those are laid out to a great extent in my letter here. And, the other is where some of them were addressed they weren't addressed sufficiently. The finding wasn't support by facts and the applicant didn't carry the burden of compliance. So that's what the remainder of this particular document is about.

The traffic question that you had, there's an opportunity to ask the applicant for a Traffic Impact Analysis. There's a lot of provisions in the Code that were addressed that really weren't addressed well because there isn't a Traffic Impact Analysis out there. I don't know why one wasn't requested given the fact that you have all this turning on to the road and you have changes in circumstances. That's something that can be requested of the applicant and would answer your question. Without it, it might or it might not. There would be a definitive answer to that question and some of the compatibility standards in the Code would actually be addressed with facts. It's an underlying problem with all the findings is there aren't . . . they're opinion based findings and not fact based findings.

My last comment I think . . . is just in regard to the sign plan. Again, the sign plan should be in front of you tonight. It's one of the compatibility requirements as a provision in the Code about signs. So that really should be in front of you tonight. It's not. Another weakness of the application that these 20 some pages go on and on about. I'm going to leave it at that. There's some very fundamental flaws here especially with the 120 day clock running and really running. There's some fundamental flaws with the application, the actual property line adjustment it might be heading to LUBA here fairly quickly because it actually got accepted by the City. We're still mulling that over, but there is some fundamental problems with the applications in front of you especially the baseline information. That's it.

Devine: Very good.

Haskell: So . . . your client hired you to find these items that were wrong or anything that was wrong? I guess I'm looking for the underlying "why don't you want this to be built"?

O'Dea: I don't think that's the issue. I think that you cannot approve something that is not in compliance with the Code. My job was to ensure that the applications in front of you are in compliance with the code.

Haskell: Well, you said it was going to go to a mandamus act or before LUBA.

O'Dea: I didn't say that it would. I said that it could. That's what happens when the 120 day clock runs. The option available to you as the applicant, it's an applicant's safety remedy to ensure that jurisdictions actually get through the process in a timely manner. When the 120 day clock runs your option is to take it out of the local proceeding and put it into Circuit Court. I didn't say that it would, the option is available. It just takes it out of the hands of the City.

Devine: Anyone else? Okay, thank you.

O'Dea: Thank you.

Devine: Oh, I'm sorry.

Nichols: Who is it that you're representing?

O'Dea: JCK Enterprises, the property owner to the north.

Cowan: When did the 120 day processing timeline, when is the official date?

O'Dea: When does it run?

Cowan: Right.

O'Dea: Amanda?

Ferguson: January 24th, the 23rd is actually the 120 day date but that is a Sunday so it would fall over to 5:00 p.m. on the 24th.

Cowan: That's when it expires? And you're saying there's not enough time?

O'Dea: I'm saying it would be very difficult to get through the . . . you're up against a very tight timeline. It would be very difficult to get through the City Council proceedings, have them hear it and get a decision at that timeline.

Cowan: Is that your opinion? Is that Amanda and

O'Dea: Well that . . . that

Schesser: At this point you're in a public hearing and you can ask for clarification from the person at the podium but it's not our opportunity to respond right now.

Cowan: Okay. So how do we . . .

O'Dea: I'm saying that's a factual determination. Staff can tell you exactly the timeline of the 120 days and they can tell you exactly when the next City Council regular meeting is. And, they can have a special session. There are all sorts of things that can happen, but I'm saying we're up against a very tight timeline because some waivers weren't granted.

Cowan: Okay, thank you.

Devine: Very good. Thank you.

O'Dea: Thank you.

Devine: Is there anyone else wishing to speak against this item? Hearing and seeing none, then the proponents will have one opportunity for rebuttal.

Alford: Thank you members of the Commission, Roger Alfred again appearing on behalf of the applicant. I want to make sure that everybody does understand that Ms. O'Dea's here representing the adjacent Carl's Jr. She said neighboring property owner, which could lead you to believe that maybe that was the residential property. Nonetheless, but this is basically a competing business immediately adjacent that is simply just trying to stop this from being able to compete with them for business. So that's what this is about and whether that's a reasonable use of the City's land use resources is for everybody else to decide. Basically, in our testimony which she is telling you is that your staff (unable to understand). We have staff reports that are very detailed, very thorough. They walk through every single criteria and explain exactly why this, these three applications comply with those criteria. Your staff did a

great job on these and I disagree with the ascertain that they totally blew it and that we're actually not in compliance with any of these standards. I would start out with a blanket statement that your staff found otherwise and you can certainly find otherwise based on what's the applications and what's in the staff reports. It's actually before you. The 120 day issue is not an issue. I mean that's just not an issue. We're perfectly find with towing that time period. We not going to mandate this to the City. We're not going to try to go to Circuit Court and sue the City (unable to understand). So we'll work with staff and come up with, if not a blanket waiver we'll come up with some sort of mechanism where we can make sure that the City has enough time to act on this application and if we have to go to the City Council that there will be enough time to do that. So that's not, you just need to draw a line through that, not a problem. In a second I'm going to let Mr. Fox talk about the property line adjustment issue. I'm going to touch on the variance stuff. Again, the ascertain was made that we're not in compliance with any of the variance criteria and that essentially as I understood it that variances can't under any circumstances be applied to this kind of circumstance. That is design standards. Well that's incorrect. There's absolutely nothing in your Code that says variances are limited to circumstances that are different than design standards. The purpose of a variance in the Code is to allow flexibility and to give the applicants flexibility when they're faced with the kind of challenging site that we have. As again as determined in the staff report, all of those criteria are met. Basically, the variance was requested because of the drive through which needs to be located between the building and the street. The evidence in the record that was considered by staff includes three different alternatives that were considered by the applicant as ways that possibly that standard could be met including putting the restaurant down in the bottom corner. The problem is that with this site with the two lots and one access onto the adjacent street, Gateway, that the driveway, the drive through would back up onto the street and the cuing would basically create a problem for both lots and on Gateway. So, that was the reason that the variance was requested. Our determination was that this site plan that is before you does the best job under the circumstances of meeting all the other code criteria and addressing the code as a whole, but the result of that is that we still needed to ask for this one variance to one of the standards. Again, this isn't the forum I think to dive into the specific about all of the five different criteria for variances and like you we just received this document for the first time tonight so we're probably going need to take a little bit of a look at it. There was also a suggestion that a TIA should be required. I think if a TIA was necessary that is something that your staff would have pointed out. There's nothing to indicate that there will be traffic issues here as a result of this development. It's a commercial development. It's a commercially zoned site. There was a question raised by Commissioner Nichols about potential conflicts arising out of left turns out onto Gateway. It's worth noting that there is an alternative access point that goes out onto Oswald. So it's likely that if you did have a situation (unable to understand) high peak traffic period, there was enough traffic on Gateway that there were cars backing up, that people would just go down and use the Oswald street as a way to get back out onto Gateway. And, that's an existing intersection obviously so there is a mechanism

there for there to be over flow out onto Oswald and out onto Gateway. I'm going to let Mr. Fox talk about the property line adjustment issue and then I would like to reserve the right to come back with a quick (unable to understand) if I need to after I talk to our architect.

Devine: Very good.

Fox: Hi, I'm a little puzzled. I'm not aware that you have any information in front of you about our proposed lot line adjustment so I just wanted to say there are two existing parcels there. We've proposed a very minor change in the boundary that separates the two parcels. Right now the existing property line that runs sort of east/west and divides the two properties is at a little bit of an angle when compared to Oswald. We've simply proposed rotating it counter clockwise slightly so that it parallels Oswald. It's a very minor change. So the . . . if you envision that in the middle of the property line really doesn't move if you put an access in the middle of the properties, the property line just simply rotates and I believe . . . it's not the basis for our whole development and we could . . . I believe we could develop both tax parcels without the lot line adjustment and if for some reason our application is deemed unsatisfactory or something we would proposed developing with the property line as is. Maybe at some point in the future, a year or two or three then we would proposed a lot line adjustment. But there is no reason that the two parcels cannot be developed . . . there's no reason for us not to proceed with our development whether there's a lot line adjustment or not, especially one so minor. On each end it maybe moves 5 feet or something. I think it's only 4, so it's four at each end and a rotation.

Devine: Thank you. Did that take care of the rebuttal then?

Fox: Yes, although I may say one other thing. The variance we asked for, half the drive through restaurants in the city have that challenge we'll say. So it's a common problem for a drive through restaurant.

Devine: Thank you. Okay at this time I'm going to close the public hearing.

Schesser: Mr. Chairman do not close the public hearing yet. Depends on what action, I'm going to say that by looking at this 15 pages, there's no way I'm going to be able to respond to the Commission on that tonight. So instead of closing the hearing I'm probably recommending that you continue it so I can respond back to these 15 pages.

Haskell: January what?

Schesser: I've had a previous discussion with the Chairman talking and looking at December but those dates aren't going to work for many members on the Commission as well as staff. So then you're looking if you want to do a special meeting you're looking at January 5th or you could do it on your work session night which is January 12th.

Devine: How do you feel that might impact this getting our backs against the wall on the timeline?

