



FEBRUARY MEETING MINUTES

February 1, 2024

CITY OF WHEELER

Call to order

Commissioner Proctor called the meeting to order at 6:07 PM.

Administration Roll

call

Present onsite

Commissioners: Doug Proctor, Anna St. John

City Staff: Pax Broder

Guests: John Stanley, Peggy Schumann, Robert Schumann

Present via Zoom

Commissioners: Chantelle Hylton, Brad Donohue

Guests: *None.*

Planning Commission Minutes from January 4, 2024

Commissioner St. John **made a motion to approve the Minutes of January 4, 2024.** Commissioner Proctor **seconded the motion. The motion was passed 4-0** (Yes: Proctor, Donohue, St. John, Hylton; No: none).

Presentations, guests and announcements

None

New business

395 C Nehalem Blvd – Application for new siding material.

Peggy Schumann said they are replacing the siding on the top half of the building (in the front) to match the siding that is currently on the side of the building facing Rector Street. Commissioner St. John said that it looks fine and is consistent with our requirements.

Commissioner St. John **made a motion to approve the new siding for 395 Nehalem Blvd.**

Commissioner Proctor **seconded the motion. The motion was passed 4-0** (Yes: Proctor, Donohue, St. John, Hylton; No: none).

Committee comments or public issues to be presented to the committee, other than agenda items

Pax gave the following report on the FEMA NFIP BiOp:

- In 2009, FEMA was sued by the Portland Audubon Society and several environmental groups in Oregon.
- In 2010, FEMA settled; agreed to consult regarding the effects of the NFIP in Oregon on T&E

species and designated critical habitat.

- In April 2016, NMFS issued the Oregon NFIP Biological Opinion (BiOp).
- The BiOp concluded FEMA's implementation of the NFIP in Oregon jeopardizes the continued existence of T&E species and adversely modifies designated critical habitat.
- BiOp includes a six element "Reasonable and Prudent Alternative" (RPA).
- RPA = NMFS's roadmap to FEMA about how to change its implementation of the NFIP to avoid violating the ESA.
- RPA was one option available to FEMA; FEMA could take an alternative course of action.
- Original deadline for action (not requiring regulatory change) in response to the BiOp was 2018.
- Congress extended the implementation period another three years.
- In October 2021, FEMA issued its Draft Implementation Plan.
- Draft Plan varies from RPA and focuses on preserving and restoring three main floodplain functions:

Flood storage - limit new fill or require compensatory flood storage to offset any new fill.

Water Quality - limit new impervious surface and heightened stormwater requirements.

Riparian Vegetation - restrict removal within 170-feet of a water feature.

- Draft Plan includes direction to avoid new non-water dependent development in the floodplain and restricts future land divisions in the floodplain.
- There is an allowance for one unit per existing parcel to avoid takings claims provided they preserve the three floodplain functions above.
- Draft Plan is vague and incomplete. No Model Ordinance provided. No technical guidance provided.
- The Draft Plan comprises changes to information provided to communities, mapping products, and reporting requirements for NFIP-participating communities as well as a range of potential measures communities will need to select from to collectively meet a "no net loss" standard of the three key natural floodplain functions.
- In March 2023, FEMA began the National Environmental Protection Act process to evaluate the impacts of its Draft Plan.
- FEMA elected to prepare an EIS (Environmental Impact Statement) recognizing that the impacts of its Plan are likely significant to NFIP-participating jurisdictions and floodplain property owners.
- Unclear whether NMFS will accept FEMA's Implementation Plan.
- Communities who decline to adopt the new standards will be removed from the NFIP. Result: Property owners who rely on NFIP for flood insurance required by their mortgages will be in default Community will not qualify for federal disaster assistance.
- FEMA published a Notice of Intent to prepare an EIS on March 6, 2023, which opened the public comment period. The comment period ran for 92 days and closed on June 26, 2023.
- The next step is for FEMA to publish a draft EIS in the Summer of 2024 with another open comment period thereafter.
- There are seven (7) local, state, and federal agencies who are cooperating agencies with FEMA that have accepted invitations for the review of FEMA's draft EIS. In addition, FEMA is currently developing draft technical guidance that will include a model code and other supplemental documents to be published simultaneously with the draft EIS. Following the

publishing of the documents, FEMA anticipates a robust public outreach and engagement strategy with a variety of meetings and feedback mechanisms for interested individuals, staff, and decision makers to attend.

