

DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF DECEMBER 3, 2018

- I. **Call to Order:** Chair John Ingle called the meeting to order at 6:35 p.m. on Monday, December 3, 2018 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.
- II. **Roll Call:** Present – Ingle, Chris Foster, Bill Kabeiseman, Jim Kessinger, Victoria Purvine, Alicia Denney and Katharina Lorenz
Absent – Susan Silodor, Tim Wood
- III. **Approval of Minutes: November 5, 2018 minutes not available, will be done in January 2019**
- IV. **Opportunity to Comment on Non-Agenda Items:**
None.
- V. **Hearing – Amendments Relating to Updates to Flood Insurance Rate Maps, Flood Insurance Study & Flood Hazard Revisions (PC-2016-4907)**

Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. There were no objections to the Planning Commission hearing the matter.

Adam Barber, Deputy Planning Director, introduced Mike Cerbone, Planning Director and said they were here to talk about the flood hazard regulations in Multnomah County. Barber stated that approximately 550 notices were mailed to owners of property in unincorporated Multnomah County who own land that is either fully or partially within the 100-year floodplain. He noted there were three project objectives, first is to adopt revisions to 22 of the County's 43 Flood Insurance Rate Maps (FIRM), commonly referred to as the 100-yr floodplain maps. We are also requesting adoption of a revised Flood Insurance Study (FIS), and to update a few of the County's flood hazard regulations so they are consistent with federal law.

Multnomah County implements federal regulations to ensure that development avoids the floodplain where possible. If development does occur in the floodplain, we want to make sure it is done in a safe way. By implementing these federal rules, it allows private property owners in our jurisdiction to purchase flood insurance on the private market, so it is an important program to our community. One of the key tools that we use regulating this federal program are the 100-yr floodplain maps. These are the maps that show where flood waters are anticipated to rise during the 100-yr flood. A more mathematical way of thinking about that is, these maps show areas that have a 1% chance of flooding in any given year. It's not that these floods occur every 100 years, you might actually have them ten years apart, but statistically, on average, they can generally be spaced out every 100 years, or 1% chance in every year. So, it's a big flood event.

Given that, development that is proposed in one of these areas is subject to different development regulations because we want to make sure that development is not going to be damaged or washed away during that type of flood. The County standards establish a base line, but we encourage our

community to build higher and stronger than the bare minimum, which could help lower premiums. Also, Multnomah County's code is unique in that we address floating structures, such as docks and moorage type structures. We specifically say in our code they need to be able to rise and fall with the floodwaters because we want to think about those utility connections and make sure the pilings that are holding the marina in place are tall enough so the docks don't go over the top and wash downstream.

We also think about wells and septic systems, we don't want flood waters getting into the community's water source that is used for drinking water, or septic systems backing up into homes, so there are standards in place that deal with those types of utilities in the floodplain. We also call out critical facilities, such as schools, police stations, hospitals, etc. These are required by federal law to be elevated at least three foot above flood waters. And we look at access roads to make sure these facilities are not going to be cut off.

As part of being involved in this National Flood Insurance Program (NFIP), we have certain responsibilities. We have to maintain our maps so they are accurate and reflect the most current scientific studies related to flood information. We have to adopt a revised flood insurance study when it's updated by FEMA. This is a technical document from FEMA that provides a little more engineering information about the flood waters. The map shows the geography of where it is going to flood and the flood insurance study shows flood depths and flood velocities in certain areas. We are also required to maintain our regulations so they comply with federal requirements. FEMA will periodically study portions of our jurisdiction and will give us direction when we need to update new maps, new study or update a regulation, and that is what occurred recently. We were contacted by FEMA a few years ago and were told that they were going to re-study this portion of Multnomah County (FEMA Project #1 and FEMA Project #2 as described on page one of the staff report.) The study area includes Troutdale and Gresham, so they are going through a similar legislative process to update the maps and study and rules in their jurisdictions.