Schesser: Well, I think . . . we don't have the waiver at the moment I mean the attorney representing Mr. Fox has indicated that they're willing to grant something and not go to Court with us. I have to take them on their word so that may not be an issue.

Devine: I was just wondering if you would prefer to try to do the 5th instead of the 12th?

Schesser: It's really up to the Commission what you want to do.

Devine: You don't have an issue with it.

Schesser: We could . . . staff could be able to respond by that time.

Devine: Okay. Any preference the 5th or the 12th?

Nichols: They're Wednesdays right.

Schesser: They're Wednesdays. Your normal meetings in January is the 12th and 19th, but you could hold a special public hearing . . . continue it to the 12th if you wanted. If you don't want to do 3 nights that month.

Devine: Okay we could just do it on the 12th in lieu of our work session.

Schesser: It's up to you. Staff is available.

Devine: Is that okay.

Schesser: Whatever the Commission wants to do.

Devine: Okay the 12th.

Schesser: You would need a motion for that.

Devine: Okay, I'll take a motion.

Haskell: I move that we continue the public hearing to January 12th.

Nichols: Second.

Devine: Any further discussion? All in favor signify by saying aye. Opposed nay?

VOTE	Commissioner Cowan	Commissioner Eckstine	Commissioner Haskell	Commissioner LaBorde	Commissioner Nichols	Commissioner Roberts	Chair Devine
AYES	X	X	X	X	X	X	X
NAYES							
ABSTAIN							

Devine: Very good. So the public hearing remains open and continues to January 12, 2011.

NOTE: At this point a recess was taken.

Deliberations: City of Cottage Grove – Comprehensive Plan Map Amendment (MCPA 3-10) to Amend Comprehensive Plan Land Use Map to Expand Urban Growth Boundary

Schesser: The purpose of this section is . . . you're not taking testimony. You've already had the testimony at the joint public hearing with the Lane County Planning Commission. You have before you what came during that open record period. You have the revised findings that are attached and those revised findings which I had mentioned to you earlier, staff is recommending that we take out the one piece of resource land at this time. So we can do additional study on that next year so that we don't jeopardize the whole project over one piece of property and we don't have that immediate need and we can move forward. We did talk to Weyerhaeuser and did talk to Kimwood. All of their positions are that Kimwood needs their land for their development and Weyerhaeuser needs the land – they're indicating that the land that they had in their letter that's in the record is what they're moving forward with.

Ferguson: We only had a few actual submittals, letters that were submitted to the City since your hearing when the record was kept open after that hearing. One letter from Mia Nelson which is in your record, a letter from Terry Van Gorder, and a letter from Daniel and Patricia Caffey – that letter was actually submitted at the public hearing on the 20th of October but I included it in your packet just in case. You also have in front of you Additional Engineering Comments on Public Facilities. That's a memo from Ron Bradsby who is the City Engineer that was detailing specifically the financial impacts of the UGB expansion, if you had any questions on that. And, we have one letter from Jan Wellman who is a property owner on Goddard Lane in support of the UGB expansion. Those were the only testimony that we did receive during that time period.

Haskell: Jan lives on Goddard?

Schesser: Yep.

Haskell: Is he on a well or city water?

Schesser: Well.

Haskell: Just thought I'd ask.

LaBorde: So, are we recommending . . .

Schesser: We're recommending that you recommend to City Council approval of the application with that resource, piece of resource land removed.

Ferguson: With the revised findings dated November 11th.

Devine: Was the public hearing officially closed?

Schesser: Yes, the public hearing is officially closed, the joint one was but the record was left open for three weeks I believe it was.

Devine: Okay. So we really . . .

Schesser: So you're the first, you're the first group to deliberate. Lane County Planning Commission will deliberate next Tuesday. City Council is scheduled for the 24th of January and then we're somewhere on the schedule before County Council in March.

Devine: Very good. Any questions, Commissioners?

Haskell: No questions.

Devine: Pretty much understand where we're at this point?

Nichols: The only concern I had was with that one parcel of land.

Devine: Which has been addressed and taken care of and removed. That seemed to be the sticking point earlier. Well if there's no further discussion I guess I would accept a motion of recommendation.

LaBorde: Mr. Chairman, I recommend that the Planning Commission recommend adoption of MCPA 3-10 based on the criteria, findings, conclusions and recommendations stated in the staff report.

Schesser: Just for clarification, the findings would be the ones dated November 11th, because there's two sets of findings. I just want to make sure your motion will include the date.

LaBorde: Including the findings of November 11th.

Eckstine: Second.

Devine: Second, any further discussion?

Haskell: Yeah, I read Mia's letter over and over. I mean there's a lot of charges in there that we do this wrong and we did that wrong and . . . am I just supposed to look at you and go is that true?

Schesser: Let me put it this way. We don't necessarily agree with what Mia said in several instances. The map that she had with the air photo and showing it, in our opinion came to far down because it came into the area that Weyerhaeuser presently uses for their operation. But it's procedure, do we want to hold up and have a battle over one piece of property and hold up all the rest? Or, are we better off to take that one out, get everything else adopted, then we'll come back and do some additional work. We have to come back do some additional work anyway with the TSP update and what we'll do is do the TSP which is ODOT is working toward getting us funding right now for next year and we will look at this piece at the same. So when we go back to the County, because we'll have to go back through that process, we can take both of those together. Both the TSP and this piece or any other piece of land that we say will meet the business park need. So it's a . . . part of it's just . . . or do we want to spend time before DLCD arguing the issue and from there either LUBA or court, if it wants to go that far. So it's we've looked at everything and we just felt we don't necessarily agree with everything Mia says in her letter but it's what's going to be the best thing for the community and move this project on.

Devine: Does it make it a tougher hill to climb if you postpone the parcel now and then you go to looking into it a year or two or whatever?

Schesser: No, not really because it's under 50 acres so we don't go to DLCD and it forces anybody who wants to challenge us to go to LUBA and that's a different process.

Haskell: I know that . . . that if Mia had not challenged us I think there would have been a lot more discussion about the future growth and our needs and all the work that went into this. But having her challenge us to remove that and the fear of having this denied we just kind of like okay let's just pass this . . . I'd like to see in the minutes a lot more conversation about the future of Cottage Grove and how we're going to get . . .

Schesser: Well, that's what . . . I mean that's what the whole study did that Winterbrook put together because it talked about how we got there and what areas . . .

Haskell: I guess the culmination of all that is we move and second, we vote and it's over. It's just kind of like anti-climatic I guess.

Ferguson: Trust me, we'll have lots more conversation in the next three meetings on this.

Schesser: Because, the record as we go through, we're keeping a record because when we go to DLCD we have to take the whole record which starts from that original joint

meeting with had with Lane County Planning Commission as the County where Greg got up and talked about his sand and stone and that process.

Haskell: Sure.

Schesser: All of that is recorded and written. All of that together with the public hearing information, what's going to happen here, what's going to happen at the Lane County, plus at City Council so all of that is going to be one big record. All of that has to go to DLCD when we submit it for the Director's review so it's not being looked in isolation.

Haskell: Right. So even though we didn't have a lot of conversation at this point about it . . .

Schesser: I mean more than welcome to have

Haskell: No, no, I don't want to add anymore paper work to what you already have to

Schesser: Well, I don't want to not give you that opportunity if you feel you need to talk and discuss it further.

Haskell: I have been given the opportunity and I feel no need to have more.

LaBorde: We have a motion on the floor.

Devine: We have a motion on the floor. All those in favor signify by saying aye.

VOTE	Commissioner Cowan	Commissioner Eckstine	Commissioner Haskell	Commissioner LaBorde	Commissioner Nichols	Commissioner Roberts	Chair Devine
AYES	X	X	X	X	X	X	X
NAYES							
ABSTAIN							

Devine: Motion carries.

NEW BUSINESS

City of Cottage Grove – Row River Nature Park Master Plan (MPD 1-10)

The Row River Nature Park is a unique and important natural and recreational resource both for the City of Cottage Grove and the broader region. Its 87 acres accommodate a diverse range of uses and needs, ranging from valuable habitat for sensitive species to BMX bicycle racing. This Master Plan is intended to guide management and

maintenance activities in the Park, as well as providing a framework and context for decisions related to the Park over the next 20 years.

The goals of the Row River Nature Park Master Plan are:

- To provide a clear direction for the future of the Park by defining a vision and guiding principles that represent the fundamental role of the Park within the City and the broader region;
- To recommend and prioritize specific actions necessary to preserve and improve Park resources;
- To build a foundation for planning and implementing future stewardship initiatives in the Park, including maintenance and management of habitat, vegetation, facilities, and infrastructure; and,
- To construct a framework for periodic reflection and refinement of recommendations and management practices within the Park.

The Row River Nature Park is in the easternmost portion of Cottage Grove, between the banks of the Row River and Row River Road. The Park totals 56.42 acres primarily consisting of ponds, meadows, and forested areas.

Commissioner Nichols asked the comments from the Lane County Transportation Planning staff.

City Planner Ferguson replied that staff was not recommending any changes to the Plan to address their comments. Their concern was about development of the parking lot and directing pedestrian/bicycle traffic away from the portion of Row River Road that does not have sidewalks or bike lanes and that is already addressed in the plan.