- Sarah Absher of Tillamook County went and testified in this case, and Tillamook County is intervening.

Old business

Commissioner Proctor gave an overview of the requirements included in Senate Bill 406 and how the Planning Commission is trying to incorporate the increased housing density requirements into the new Development Ordinance. The City can keep the existing property line setbacks, which will create a practical limit on how many units can be put on a lot. However, there will still be a lot of changes to the code allowing for increased density and not all Wheeler residents will be happy with those changes.

Commissioner Donohue asked how this would impact the sentiment of the citizens in Wheeler. Commissioner Proctor stated that the development can get really dense if you put four units on a 5,000 square foot lot. Commissioner St. John asked for clarification as to whether this applied outside of a Planned Unit Development, and Commissioner Proctor confirmed it applies to *any* lot we allow a single-family dwelling on. It can be disruptive to the look of the community, but the Oregon Senate is not giving the cities many options. Commissioner St. John said that in Portland there is increased density among main thoroughfares, but that it would be difficult to divide up Wheeler in a similar manner.

John Stanley asked if you could implement landscape restrictions or vegetation buffers into the code. Commissioner Proctor stated he believed those requirements can only be applied in Planned Unit Developments.

Commissioner Donohue asked for clarification on Planned Unit Developments. Commissioner Proctor stated that it has been in the code for quite some time but was never used. It was originally envisioned to be like a subdivision but has now become more like cottage clusters. The state defines these as 900 square feet or less per cottage, sometimes with one-way streets. The houses are similar in some ways, but still look different and generally they face an open common space (but not always). Commissioner St. John stated that in SB406 there is no requirement for open space.

Commissioner Proctor stated that our current ordinance doesn't have provisions for a zero-lot line. A condo would be considered a zero-lot line as they are individually owned, and the common wall becomes the zero-lot line. This will need to be added to Wheeler's code.

Commissioner Proctor stated that accessory dwelling units (ADUs) were introduced by House Bill 2001, and any time you have an R1 zone you can have ADU that can be attached or detached, can be 900 square feet or less, and you do not have to provide off-street parking for it.

Continue review of Development Ordinance:

The Planning Commission's redlined/working version is included in the meeting packet.

Section 2.01.04 – Permitted Uses – All Zones

- A – changed to “Facilities within the public right of way designed to provide public utilities.
- B – changed to “Roads and other related facilities within the public right of way designed to provide public access.
- C – removed entirely.
- D – changed to “Growing food for personal use or use in the on-premise business (example: herbs for a restaurant).
- E – added “Public parks and recreation areas including waysides, walking and bicycle paths.”
- F – added “Property line adjustments and partitions subject to provisions in Article 4.”

Section 2.01.05 – Prohibited Uses – All Zones

- A – minor grammatical corrections.
- B – added “whose usual adult weight exceeds 150 pounds.”
- C – removed entirely.
- E – added “Breeding, raising, sheltering and/or keeping of 2-legged outside animals that are noisy like roosters and geese.”
- F – added “Using food, shelter or other means to attract wild animals.”

Section 2.02.02 – R1 Permitted Uses – minor grammatical corrections.

- D – removed entirely.
- E – removed entirely.
- F – added “Manufactured homes subject to the requirements of Article 4.”
- G – added “Cottage industry, subject to provisions in Article 4.”
- H – added “Bed and Breakfast establishment, subject to provisions in Article 4.”
- I – added “Middle Housing subject to provisions of Article 4.”
- J – added “Accessory Dwelling Units, subject to provisions in Article 4.”
- K – added “Accessory Structures/uses subject to the provisions of Article 4.”

Section 2.02.03 – Special Permitted Uses – removed this section entirely.