Barber then went through his presentation. He noted that we were notified in August by FEMA that we must adopt these revised maps, the revised study, and amend County code to be consistent with federal regulations by February 1, 2019. The code amendments are fairly minor; we have seven new terms and modified fifteen existing definitions based on the advice of FEMA. The Department of Land Conservation and Development (DLCD) also participated in the audit of the County code. We are deleting an exemption that exempted certain maintenance activities conducted by drainage districts. We were informed by FEMA that those activities can no longer be exempt. We are also clarifying roles and responsibilities among FEMA, the County and landowners. We had some standards that related to development and excavation in filling in the floodplain that only applied in the West of the Sandy River Plan Area and FEMA indicated those should be county wide standards.

In conclusion, this ordinance is initiated by FEMA and is required by FEMA to stay in compliance. We were provided largely the text of the amendments by FEMA and the State, and are confident that it has been heavily vetted. In order for community members to continue to be eligible for flood insurance, we are required to adopt this by February 1st. Because of this strict timeline, we are requesting this be adopted this evening without amendment.

Ingle opened the hearing for public testimony.

Logan Ramsey, NW Skyline Blvd, Portland. What struck me about the planner's testimony is they only sent out 550 notices, and yet apparently under the FEMA rules, this could affect thousands of people. Am I mistaken in that assumption? Barber said the properties affected by the ordinance would be properties that are either partially or fully in the floodplain, which is roughly 550 properties. For instance, if someone lives up on the top of Skyline, it would not be affected by the ordinance, so there was no notice sent. Mr. Ramsey said, so I wouldn't be taken to task for water draining off my property to a downstream person? Barber said this ordinance is more about floodwaters that are coming from upstream and affecting the neighbors, not coming off of properties. This is a 100-year flood as identified by FEMA. Mr. Ramsey said it seems to me it could potentially affect more than the 550, depending on how it's interpreted.

Anyway, the reason I'm here is to raise an issue that had not been previously heard, and that is the issue of herbicides. Maybe you heard about the 270 million dollar judgment that was filed against Monsanto for the use of glyphosate, or Roundup. They use a combination herbicide to spray along the road right-of-ways to control vegetation and this summer, when they sprayed it, there was no notice and people walk their dogs, jog up and down Skyline Blvd and undoubtedly they're tracking this down the road and into their homes. It's totally unnecessary, it's not something they need to do on the roadside, they can use mowers.

Ingle said, I understand your concern, but can you relate it to the issue we are addressing with flood insurance and flood mapping? It sounds like you would discourage the County, or any property owner, from using herbicides to control vegetation along the streambanks. Mr. Ramsey said, well, that certainly would be a concern, the use of herbicides in drainage ways and watercourses. Ultimately, I think that does affect downstream properties, and when they spray it along Skyline Blvd it turns the vegetation brown for six months. I think it's an issue this body should be considering because of the recent lawsuits that Monsanto has lost. Ingle said, understood. Mr. Ramsey said one additional issue is the area that would be considered safe from wildfires. I think we were all amazed to see the conflagration in Paradise, the so-called Camp forest fire. One thing that would have helped would have been a bigger fire break. Ingle said thank you. I realize too that on our agenda, we usually have an item for the general public conversation on non-agenda items, and I don't see it. That would have been a more appropriate time to have brought those issues to our attention. However, it's not there.

Ingle closed the public testimony and asked if the Commissioners had additional questions for staff. Foster said I think it is completely straightforward and I will move for adoption as proposed. Purvine seconded. Motion passed unanimously.

VI. Continued Hearing – Amendments Relating to Ground Disturbing Activity including Minimal Impact Projects, Grading and Erosion Control, Agricultural Fill, Stormwater Drainage Control, Hillside Development and Large Fill Permits (PC-2016-5384)

Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. There were no objections to the Planning Commission hearing the matter.

Ingle noted that the record was kept open for submittals and public testimony from the November 5, 2018 hearing.