Commissioner Cowan asked about the creation of a link to the Row River Trail.

Staff replied that even though the plan contains recommendation to formalize this connection, there are no funds dedicated to do so at present or expected.

A letter received from Wayne Schmidt in support of the proposal was received and is attached as Exhibit "B".

OPEN PUBLIC HEARING

Pam Reber, 79366 Replsleger Road, spoke on behalf of the Advisory Committee who helped to write the plan. She emphasized the importance of the plan for the long range planning of the park. She felt the management plan was the key for organizing multiple partners on restoration projects and on the annual maintenance requirements.

CLOSE PUBLIC HEARING

Commissioner Haskell stated he like the plan because it has options for changing things as new issues came up. He stated he tried to insert some of his redneck perspective into the plan, by encouraging hands-on education opportunities.

Commissioner Nichols agreed with Commissioner Haskell and said the plan encourages active participation without becoming Coiner Park. He also liked the flexibility of the plan.

IT WAS MOVED BY COMMISSIONER HASKELL AND SECONDED BY COMMISSIONER COWAN THAT THE PLANNING COMMISSION APPROVE APPLICATION NO. MPD 1-10 AS PRESENTED, BASED UPON THE CRITERIA, FINDINGS, CONCLUSIONS, RECOMMENDATIONS AND CONDITIONS STATED IN THE STAFF REPORT.

Vote on the motion was as follows:

VOTE	Commissioner Cowan	Commissioner Eckstine	Commissioner Haskell	Commissioner LaBorde	Commissioner Nichols	Commissioner Roberts	Chair Devine
AYES	X	X	X	X	X	X	X
NAYES							
ABSTAIN							

Election of Officers for 2011

Commissioner Devine was elected as Chair for 2011 and Commissioner Haskell was elected as Vice-Chair for 2011.

INFORMATION FROM STAFF

Staff advised that the Speedway is finally done. The WOE has a new chair, Judy Cash. That staff will begin working with both groups to implement the master plan immediately.

AUDIENCE PARTICIPATION

None.

COMMISSION COMMENTS

Commissioner LaBorde stated that this was his last meeting as a member of the Planning Commission and thanked staff and congratulated them on the work they had done over the past several years, in particular Amanda's work on the Development Code. He further stated that he wanted the Planning Commission to know that he felt he had been out-of-line on comments on the Cell Tower in October. He also wanted to encourage the Commission to keep in mind the commitment the City has made to property owners through their existing zoning. Commissioner Devine thanked him for his service and encouraged him to stay involved. Attorney Kelly assured him that he was working to keep the lease impacts of the cell tower down to as few as possible.

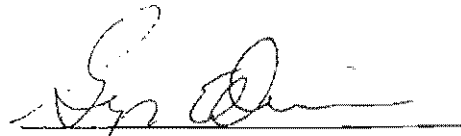
ADJOURNMENT

The meeting was adjourned at approximately 9:25 p.m.

ATTEST:

APPROVED


Cindy Blacksmith, Recording Secretary


George Devine, Chair

MINUTES

Lane County Planning Commission
Board Conference Room -- Lane County Public Services Building
125 E. 8th Avenue - Eugene, Oregon

December 21, 2010
5:30 p.m.

PRESENT: Robert Noble, Chair, Tony McCown, Vice-Chair, Lisa Arkin, George Goldstein, Nancy Nichols, Dennis Sandow, John Sullivan, Jozef Siekiel-Zdzienicki, Ryan Sisson, Planning Commission Members: Stephanie Schulz, staff.

Mr. Noble called the meeting of the Lane County Planning Commission to order at 5:30 p.m. and noted that Ms. Arkin was expected to arrive later in the meeting. He further noted that Ms. Arkin had not planned to participate in the deliberations regarding Cottage Grove.

WORK SESSION

I. DELIBERATIONS - PA 10-5438 - In The Matter Of Adopting The Cottage Grove Economic Opportunities Analysis And the Cottage Grove Comprehensive Plan Map Amendments To Expand The Cottage Grove Urban Growth Boundary.

Ms. Schulz, responding to a question from Mr. Noble, stated that deliberations regarding Cottage Grove had also been placed on the agenda for the Commission's January 4 meeting. She further noted that the current meeting would be devoted to information presentations regarding the Cottage Grove Urban Growth Boundary (UGB) and that the January 4 meeting would involve substantive deliberations and discussions regarding that same matter.

Ms. Nichols asked if Commission members were welcome to ask staff questions regarding the Cottage Grove UGB agenda item. Ms. Schulz responded in the affirmative but noted that the actual work plan materials regarding that agenda item were not yet ready to be distributed.

Ms. Schulz noted that she planned to mail the aforementioned work plan materials to the Commission members. Ms. Schulz further noted that those work plan materials would review the Committee's actions and discussions in 2010 regarding the Cottage Grove UGB.

Ms. Schulz noted that the work plan materials would also include a list of projects to be included in the long-range elements of the work plan. She stated that the Commission was expected to provide information regarding their priorities for the projects listed therein.

Ms. Schulz restated that staff had only intended to provide information regarding the Cottage Grove UGB agenda item during the current meeting and that deliberations regarding the matter were scheduled to take place on January 4.

Ms. Schulz informed the Commission that Planning Director Kent Howe would be unavailable for the next two weeks.

Mr. Sullivan submitted a list of Lane County Planning Commission Recommendations for the 2009/10 Long Range Planning Work program to staff

Ms. Schulz presented the staff report and noted that Lane County staff had held a joint hearing on October 20 with the City of Cottage Grove Planning Commission. She noted that the record from that meeting had been kept open until November 10 and that the testimony from it had also been included in the Commission's agenda item summary materials.

Ms. Schulz summarized her December 13, 2010 staff memorandum to the Commission regarding the Cottage Grove UGB and noted that it would be appropriate for the Commission to review and/or modify the minutes of the October 20 meeting.

Cottage Grove Community Development Director Howard Schesser noted that Cottage Grove staff had reviewed information from the 1000 Friends of Oregon organization and determined that the business park discussed at the October 20 meeting was not immediately needed.

Mr. Schesser noted that Cottage Grove staff had engaged in follow-up discussions with representatives from Weyerhaeuser and Kinwood and ultimately determined that additional lands for business park use were not available on either of their properties.

Mr. Schesser summarized his recent discussions with Lane County transportation staff regarding potential amendments to Cottage Grove's TSP (Transportation System Plan) that might be needed as a result of any expansions to the UGB. He further noted that ODOT was expected to contribute funding resources to any amended areas of the TSP. He noted that the TSP amendments and ODOT's funding resources would be addressed over the next year as funding became available.

Mr. Schesser noted that the Cottage Grove Planning Commission had met on December 15 and had there recommended to the Cottage Grove City Council the approval of the amended UGB expansion as provided by staff.

Mr. Schesser, responding to a question from Mr. Siekiel-Zdzienicki regarding the draft Cottage Grove Urban Growth Boundary Justification Report, noted that the Cottage Grove Planning Commission's only notable exception to the staff recommendation had addressed the resource lands within the UGB. He noted that the Cottage Grove Planning Commission's vote regarding the UGB matter had been unanimous.

Mr. Sullivan asked how Cottage Grove staff wanted the Lane County Planning Commission to address any elements pertaining to Rachel Road. Mr. Schesser responded that any issues related to Rachel Road had been deferred until further amendments to the Cottage Grove TSP had been made.

Mr. Sullivan noted that there were two new Lane County Commissioners on the Board and encouraged Cottage Grove staff to address issues pertaining to Rachel Road when they made their presentation to the Lane County Board of Commissioners in January.

Mr. Schesser, responding to a question from Mr. Siekiel-Zdzienicki, briefly discussed how elements such as those pertaining to Rachel Road would be addressed as the Cottage Grove TSP was amended to reflect any changes to its UGB.

Mr. Sullivan noted that Cottage Grove property owner Daniel Cathey had submitted testimony and requested that Mr. Schesser and Cottage Grove City Planner Ananda Ferguson include Mr. Cathey in the subsequent planning discussions regarding the UGB. Mr. Schesser confirmed that he or Ms. Ferguson would confirm that Mr. Cathey's concerns had been heard and addressed by Cottage Grove staff. Mr. Siekiel-Zdzienicki further requested that property owners Terry Van Gorder and Elaine Roberts also be included in the Cottage Grove staff's communications.

Mr. Schesser, responding to a question from Mr. Siekiel-Zdzienicki, described how Cottage Grove property owners had been formally notified of any residential areas that might be re-zoned for commercial use as part of the UGB expansion. Mr. Schesser further noted that several property owners had been present at recent meetings regarding the UGB.

Mr. Schesser, responding to a question from Mr. Siekiel-Zdzienicki, described the provisions of the safe-harbor riparian ordinance that had been used in a development code update enacted in January of 2008. He noted that those provisions indicated the use of a 50-foot setback as a minimum protection area.

Mr. Schesser, responding to a question from Mr. Goldstein, noted that the figures relating to wastewater in the UGB justification report had not changed significantly after the 1000 Friends of Oregon's review of the report.

Mr. Noble asked the Commission members to offer comments or a motion regarding the Cottage Grove UGB. He noted that the Lane County planning commission was empowered to approve, disapprove or approve with conditions.