Section 2.02.04 – Conditional Uses

- C – changed to “Government Facilities.”
- D – added “subject to the provisions of 4.20.9 for day care;”
- E – added “Dental care facilities” and “(including Chiropractic, and ‘alternative’ type medicine).”
- G – removed entirely.
- H – removed entirely.
- F – added “Residential home.”
- J – added “Accessory Structure/uses subject to the provisions of 4.12.”

Section 2.02.05 – R1 Dimensional Standards

- A – changed to say that the minimum lot size “shall be 5000 square feet. If all setbacks can be met, any of the following are allowed:”
 - 1 – changed to say “A residential dwelling and an Accessory Dwelling Unit on the

same lot.”

2 – changed to say “Middle housing.”

3 – removed entirely.

C – Minimum Setback

1 – Non corner lot

a. changed to “Front yard – 20 feet.”

b. changed to “Side Yard – 5 feet.”

c. changed to “Back Yard – 5 feet.”

2 – Corner lot

a. changed to “Front Yard – 20 feet.”

b. changed to “Street Side Yard – 15 feet.”

c. changed to “Non-Street Facing Side Yard – 5 feet.”

d. changed to “Back Yard – 5 feet.”

3 – Flag Lot

a. changed to “Front Yard – 20 feet. The front yard is the yard that has street access via a driveway.”

b. changed to “Side Yard – 5 feet.”

c. changed to “Back Yard – 10 feet.”

4 – Dwelling plus an ADU (If a corner lot is involved, use those setbacks)

a. changed to “Front Yard – 20 feet.”

b. changed to “Side Yard – 5 feet.”

c. changed to “Back Yard – 10 feet.”

d. changed to “If the ADU is detached, there is a minimum distance of 10 feet between buildings.”

5 – added “Middle Housing when units face in multiple directions”

a. The face of each unit has a 15-foot setback.

b. The side yard setback is 5 feet unless it is a corner lot. In that case:

1. Street Side Yard – 15 feet

2. Non-Street Side Yard – 5 feet.

For example, a quadplex is on a non-corner lot and two units face east and the other two west. The east setback is 15 feet, the west setback is 15 feet, and the north and south setbacks are 5 feet.

Commissioner Proctor indicated that he may break-up “Middle Housing when units face in multiple directions” into corner and non-corner lots to make the setback restrictions more clear.

6 – Condominiums (attached buildings with individual ownership regardless of their configuration).

a. changed to “Front Yard – 20 feet.”

b. changed to “Side Yard – 5 feet for the building; each unit shall have a zero lot line between attached units.”

c. changed to “Back Yard – 10 feet.”

D – removed entirely.

F – removed entirely.

Section 2.03.02 – R2 Permitted Uses

C – added “Family day care center.”

D – rewrote to “Manufactured homes subject to the requirements of 4.09.”

E – removed entirely.

G – added “Affordable housing when owned by an organization, as defined in affordable housing land and complying with the requirements section.”

H – added “Cottage industry, subject to provisions in Article 4.”

I – added “Accessory Dwelling Unit (ADU).”

J – added “Middle Housing subject to provisions in Article 4.”

K – added “Accessory Structures/uses subject to the provisions of 4.12.”

Commissioner Proctor asked Pax to follow up with the City Planner on whether Design Review can be required on multiple family dwellings in light of SB406. Commissioner St. John stated that Walt had mentioned affordable housing, and we will need to incorporate it into the code and add a definition for it as well.

Commissioner Proctor stated that Goal 10 of the Comprehensive Plan supports ADUs, but they aren’t in the current zoning ordinance. Goal 10 will need to be updated for the new middle housing requirements. The state doesn’t define “tiny houses,” but defines a “small home” as 400 square feet or less.

The state also has a four-unit minimum for Planned Unit Developments. Commissioner Proctor suggested breaking up Planned Unit Developments into Subdivisions, Condos, Cottage Clusters, and Multi-family Dwellings. Common ground would require a Homeowner’s Association, which Walt has included in his proposal. This may need to be moved from Planned Unit Development as it can apply in R1 as well.