Barber gave a recap of this project to date and proceeded on to the staff report, which summarizes revisions that were made since the hearing November 5th. They are fairly minor in volume and are shown in blue. They are based on testimony that was submitted last month advocating for some proposed code changes, which are captured in Attachments A.1 through A.6. We have added new attachments that the Commissioners asked for. We included county-wide maps showing where our resource zones are because of a proposal to prohibit large fills in the Significant Environmental Concern Wildlife Habitat (SEC-h) overlay. Staff pointed out that large fills are currently prohibited in Commercial Forest Use (CFU) and Exclusive Farm Use (EFU) and there is a proposal in the ordinance to also prohibit large fills on high value farmland. In looking at the combined maps, staff's opinion is that there are very few areas where large fills could be approved in the West Hills. That is regardless of adding an additional prohibition of SEC-h, so staff is recommending against that additional prohibition.

Barber submitted Exhibit G into the record, an email from Jim Cathcart, the District Manager of the West Multnomah Soil & Water Conservation District (WMSWCD), recommending a slight variation of how to refer to the Natural Resources Conservation Service for Natural Resource Enhancement and Restoration type of work. We support this amendment. Also submitted into the record is Exhibit H, a follow-up letter from Carol Chesarek indicating that she supports the proposal.

A summary of the code changes since the November meeting that staff is recommending is under Section 3.0, beginning on page 3 of the staff report. A summary of the key policy questions that did not result in further code amendments begins on page 8 of the staff report.

Ingle said it appears from Carol's letter of November 28th that she is generally happy with everything, except forbidding large fills in areas designated SEC-h, and we are taking a position that is counter to that. I wonder what the rationale is. Barber said I had a conversation with Carol this afternoon and she was not aware that large fills are prohibited in the CFU zone. It was her understanding that they were only prohibited in the EFU, so I think that alleviated some concerns that she had. Foster said in looking at that map that combined everything, there is one component that is not in there and that is SEC streams (SEC-s), so that even takes more ground out. The West Hills is above the 95 percentile in areas that are ineligible. The SEC-h is really a non-issue. I am in agreement with all the changes you made, I think they are all very reasonable.

Kessinger commented on the tree drip-line issue stating that if you push fill on a tree root zone, you are going to pretty much kill it. Are trees protected in the county or not? Cerbone said cities tend to be more restrictive on pruning of trees. The County protects trees in different ways, so if vegetation is required to be there, we regulate vegetation removal impacts within the SEC-wr and the SEC-s, which are the buffer areas adjacent to streams. In general, removal of vegetation on your property, if it is not in a protected area, is not something we regulate. Barber said we are typically focused on the ground disturbance. Foster said I know you missed last month, but we had a conversation about this. My thought was, it's a bad practice, of course, but it is not really related to what we are talking about here, Earth disturbing activities. Tree preservation is a different subject. It's a valid concern, but it belongs somewhere else.

Kessinger asked what the thinking is on the Agricultural Fill. Fill is defined as a geological thing, so say you had a mountain of leaf matter; that would not be considered fill, that's a compost or some other category, correct? Barber said that is correct, we are not concerned with organic material. What we have tied this to is importation of topsoil, which is defined and it's really going

to be soil, so compost, leaf matter is not a land use issue. Kessinger said so taking away the financial incentive is it trying to reduce the likelihood of anybody doing it? Cerbone said it is trying to keep people focused on if they want that material, they can get that material, but we do not want to incentivize them to collect more than maybe they should. Kessinger asked, is it wrong for somebody to make money on the fill? Cerbone said no, we have a permit where you can do that; the large fill permit allows you to go through that process and be able to make that money. Kessinger said, so a farmer, if they wanted to do a large fill, they could go through that and they could make money. Cerbone said yes, you are not proscribed into one pathway, you can pick the permit that meets what you want to do on your property, as long as that permit is allowed on your property. Foster said in the case of doing it on EFU land or farmland, it has to be dual purpose. It has to enhance the farm operation as well as large fill, it can't just be a large fill with no benefit to the farm. Barber said large fills are not allowed on EFU.