Mr. Goldstein, seconded by Mr. Sisson, moved to forward a recommendation to the Board of Commissioners to approve the proposed Cottage Grove UGB expansion and associated Plan redesignation amendments for those properties to be included in the City urban growth boundary.

Mr. Sullivan noted his support of Mr. Goldstein's motion based on the Cottage Grove staff's efforts to address the public comments that had been submitted regarding the matter. He further noted that his support was also based on his perception that all of the relevant Lane County Ch. 12 criteria had been met.

Mr. Siekiel-Zdzienicki commended the Cottage Grove City staff for their efforts to respond to the public comments that had been submitted regarding the UGB expansion. He hoped that representatives from other local government agencies would follow suit.

Mr. Noble commended the Cottage Grove City staff for their efforts regarding the UGB expansion and further noted that he had been particularly impressed with the consultant's explanations regarding the UGB expansions.

Ms. Nichols indicated her support for Mr. Goldstein's motion but noted that the audio recording for one of the recent public hearings regarding the Cottage Grove UGB expansion had been somewhat difficult to understand.

Mr. Noble called for a vote on Mr. Goldstein's previously stated motion and noted that the motion incorporated the understanding that Lane County staff would follow up on the information previously provided to Cottage Grove staff. The motion passed unanimously, 8:0.

Mr. Sullivan indicated his intention to offer an additional motion based on previous developments regarding the McKenzie River and the Lane County Board of Commissioners' lack of participation in work sessions.

Mr. Sullivan, seconded by Mr. McCown, moved that Winterbrook Planning's PowerPoint presentation be included as part of a proposal to the Lane County Board of Commissioners during a Board work session.

Mr. Sullivan noted that the Winterbrook presentation had been enormously helpful to his understanding of the issues relating to the Cottage Grove UGB and further noted his belief that the Lane County Board would benefit considerably from an examination of the Winterbrook presentation materials.

Mr. Sullivan believed that the Lane County Board would not choose to review the Winterbrook presentation during a public hearing session.

Mr. Sullivan believed that the new Lane County Board needed to participate in the same level of work session discussions regarding urban growth boundaries that the Planning Commission had conducted.

Mr. Siekiel-Zdzienicki maintained that the new Lane County Commissioners did not have a significant amount of experience in dealing with issues pertaining to urban growth boundaries.

Mr. Goldstein maintained that a Lane County Board process more similar to that of the Planning Commission's work sessions regarding urban growth would have yielded more positive results than what had occurred.

Ms. Arkin arrived to the meeting at 5:57 p.m.

Mr. Noble called for a vote on Mr. Sullivan's previously stated motion. The motion passed unanimously, 8:0.

Mr. Noble asked the Commission members to approve the minutes of the October 20, 2010 Cottage Grove public hearing.

Mr. Noble informed Ms. Arkin of the Planning Commission's passage of the motion regarding the Cottage Grove UGB earlier in the meeting.

Mr. Sullivan and Mr. McCown offered corrections to the minutes.

Mr. Sullivan, seconded by Mr. Siekiel-Zdzienicki, moved to approve the October 20, 2010 minutes of the joint meeting of the Cottage Grove Planning Commission and Lane County Planning commission as corrected. The motion passed, 7:0 (Ms. Arkin and Mr. Sandow voting in abstention).

Mr. Noble called for a break and 6:02 p.m. and reconvened the meeting at 6:06 p.m.

II. 2010 Planning Commission Annual Report and Recommendation for 2011 Long Range Planning Work Program

Mr. Noble briefly discussed how the Commission's review and discussions regarding the report and the work plan might be conducted. He suggested that the initial conversations regarding the matter would address the results of the Planning Commission's previous work plan.

Ms. Schulz noted that the running list of projects for the 2011 long range planning work program was not yet available. She hoped that the Commission's current discussion would address elements from previous work plans with an emphasis on what themes might need to be carried over, eliminated, or completely revised.

Mr. Noble noted that he had a copy of a list of projects from the 2010 version of the work plan that could be used in order to conduct the Commission's discussions as suggested by him and Ms. Schulz. He further noted that the Commission had identified five categories to be used as themes for discussion: maintenance of the rural comp plan, coordination, policy issues, recent considerations, and areas for future consideration. He noted that the Commission's previous prioritization efforts using those categories had appeared to be successful.

Mr. Sullivan noted that he had reviewed the Planning Commission's work plans since 2004 and believed that five categories listed by Mr. Noble and the format in which those categories had been applied had been very useful to the Commission.

Mr. Sullivan noted from the list of Commission recommendations he had previously distributed to staff that many of the items therein had been addressed in staff reports.

Mr. Noble stated that the Commission discussion items would be used by the Board of County Commissioner to determine the Lane County staff work plan.

Ms. Schulz, responding to a question from Ms. Arkin, briefly described how the Commission's recommendations regarding the Springfield UGB had been considered by the Lane County Board.

Mr. Siekiel-Zdzienicki reported from his recent conversation with Eugene Planning Director Lisa Gardner that Eugene City staff intended to confer with the Lane County Planning Commission members regarding Eugene's UGB in January.

Mr. Noble noted his understanding that the City of Springfield intended to revamp its approach to its UGB based on the recommendations and input of the Lane County Planning Commission.

Ms. Schulz, responding to a question from Mr. Noble, understood that the City of Springfield had completed its process regarding its UGB. She noted that she had participated in a Springfield staff meeting where various employment and economic concerns related to the UGB had been addressed. Ms. Schulz did not know if that staff meeting represented further refinements or a completion of the Springfield UGB process.

Mr. McCown noted that the Lane County Planning Commission still had various issues of concern regarding the Eugene and Springfield UGB's.

Mr. Siekiel-Zdzienicki noted that the impression he had received from Lane County Planning Director Kent Howe was that the Planning Commission would be asked to further review additional refinements to the Springfield UGB.

Mr. Schulz informed the Commission that the Lane County Board had recently made a decision regarding the City of Florence's UGB.

Ms. Schulz, responding to a question from Mr. Goldstein, noted that stormwater issues had been discussed at the recent Lane County Board meeting regarding the Florence UGB.

Ms. Arkin believed that the City of Eugene would not confer with the Lane County Planning Commission regarding the Eugene UGB before January of 2011. Mr. McCown responded that he expected such discussions to take place later in the year.

Mr. Goldstein asked if the City of Eugene had put a moratorium on urban growth. Ms. Schulz responded that she did not make any such indications but intended to state that she did not know of any other cities that intended to bring any UGB related projects before the Planning Commission.

Ms. Arkin noted that the Commission had requested additional information regarding the coastal management resource plan from staff.

Mr. Sullivan, responding to a request for clarification from Mr. Goldstein, noted that the Commission's work plan was approved during their regular meeting in December.

Mr. McCown discussed how the Commission's work plan had been developed over the previous year and noted that the Commission had in its discussion made clear distinctions between the staff's work plan and the Commission's work plan.

Mr. Noble commented that the Commission had agreed to incorporate additional training elements into their work plan for 2011.

Mr. Sullivan noted that Celia Berry had provided the Commission with documentation to be used in their transportation and land use planning discussions.

The Commission members discussed how they had jointly worked to address various areas for future attention and Planning Commission training strategies as their 2011 work plan was developed.

Mr. Sandown noted that he had requested that staff provide the Commission members with training from the International Association of Public Participation spectrum. He believed that such training would have been particularly helpful towards the Commission's discussions on various water quality issues.

Ms. Nichols agreed that additional training might have helped the Commission avoid some of the controversies that had arisen during the Commission's discussion of local drinking water protection ordinances.

Mr. Sandown described how the aforementioned IAPP spectrum was used as an observational measurement tool in various public policy discussions.

Ms. Arkin stated that some of the work plan items the Commission had prioritized had been transferred to a smaller land use task force and that the Commission had never received a report from that task force. Mr. McCown responded that the task force's report had been forwarded directly to the Lane County Commissioners and had received a public hearing at one of the Lane County Board meetings.

Mr. Noble expressed that the Planning Commission had been kept "out of the loop" with respect to the land use task force report. He further maintained that there were many areas of concern from the Commission that had never been directly addressed by the land use task force.

Mr. McCown suggested that the Commission might revisit some of the land use task force issues that remained unresolved.

Mr. Sisson noted that he had served on the land use task force and briefly discussed how that group had addressed issues identified by both the Planning Commission and the Board of Commissioners.

Mr. Siekiel-Zdzienicki expressed that the Planning Commission should have been better informed regarding the discussion processes of the land use task force and that a meeting should have been held so that the Commission could offer the task force their input and feedback.

Mr. McCown responded to Mr. Siekiel-Zdzienicki's comment and noted that it was important that a conscious effort be made to distinguish between the Planning Commission and Lane County planning staff work plans.

Mr. Sisson commented that there had been tremendous pressure from the Board of County Commissioners for the land use task force to complete its recommendations.

Mr. Siekiel-Zdzienicki believed it would have been worthwhile for the Planning Commission to have been better informed of the land use task force discussions and resulting recommendations.

Mr. Sisson asked if it would be appropriate for the Planning Commission to be more proactive in its attempts to insert itself into policy review discussions such as those that had been conducted by the land use task force. He further asked how joint work sessions with other advisory groups and commissions might be conducted in order to develop effective recommendations for the Lane County Board.

Mr. Noble noted that while successful and productive joint meetings between the Planning Commission and other groups had been conducted in the past, it was still important to consider the Board of County Commissioner's role in the development and approval of the Commission's work plan.

Ms. Arkin offered a historical perspective on the Lane County Planning Commission's relationship with the Board of County Commissioners and believed that that relationship had improved over the last year although there still remained opportunities for improvement with respect to the joint work processes of the two groups.

Mr. Sandow noted his concern with various levels of ex parte contact which he believed had been used to constrain the knowledge and general work processes of the Planning Commission members. Mr. Sandow commented that a number of policy and community issues under review by the Commission had been affected by the quality and quantity of the data that had historically been made available to the Commission members.

Mr. Sandown suggested that a bipartisan tool known as the Oregon Benchmarks be used to provide the Commission members with additional practical data regarding various quality of life indicators on Lane County and surrounding areas. He maintained that the Oregon Benchmarks were nationally recognized as one of the best measures of quality of life indicators in government and public sectors. He further suggested that the Commission members be trained in the use of the Oregon Benchmarks along with County Commissioners.

Mr. Siekiel-Zdzienicki responded to Mr. Sisson's previous comments and noted that the County Commissioners rarely if ever attended the Planning Commission's work session meetings. He further noted that the Planning Commission public hearings where County Commissioners had actually attended had not been particularly productive.

Mr. Siekiel-Zdzienicki stated that some Planning Commission work sessions might need to be repeated for the benefit and information of new County Commissioners.

Mr. McCown discussed the basic work process philosophies of the Planning Commission and noted his perceptions of how the group had historically defied its goals and work strategies in relation to the work plans of the Lane County staff and the Board of County Commissioners. He maintained that the Commission needed to further and more accurately define its work process before it could proceed in addressing various policy matters.

Mr. Sullivan commented that he served on several economic development committees throughout the State of Oregon and maintained that his experience therein had helped him become extremely well informed regarding many of the issues that had been addressed by the Planning Commission.

Mr. Sullivan commented on the relationship between the work processes of the Lane County Planning Commission and the Board of County Commissioners and noted that several of the recommendations that had been presented to the Board by Lane County staff during the Board's March 10 meeting had been directly addressed by the Planning Commission at some point.

Mr. Sullivan felt that Planning Director Kent Howe had been able to incorporate the Planning Commission's proposals into the recommendations that had been presented to the Lane County Board. Mr. Noble clarified that he had asked Kent to include the Planning Commission's proposals in order to demonstrate the funding needed for several of the individual proposals.

Mr. Sullivan discussed the manner in which the Planning Commission members might more effectively coordinate with Mr. Howe and other Lane County staff as they developed proposals and recommendations to be forwarded to the Lane County Board of Commissioners.

Mr. Sullivan suggested a number of articles that the Commission members might review in order to improve their various discussions and work plan processes.

Mr. Sullivan stated that there were 36 different volunteer advisory committees that reported to the Lane County Board of Commissioners and that it was very difficult for Commissioners to be adequately responsive to the discussions and recommendations offered by the Planning Commission.

Mr. Sullivan believed that the Planning Commission had not seen the ultimate outcomes of their recommendations to the Lane County Board since November of 2008.

Mr. Goldstein responded to Mr. Sullivan's comments and suggested it might be effective to confer with Mr. Howe in order to improve the value of the Planning Commission's overall work plan and its recommendations to the Lane County Board.

Mr. Noble responded that certain individuals had been precluded from providing the Planning Commission with additional information if it was not a direct component of other testimony being provided.

Mr. Goldstein suggested that performance reviews for elements of the Planning Commission's work plan might only be warranted if it was agreed that they would have a positive outcome on the projects those work plan elements had addressed.

Mr. Sullivan noted that former Planning Commission member Ed Becker had used his professional expertise to effectively influence the Commission's decisions by raising points of issue that could then be thoroughly discussed by the other Commission members.

Mr. Sandow noted that the level of data and information provided by each of the Commission members would have a positive effect on the quality of the questions that the Commission might discuss.

Mr. Siekiel-Zdzienicki suggested that the Commission might conduct a work session where the group's process for soliciting and reviewing information from public comments was reviewed in greater detail. He hoped that the Commission's process in that regard might somehow be amended in order to allow for more facts and information to be provided by members of the community.

Mr. Siekiel-Zdzienicki briefly discussed the need for the Planning Commission to review and potentially amend its public comment processes in order to allow for a more effective distribution of information.

Mr. Noble discussed the manner in which the Planning Commission might improve its work plan and discussion processes.

Mr. Noble suggested that the Commission's work plan might be adjusted in order to accommodate additional training for its members.

Mr. Noble suggested that the Commission reschedule the date of its January 2011 meeting. Ms. Schulz responded that a rescheduled meeting might allow staff to provide the new members of the Lane County Board with additional information regarding the Planning Commission's work plan.

Mr. Noble commented that the Commission might hold further discussions with Mr. Howe regarding their work plan at their meeting on January 18, 2011.

The Planning Commission members briefly discussed their respective availabilities for their January meeting.

Ms. Schulz confirmed that those agenda items previously scheduled for the Commission's meeting on January 4 would be moved onto the agenda for their January 18 meeting.

Mr. Noble asked that any staff information materials to be used at the January 18 meeting be distributed to the Commission members in advance.

Mr. Sandow commented that water continued to be a highly important public health issue for Lane County and surrounding regions. He hoped that Lane County Public Health staff would coordinate with the Planning Commission members in order to consider ways in which regional water quality issues might be addressed more effectively.

Mr. Noble responded to Mr. Sandow's comment and briefly discussed his perceptions of how the Planning Commission had historically addressed water quality and other public health issues.

Mr. Sandown stated that he had served on the Deschutes County Planning Commission and further noted how that body had recommended a variety of water mitigation projects in order to protect groundwater from local tributaries and streams.

Mr. Sullivan commented on how EWEB had addressed efforts to mitigate nitrogen levels in the McKenzie River.

Mr. Noble confirmed the Commission's plans for its January 18 meeting and its decision regarding the Cottage Grove DGB.

Mr. Noble adjourned the meeting at 7:19 p.m.

(Recorded by Wade Hicks)

APPENDIX 4:

Cottage Grove City Council Agendas and Minutes

AGENDA
CITY OF COTTAGE GROVE
REGULAR CITY COUNCIL MEETING
January 24, 2011
7:30 P.M.



AGENDA SESSION FRIDAY - JANUARY 21, 2011 AT 8:15AM
CITY HALL COUNCIL CHAMBERS

- (1) CALL TO ORDER
- (2) ROLL CALL/PLEDGE OF ALLEGIANCE
- (3) ITEMS TO BE ADDED TO THE AGENDA
None
- (4) PRESENTATIONS
 - (a) Kiwanis Children's Cancer Cure Month Proclamation
- (5) PUBLIC HEARINGS
 - (a) **Public Hearing on Urban Growth Expansion and Comprehensive Plan Land Use Map Amendments for Employment Lands (MCPA-3-10) (Staff Report by Community Development Director Howard Schesser)**

(6) PUBLIC COMMENT ON AGENDA ITEMS

The following period of time, not to exceed 30 minutes without Council approval, is the time provided for persons in the audience to speak to the Council on any items of City business which appear on this agenda. To make a comment the person must be acknowledged by the presiding officer. Before making any comments the person must state their name and address for the record. Except with Council approval comments shall be limited to five (5) minutes per person. Each person may only speak once on any one subject. No discussion, testimony or evidence is allowed on items involving appeals of Planning Commission decisions or items that are scheduled for a Public Hearing or involving deliberations for which a public hearing has been closed. All comments are to be made to the presiding officer and shall not be made directly to any Councilor, staff or other person.

Persons desiring to speak to the Council on items not on the agenda shall do so under item 11, Public Comment on Items Not on the Agenda.