Ingle opened the hearing to public testimony.

Logan Ramsey, NW Skyline Blvd, said not to waste your time, but I feel like I need to state again that I feel that the spraying of herbicides on road right-of-ways definitely has an impact on the water that runs off of those properties. It affects the public, they usually don't put notices out and you see people doing various activities in the road right-of-way, so I think it is something this body could take up and should take up. Also another issue that I feel is important is the area they call a defensible space for fire control, which is currently set at 30 feet or 35 feet. I think it is pretty evident from the fires in the Fall, that 30 feet will not prevent wildfires from leaping from house to house or area to area. Ingle said the next agenda item will be a worksession on Wildfire Safety improvements, but your testimony has been heard. Foster said we are going to be updating our code in the near future to address the wildfire issue.

Cerbone wanted to make sure Commissioner Kessinger's question was answered accurately. The question he was asking was whether a farmer could find a way to accept money to accept fill. It would be in very limited circumstances where that could occur. I felt like maybe I was giving you a little misinformation. So on resource land, EFU and CFU land; that could not occur because they are precluded. And I believe we also have an exemption for high value farmland. Barber said that is a proposed new prohibited area. Cerbone said so the only areas where a farmer could accept fill and get a large fill permit would on land that is MUA-20 and not considered high quality soil. Kabeiseman said if they are bringing in soil for farming purposes outside the purview, that is acceptable as farming. Cerbone said this literally has to do with the farmer's ability to accept compensation for receiving the product.

At this point, Ingle indicated that the public record is closed and asked for a motion. Foster moved to adopt the ordinance with the one amendment from Mr. Cathcart, per the revisions on the recent staff report. So we are adopting all the changes staff made in the last month, and adding the change that the Soil & Water Conservation District manager proposed. Lorenz seconded. Motion passed unanimously.

VII. Briefing – Wildfire Safety Improvements (PC-2017-9605)

Kevin Cook, Multnomah County Senior Planner outlined the staff report, along with a presentation and videos of recent wildfires. He stated that this project is intended to improve upon the County's wildfire protections, and outlined the reasons for undertaking this project, the general scope and the next steps involved in this process.

He noted that in our current regulatory scheme, we have Fire Safety Standards that apply to our Forest zones, as well as the equivalent Forest zones in the National Scenic Area (NSA). But we do not have a specific fire standard outside of those zones, so this policy directs us to look at those other areas.

There were a number of known issues and observations that have come up through the years regarding implementing the current CFU fire safety standards, which are outlined in Section 4.0 Observations. These are issues that will be addressed in these safety improvements, as well as the intention to engage the fire service providers. The intent is to get some changes on the books in 2019, and come back as science and information allows. There are different standards in the CFU zones and the Gorge, so the question is, if there are good practices in one area, should they be applied county-wide?

There are probably some shortcomings in our current code, so staff intends to work with wildland fire experts to audit the current code against the latest best practices. Cerbone noted that Wasco County procured a special grant from the National Fire Protection Agency to do some detailed work regarding wildfires, so we are going to be working closely with them.

VIII. Director's Comments:

Cerbone pointed out that our new consolidated code, Chapter 39, is now live, and so far it is working quite well. Foster said the challenge now is, as we add things, whether we are going to encounter any difficulties. Cerbone said we will have a housekeeping bill that we will do annually, so that as we find these errors, we will correct them. Those will not be policy decisions, just correcting the code to match the intent at the time we enacted.

Ingle asked if there was a preview for January, Cerbone said there will be a hearing for Housekeeping amendments. Barber said we will also talk about the 2019 Work Program, and reporting out on the 2018 permit activity for land use planning and compliance.

Meeting adjourned at 9:00 p.m.

The next Planning Commission meeting is scheduled for January 7, 2019.

Recording Secretary,

Kathy Fisher