- (7) RESOLUTIONS AND ORDINANCES
 - (a) **Second Reading for Ordinance No. 3001 Amending the Comprehensive Plan Land Use Map (MCPA-4-10) (Staff Report by Community Development Director Howard Schesser)**

- (b) Second Reading for Ordinance No. 3002 Amending Title 14, City Wide Land Use District Map (MCPA-4-10) (**Staff Report by Community Development Director Howard Schesser**)
 - (c) First Reading for Ordinance Expanding the Urban Growth Boundary and Amending City Comprehensive Plan, Land Use Diagram Map (MCPA -3-10) for Employment Lands (**Staff Report by Community Development Director Howard Schesser**)
 - (d) First Reading Ordinance Amending Chapter 13.04 of the Cottage Grove Municipal Code Related to Water System Regulations and Charges in Its Entirety (**Staff Report by Finance Director Bert McClintock**)
 - (e) First Reading Ordinance Amending Section 2.64.150 and 2.64.170 of the Cottage Grove Municipal Code Regarding Elections (**Staff Report by City Manager Richard Meyers**)
 - (f) Adoption of An Ordinance Repealing Chapter 9.40 Relating to Forfeiture of Property by Drug Traffickers and Adopting a New Section 9.06.035 Oregon Civil Forfeiture Code Adopted (**Staff Report by City Attorney Sean Kelly**)
- (8) BUSINESS FROM THE CITY COUNCIL
- (a) Set Public Hearing for Review of SDC (**Staff Report by City Engineer Ron Bradsby**)
 - (b) Set a Work Session Date to Continue Goal Setting (**Staff Report by City Manager Richard Meyers**)
 - (c) City Council Vision Keepers Interview Subcommittee Appointments (**Staff Report by City Manager Richard Meyers**)
 - (d) Concerns from the City Council
- (9) BUSINESS FROM THE CITY MANAGER
- (a) Report from the City Manager

(10) BUSINESS FROM THE CITY ATTORNEY

- (a) Report from the City Attorney

(11) PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

This additional time, not to exceed 30 minutes without Council approval, is the time provided for persons in the audience to speak to the Council on any items of City business which do not appear on the agenda. To make a comment the person must be acknowledged by the presiding officer. Before making any comments the person must state their name and address for the record. No discussion, testimony or evidence is allowed on items involving appeals of Planning Commission decisions or items that will be or have been scheduled for a public hearing or involving deliberations for which a public hearing has been closed. Except with Council approval comments shall be limited to five (5) minutes per person and each person shall only speak once on any one subject. This additional time is not for the purpose of receiving additional comments or repetitive comments on issues addressed by the speaker under item 6 above.

(12) CONSENT AGENDA

- (a) Minutes of the December 6, 2010 Council Work Session
(b) Minutes of the January 7, 2011 Agenda Session
(c) Minutes of the January 11, 2011 Regular City Council Meeting

(13) ITEMS REMOVED FROM THE CONSENT AGENDA

(14) ADJOURNMENT

THE NEXT REGULAR CITY COUNCIL MEETING WILL BE HELD ON FEBRUARY 14, 2011 AT 7:30 P.M. IN THE COUNCIL CHAMBERS AT CITY HALL.

NOTE: Cottage Grove complies with state and federal laws and regulations relating to discrimination, including the Americans with Disabilities Act of 1990 (ADA). Individuals with disabilities requiring accommodations should contact Trudy Borrevik at (541) 942-5501 at least 48 hours prior to the meeting.

This agenda can also be found on the City's web page at www.cottagegrove.org

COTTAGE GROVE CITY COUNCIL
REGULAR MEETING MINUTES
January 24, 2011

DRAFT

CALL TO ORDER

Mayor Gary Williams called the meeting to order at 7:30 in the Council Chambers at City Hall.

ROLL CALL/PLEDGE OF ALLEGIANCE

City Recorder Trudy Borrevik called the roll. The following were

PRESENT: Mayor Gary Williams, City Councilors Mike Fleck, Jeff Gowing, Jake Boone, Heather Murphy, Garland Burbach and Victoria Doyle

YOUTH REPRESENTATIVE: Dallas Murphy

STAFF PRESENT: City Manager Richard Meyers, Howard Schesser Community Development Director, Mike Grover Police Chief, Pete Barrell Community Services Director, Finance Director Bert McClintock, Ron Bradsby City Engineer and City Planner Amanda Ferguson.

CITY ATTORNEY: Sean Kelly

OTHERS PRESENT: Cameron Reiten - KNND Radio, Greg Winterowd - Winterbrook Planning

ITEMS TO BE ADDED TO THE AGENDA

None

PRESENTATIONS

Mayor Williams read a proclamation proclaiming February 2011 as Kiwanis Children's Cancer Cure Month and presented the proclamation to representatives of the Cottage Grove Kiwanis Clubs.

PUBLIC HEARINGS(a) Public Hearing on Urban Growth Expansion and Comprehensive Plan Land Use Map Amendments for Employment Lands (MCPA-3-10)

Community Development Director, Howard Schesser, said the public hearing was to look at the Urban Growth Expansion and Comprehensive Plan Map amendment to expand the urban growth boundary for employment land purposes. In 2009 the City undertook an Economic Opportunity Study in accordance with State law and from that have started the process to look at where the urban growth boundary can be expanded in order to accommodate employment lands that provide growth for the next twenty years. He said the City hired Winterbrook Planning with a DLCDC grant to assist the City with the process and Greg Winterowd was present at the meeting to present the presentation he gave to the Cottage Grove and Lane County Planning Commissions in April, 2010. He said there was a joint public hearing before the Cottage Grove and Lane County Planning Commissions in October, 2010 and the record was kept open until November for additional written submissions. Each commission deliberated separately, Cottage Grove Planning Commission on December 15, 2010 and Lane County Planning Commission on December 21, 2010 and both commissions unanimously approved the recommendation that was brought forward with the removal of one parcel of resource land.

Howard said putting land in the urban growth boundary did not bring it into the City, it didn't annex the land into the City and didn't re-zone the land into the City or put City zoning on it. He said it just changed the comprehensive plan map and the boundaries of the urban growth boundary for those areas that in the future could be annexed into the City and developed in accordance with the zoning they would have to go through. It did designate the land and in many cases the majority of the land was the same designation that was in the comprehensive plan.

He introduced Greg Winterowd of Winterbrook Planning and said he would do his presentation with regards to urban growth boundaries and the items the City was required to look at and in the order they were required to look at.

Councilor Fleck asked if the County had different zoning for lands that resided within the UGB of a municipality.

Howard said they did but from what he understood they weren't going to change it to Chapter 10, they were going to keep it at Chapter 16.

Greg Winterowd said he had enjoyed working with staff and the citizen's advisory committee and the Lane County staff on doing the Economic Opportunity Analysis and the Urban Growth Boundary and Comprehensive Plan Amendment. He complimented the public works staff who worked with the planning staff to make sure they could prove to the State and others the City could provide services to the land being added to the urban growth boundary.

He said the reason he did the simple path presentation was because trying to diagram the Economic Development Rule called Goal 9 of the State or the Urbanization Rule, Goal 14, would

be too confusing and hard to understand. He said he simplified it so people could understand why cities were going through the process, providing enough land in the urban growth boundary for the next twenty years for employment purposes.

He presented the power point presentation "A Simple Path - Continued", which is attached hereto marked Exhibit "A". He talked about the "sands and stones" concept, that for a lot of land needs, it was a lot like pouring sand into a vessel, you had a twenty year supply of so many housing units, sometimes commercial land could be viewed that way, so much park land, it didn't have special needs. The idea of stones was, like a Japanese garden, they had to be carefully placed and they were big chunks, they had special siting requirements that had to be met. The concept of sand, meaning population growth, housing, stones and employment growth that had to be located near a freeway, flat land and with public facility services. He said local government could define the kinds of employment sites that would be needed in the community.

Mayor Williams thanked Greg for his presentation.

Mayor Williams opened the public hearing.

Frank Cretser, 77940 Hwy 99 South, Space #12, Emerald Valley Mobile Home Park, Cottage Grove, asked how soon the property would be condemned and if he had to find a place to move his mobile home and asked what he did when it happened.

Howard said just because the land was in the urban growth boundary, it was up to the property owner to decide if they wanted to move forward with development. He said it was a twenty year time frame the City was dealing with that they had to provide land for, so there wasn't anything saying that the property would be redeveloped anytime in the near future and most likely leaving it with a low density residential it wouldn't be changed.

Mayor Williams closed the public hearing.

PUBLIC COMMENT ON AGENDA ITEMS

None

RESOLUTIONS AND ORDINANCES

- (a) Second Reading for Ordinance No. 3001 Amending the Comprehensive Plan Land Use Map (MCPA-4-10)

Community Development Director, Howard Schesser, said the Council held the public hearing and had the first reading at the last meeting and staff recommended that Ordinance No. 3001 be adopted.

IT WAS MOVED BY COUNCILOR FLECK AND SECONDED BY COUNCILOR GOWING THAT ORDINANCE NO. 3001 BE READ ONCE IN TITLE ONLY AND PLACED ON ITS FINAL PASSAGE.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

City Attorney, Sean Kelly, read Ordinance No. 3001 once by title only.

IT WAS MOVED BY COUNCILOR MURPHY AND SECONDED BY COUNCILOR FLECK THAT ORDINANCE NO. 3001 BE ADOPTED.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

(b) Second Reading for Ordinance No. 3002 Amending Title 14, City Wide Land Use District Map (MCPA-4-10)

Community Development Director, Howard Schesser, said Council had amended the Comprehensive Plan for the same property and had the first reading at the last meeting and staff was recommending that Ordinance No. 3002 be adopted.

IT WAS MOVED BY COUNCILOR MURPHY AND SECONDED BY COUNCILOR FLECK THAT ORDINANCE NO. 3002 BE READ ONCE IN TITLE ONLY AND PLACED ON ITS FINAL PASSAGE.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

DRAFT

City Attorney, Sean Kelly, read Ordinance No. 3002 once by title only.

IT WAS MOVED BY COUNCILOR MURPHY AND SECONDED BY COUNCILOR FLECK THAT ORDINANCE NO. 3002 BE ADOPTED.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

(c) First Reading for Ordinance Expanding the Urban Growth Boundary and Amending City Comprehensive Plan, Land Use Diagram Map (MCPA -3-10) for Employment Lands

Community Development Director, Howard Schesser, said Council held the public hearing tonight and read the minutes from both the City and County Planning Commissions and staff was recommending that the ordinance be introduced, read once by title only and following discussion be brought before the Council at the next meeting for a second reading and consideration for adoption.

Councilor Fleck said he thought it was a convoluted process. He said the City had adopted a business park overlay zone last year in apprehension and now weren't going to implement it but after reading through the material he understood why.

IT WAS MOVED BY COUNCILOR FLECK AND SECONDED BY COUNCILOR GOWING THAT ORDINANCE NO. 3003 BE INTRODUCED, READ ONCE BY TITLE ONLY AND FOLLOWING DISCUSSION BE BROUGHT BEFORE THE COUNCIL AT THE NEXT MEETING FOR A SECOND READING AND CONSIDERATION FOR ADOPTION.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

City Attorney, Sean Kelly, read Ordinance No. 3003 once by title only.

(d) First Reading Ordinance Amending Chapter 13.04 of the Cottage Grove Municipal Code Related to Water System Regulations and Charges in Its Entirety

Finance Director, Bert McClintock, said through the years, Chapter 13.04 had been amended several times, making additions and deletions to sections that were no longer needed. She said the Code had become unorganized and difficult to understand and staff felt it needed to be reviewed and rewritten to modernize the language and address the aspects of the current operations. She said it was important to note that the Public Works Director, City Engineer, City Manager and herself as well as staff that dealt with the system, were involved in rewriting the code. She said one goal of the revised code language was to address water leak provisions which clearly indicate procedures. The proposed code did not create any new fees although the Council may want to consider a fee for late payments. Staff was recommending that the ordinance be read once by title only and be placed on the next agenda for a second reading and subsequent adoption.

Councilor Fleck brought up concerns that he had regarding the ordinance. He said in Section 13.040.030, it talked about distribution on all private connections and the intent was that people who were already hooked to the City water system, and he wanted to make clarification about homes that were annexed into the City that may have well systems, that this was did not force them to actually come into the City. He confirmed that Section 13.040.070 (A) was the description of the items listed in sub-sections 1, 2, 3, 4 and 5 and discontinuance of service would not be just because there was not a backflow device but it actually referred to sub-section 5. His concern in mentioning these items was that if there were older homes or if they had been annexed it, he wouldn't want to go City wide enforcing the changes.

IT WAS MOVED BY COUNCILOR FLECK AND SECONDED BY COUNCILOR BOONE THAT ORDINANCE NO. 3004 BE INTRODUCED, READ ONCE BY TITLE ONLY AND FOLLOWING DISCUSSION BE BROUGHT BEFORE THE COUNCIL AT THE NEXT MEETING FOR A SECOND READING AND CONSIDERATION FOR ADOPTION.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowng	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

City Attorney, Sean Kelly, read Ordinance No. 3004 once by title only.

(e) First Reading Ordinance Amending Section 2.64.150 and 2.64.170 of the Cottage Grove Municipal Code Regarding Elections

City Manager, Richard Meyers, said the current sections in the Code were in conflict with the State Statute which had changed over the years. He said under State law if a citizen filed an

initiative petition they would have to have signatures of at least fifteen percent of the registered voters at the time the petition was filed and for a referendum they would have to have signatures for at least ten percent of the registered voters at the time the petition was filed. The City's Code for initiatives requires signatures of fifteen percent of the number of votes cast at the last election for the office of Mayor and ten percent for referendums. The other provision that was in conflict was the appeal of ballot titles. The current Code states that the City Attorney prepares the ballot title language and if an elector is dissatisfied with the title, they appeal to the City Council. He gave an example where this could be a conflict. If the petition filed were a referendum that was attempting to go before the voters referring something the Council had done, the appeal would go back to the Council who voted for and supported the item already. This could be a conflict or look like a conflict because the appeal would go back to the body that you were sending the vote about. Under State law, appeals of ballot titles would go to the Circuit Court. He said the ordinance before Council fixed the Code to comply with the provisions of State Election Laws. He said the change in signatures would be different. The current Code required 452 as of the last election for an initiative and under the proposed ordinance using the State law requirements it would be 724 signatures.

IT WAS MOVED BY COUNCILOR MURPHY AND SECONDED BY COUNCILOR BURBACK THAT ORDINANCE NO. 3005 BE INTRODUCED, READ ONCE BY TITLE ONLY AND FOLLOWING DISCUSSION BE BROUGHT BEFORE THE COUNCIL AT THE NEXT MEETING FOR A SECOND READING AND CONSIDERATION FOR ADOPTION.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowing	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

City Attorney, Sean Kelly, read Ordinance No. 3005 once by title only.

- (f) Adoption of An Ordinance Repealing Chapter 9.40 Relating to Forfeiture of Property by Drug Traffickers and Adopting a New Section 9.06.035 Oregon Civil Forfeiture Code Adopted

City Manager, Richard Meyers, said the ordinance had an emergency clause so the Council would have to determine if there was an emergency and then make a motion to read it twice by title and then make the motion for adoption. He said all the motions would require unanimous votes.

IT WAS MOVED BY COUNCILOR MURPHY AND SECONDED BY COUNCILOR FLECK THAT THE COUNCIL DETERMINES IT IS IN THE PUBLIC INTEREST THAT ORDINANCE NO. 3006 BE ADOPTED AT A SINGLE MEETING.

Councilor Boone asked what the downside was to not declare an emergency.

DRAFT

City Attorney, Sean Kelly, said time. The City currently had about five cases pending for forfeitures and he was concerned there may be some concern to finish the projects.

Councilor Boone asked if the City was already doing forfeitures under the current ordinance.

Sean said no, not under the current municipal ordinance, they were operating under the new State law.

Councilor Boone asked if Council didn't pass the ordinance, how did they lose out on the current cases. Did they continue to use the current State law.

Sean said the problem was a conflict with the current Municipal Code being incorrect and outdated. He said the City had seized items and were moving forward on the forfeitures, however there could be conflicts with the Code which would not allow the City to complete the forfeitures. His primary concern was the fact that the projects were in the works and he would feel more comfortable if they had the new ordinance in place sooner rather than later. He said the police weren't an active, regular patrol on the freeways, only when there was time for them to patrol that area. They had seized twenty pounds of marijuana and over ten pounds of methamphetamine in eight months, it was a problem that was being addressed.

He said the other thing they noticed in looking at statistics was there had been few forfeitures since the State law had been written. Lane County hadn't really been doing anything with forfeitures. He said it was an appropriate tool, especially when dealing with people moving substantial amounts of narcotics up and down the freeway.

Councilor Boone said one of his concerns was the wording in the ordinance "...specifically granting the City authority to seek civil forfeiture in non-drug related cases..." and asked if it was inherent in the Oregon Statutes or was that an extra clause that the City was adding.

Sean said it was inherent in the Oregon Statutes but said it needed to be specifically adopted by the City.

Councilor Boone said he had been looking at the laws comparing criminal and civil forfeiture and his concern was he didn't feel clear about it and he was rather concerned about saying it was an emergency and passing it. He said he had done some research and found information that to him as a layman, looked rather unpleasant. He said we already had criminal forfeiture in place. He gave an example of an incident and asked if with criminal forfeiture, the City was able to take the vehicle.

City Attorney, Martin Fisher, said the short answer was no. A criminal forfeiture had to be included in a criminal complaint filed by the County DA and so it was part of a criminal proceeding in Circuit Court. The City couldn't do it at our level.

Councilor Boone asked if there was a way to allow the City to do that.

Martin said no.

Sean asked Councilor Boone what his concern was.

Councilor Boone said it seemed to him that what was going on was civil forfeiture had a lower bar that the government had to hurdle to take someone's property. It seemed that now it required a criminal conviction on the part of somebody but not necessary the person who actually owned the item in question. He said that concerned him. He said it seemed like there were less protections for an innocent person under the civil forfeiture laws as they stand than there would be under criminal. Considering that the interstate ran through Cottage Grove, innocent people also traveled through on the freeway and there had been a number of documented cases of innocent people getting caught up in something like this where they were not big time drug traffickers like the forfeiture laws were originally designed to combat. He said they ended up losing property anyway because the procedures seemed to have been written to make it very easy for the government to stop the use.

Sean said it wouldn't disagree with him on the old provisions, but he would under the new provisions. In a criminal forfeiture, the distinction was it would be a charge where you would include the item as part of the pleadings in the criminal matter. He said it would be an element, he didn't know if it raised the bar that much over the civil forfeiture. He corrected a couple of things that normally a conviction would be required, however there were some exceptions to that rule as well. He had the same concerns Councilor Boone had, that he didn't want to see government infringing on the rights of the innocent unnecessarily. He said having worked through it and Martin and he having gone through it, he felt comfortable that there were adequate protections, that the law had been changed enough that it wasn't as easy as it used to be for the government to come in and abuse the process. He said the other thing was the way the money was disbursed. In the past it was kept by an agency and the way it was worded now was to remove tools that were being used to commit crimes from people that had been convicted or had consented and allowed officers to find substantial amounts of drugs in their cars. He said he saw on a weekly basis, charging instruments with people having methamphetamine on their person or in their vehicle. He said he hasn't sought forfeiture in any of those cases.

Councilor Boone said in the future, there could be people who used the laws improperly and he felt it was the responsibility of Council to make sure that whatever laws they passed were as concrete as possible as far as protecting innocent citizens. He said he didn't feel that the ordinance did that, it was too open ended. He gave scenarios of two different shoplifting cases of less than one hundred dollars. He said he didn't see where the ordinance had a check for proportionality.

Sean said in the case he described he didn't think there was a significant nexus between the person who stole the item and the theft occurred inside the store, it was concealed on their person and exiting the store and leaving in the vehicle. He said if they had taken the vehicle and rammed through the door and loaded it up with as much merchandise as they could and then sped away in the vehicle, the vehicle was clearly used in the commission of the crime.

Discussion was held on different scenarios of theft using a vehicle and how civil and criminal forfeitures would apply. Also discussed was driving offenses where a car could or could not be forfeited.

Councilor Burbach gave some examples of criminal cases and said he felt that when someone committed a crime, they needed to deal with the repercussions.

Councilor Doyle said when she first read the ordinance she was uncomfortable with it too, but after hearing the conversation she felt more comfortable with it. She said we weren't living in the 50's and we needed to have faith in our law enforcement.

Councilor Gowing said he felt they were worrying about a lot of things that they shouldn't because listening to all the conversation, they were worrying about how to treat someone that broke the law. He said they should pay for what they had done and he didn't have sympathy for someone that was going to be an eight time repeat offender.

Councilor Fleck asked someone's vehicle, other than the person arrested, being involved in a crime and if that vehicle could be seized if the owner of the vehicle didn't have any knowledge of the crime.

Martin said yes but it was more challenging in the absence of some way to connect the person. There was a distinction between a person who was truly innocent versus the person who let the friend use the car repeatedly and kind of knows what is going on but doesn't know specifically.

Councilor Fleck said he had the answer to all of the concerns, that the Council was part of the checks and balances and they oversaw the staff but obviously they couldn't tell them how to prosecute, that wasn't within Council's scope. But if they continually did things that Council disagreed with they could use a different legal firm.

Sean said the procedure hadn't been discussed yet. He said in a case where they would be seeking a civil forfeiture, the first thing that happened was drugs or an item was found, whatever lead them to seize the item. He said at the time of the arrest the person was given notice of the City's intent to seek forfeiture and at that time they could take and file a claim seeking to have a hearing to avoid forfeiture of the item. There was then a hearing before a judge and determination was made as to whether or not forfeiture was appropriate at that time and then there was an additional check. He gave an example of someone arrested for less than an ounce of marijuana and a substantial amount of cash and the person was given the cash back because it wasn't appropriate for forfeiture.

Martin said there were two kind of hearings. A claimant could request an expedited hearing to determine whether the property should be seized and that would be done for something like a car, livestock, something that you needed back. Assuming the person received it back, that was a temporary order that let them keep it pending a trial. The City then had to file a lawsuit in Circuit Court and provide notice to the person who had it and it was published in the paper. Then they wanted to see if the person was convicted or acquitted. If they were convicted the game was over

and if they were acquitted it had to be returned. If there was a third party, the City had an analysis of how connected they were and if it was something they could convince a judge of. He said in order to merit that level of work, it would have to be a sizeable asset or a repeat offender, he would not spend the time to have a trial over \$3,000 or an older car, it wasn't worth it.

Sean gave some other examples of cases where claims were filed.

Councilor Boone said he did concur that people needed to pay for what they had done, but he said he felt we might be charging them too much in some cases for what they had done. He asked if there was a way to split off the civil forfeiture portion of the ordinance and making it a separate item. He said he could see the emergency issue with the ordinance we had now and replacing it with the State code but needed more time to review the civil forfeiture.

Discussion was held on options regarding the proposed ordinance.

Mayor Williams reminded Council that in order to adopt the ordinance with an emergency clause, it did require a unanimous vote.

Councilor Fleck said he agreed with Councilor Boone that maybe the ordinance should be split into two ordinances, one for the criminal forfeiture and one for the civil forfeiture.

Sean it was possible to do that. He said he appreciated the concern over the ordinance he was having a little bit of difficulty understanding the distinction. He said non-drug forfeitures were there to address criminal behavior and to take away a tool from a criminal that had been using it to commit a crime.

Councilor Doyle clarified that what they were doing was adopting the State law not rewriting it.

Sean said exactly and the State did allow for non-drug forfeitures.

Richard said regarding procedure, if the motion to adopt with an emergency clause failed, then that clause fell off and the ordinance could be read once by title and bring it forward to the next meeting.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowing	Councilor Boone	Councilor Murphy	Councilor Burbach	Councilor Doyle	Mayor Williams
AYES	X	X		X	X	X	X
NAYS			X				
ABSTAIN							

IT WAS MOVED BY COUNCILOR FLECK AND SECONDED BY COUNCILOR GOWING THAT ORDINANCE NO. 3006, WITHOUT AN EMERGENCY CLAUSE, BE

2011-01-24

INTRODUCED, READ ONCE BY TITLE ONLY AND FOLLOWING DISCUSSION BE BROUGHT BEFORE THE COUNCIL AT THE NEXT MEETING FOR A SECOND READING AND CONSIDERATION FOR ADOPTION

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowling	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

City Attorney, Sean Kelly, read Ordinance No. 3006 once by title only.

BUSINESS FROM THE CITY COUNCIL

(a) Set Public Hearing for Review of SDC

City Engineer, Ron Bradsby, said the Council had a work session before the regular meeting tonight to go over the process and the next step was to set a public hearing. He said it was staff's recommendation to schedule the public hearing for May 9, 2011 and direct staff to proceed with the preparation of the final report on the SDC charges.

Consensus was to schedule the public hearing for May 9, 2011.

(b) Set a Work Session Date to Continue Goal Setting

City Manager, Richard Meyers, said goal setting was held on January 8, 2011 and the Council was unable to complete the process, therefore a date needed to be scheduled when that could be completed.

Discussion was held and the consensus was to continue the goal setting for Monday, March 7, 2011 at 6 pm.

(c) City Council Vision Keepers Interview Subcommittee Appointments

City Manager, Richard Meyers, said there were appointments on the Vision Keepers that Council needed to make. The City also had several at-large positions that the City would be advertising for recruitment. Council needed to select a sub-committee to interview the applicants and bring forth to the Council for appointment.

Mayor Williams appointed Heather Murphy as the Chair and Councilors Gowling and Fleck to be on the sub-committee.

(d) Concerns from the City Council

Councilor Burback said he had been contacted by a citizen who was concerned about the swim pool. He felt it was important for the community, not just the schools, to be able to use the pool for various swims and programs. He felt the City should, at some point in time if possible, to figure out funding sources to keep the pool open that wouldn't impact the City directly as far as money was concerned. He said something like a sales tax of some kind on certain things might be something to look into.

Mayor Williams said at one time there was a lot of community involvement in a discussion about the pool and asked Richard if that was something that was still active.

Richard said there was a group being formed in the community who were working on finding out what kind of support there was for the pool.

Mayor Williams recommended Councilor Burback talk with Richard to find out who some of the principals were in the community group.

Councilor Fleck said he had attended the Lane Regional Air Protection Agency (LRAPA) meeting today as an observer, his first official meeting would be February 28, 2011. He explained that Lane County was the only county in the State with their own regulatory agency and what they did. He said there had been a contention amongst all of the stakeholders because Eugene had the most representatives based on population and the smaller communities had concerns. He said he was encouraged at the meeting by some of the comments that said at least at a minimum Oakridge and Cottage Grove should have full time representation on the board

BUSINESS FROM CITY MANAGER

(a) Report from the City Manager

City Manager, Richard Meyers, said one thing they may want to keep their eyes on regarding LRAPA was that they had formed a committee to look at restructuring the organization.

Councilor Fleck said that was what he was referring to, it was a report back from the committee to the full board.

Richard let Council know the City had replaced some light bulbs in the back of the Council Chambers that the City was trying out to see about cost savings.

BUSINESS FROM CITY ATTORNEY

(a) Report from the City Attorney

None.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

CONSENT AGENDA

- (a) Minutes of the December 6, 2010 Council Work Session
- (b) Minutes of the January 7, 2011 Agenda Session
- (c) Minutes of the January 11, 2011 Regular City Council Meeting

IT WAS MOVED BY COUNCILOR FLECK AND SECONDED BY COUNCILOR MURPHY TO APPROVE THE CONSENT AGENDA.

The vote on the motion was as follows:

VOTE	Councilor Fleck	Council Gowing	Councilor Boone	Councilor Murphy	Councilor Burback	Councilor Doyle	Mayor Williams
AYES	X	X	X	X	X	X	X
NAYS							
ABSTAIN							

ADJOURNMENT

There being no further business, Mayor Williams adjourned the regular meeting of the City Council at 9:27 p.m.

The next regular City Council Meeting will be held February 14, 2011 at 7:30 p.m. in the Council Chambers at City Hall.

Trudy Borrevik, City Recorder

Gary Williams, Mayor