Section 4.05.01 – Purpose

Removed “contains more amenities” and “contains typical subdivision controls.”

Added “All PUDs must have at least 4 housing units. In a Planned Unit Development the setbacks, minimum lot sizes and off street parking requirements for the underlying zone are superseded by the rules in this Planned Unit Development section. The 24’ height requirement still applies to all building in Wheeler.”

Removed “While greater density or more lenient siting requirements may be granted, the Planned Unit Development should contain features not normally required of traditional developments. This requires greater scrutiny on the part of the City to assess a proposal. To realize these objectives and enable thorough analysis of a Planned Unit Development, more information is demanded about the proposal than would be required if development were being pursued under conventional subdivision requirements.”

John Stanley asked when these proposed changes would take effect. Commissioner Proctor said he was hoping it would be this summer, though the deadline for SB406 is summer of 2025. Mr. Stanley asked for clarification on SB406 applying to cities under 1,000 in population. Commissioner Proctor clarified

it applies to any city in Tillamook County, regardless of size.

Commissioner St. John asked if the City has a current buildable land inventory, and Pax stated that he believed the most recent one was done by Tillamook County in 2017. The Planning Commission did one that wasn't as formal around the same time. Lots that were buildable but prohibitively expensive to develop weren't considered buildable lots at that time. There are only a few locations currently in Wheeler's city limits where the land is flat and large enough for a Planned Unit Development.

Commissioner Donohue asked how we would handle professionally built treehouses, which are built to very high standards. Commissioner Proctor said if it meets stick-built standards for a residential dwelling we would allow it, but an engineer would be required to sign off on all the papers and it would have to be approved by Tillamook County building inspectors. There is nothing in our code that would prohibit one of these, so long as it met those building requirements (insulation levels, sheer wall wind resistance, etc.). Utilities would have to be in a conduit to get up to the structure. We only require foundations on manufactured homes and small homes (tiny houses). Small homes must meet most of the stick-built regulations, but they are allowed to have a ladder to a loft bedroom. If a treehouse was 400 square feet or less, it would fall under the state's small home guidelines.

Section 4.05.02 – Objectives

- C – removed entirely.
- D – removed entirely.
- E – removed entirely.
- F – removed entirely.

Section 4.05.01 – Purpose – minor grammatical corrections.

- C – removed entirely.

Added Section 4.05.03 – Homeowners Association

Commissioner St. John stated that section 4.05.04 of the proposed development ordinance is very different from the original section (10.030) with different definitions. Commissioner Proctor stated that he re-wrote this whole section, but the numbering of the section may need to be changed. Commissioner Proctor's section (Common Regulations for All Planned Unit Developments) was put after the section on Development Requirements.

Commissioner St. John stated that Walt's section on Planned Unit Developments made it sound like creating a community that is separate from the rest of town, but with most of the same features (schools, libraries, community halls, etc.). Commission Proctor said we shouldn't put those in the code because don't have enough land for all of it, we should keep it to residential development. If a developer wants to make units that are detached and over 900 square feet, a subdivision makes sense.

Commissioner Proctor asked Pax about short-term rentals and whether the current City Council would want to keep them prohibited in the code or not. Pax said this hadn't come up recently, but he would inquire about it. Commissioner Proctor stated that he saw a court ruling indicating that short term

rentals were not considered land use functions, and that is why it isn't being allowed in zoning ordinances.

Added Section 4.05.04 – Common Regulations for all Planned Unit Developments

Commissioner St. John was unsure what the citation should be for this section, and Commissioner Proctor said that “F” through “L” are out of the present code, but the rest is mostly new.

Commissioner Proctor said we cannot restrict right of way parking for ADUs per HB2001, but we do need to restrict it in terms of “you can't park in front of your neighbor's house.” A person should have to park in front of the lot their ADU is located on if off-street parking is not available. This was then added to the section on parking.

Commissioner Proctor asked Pax to inquire if the City Council would want to retain the historical district, and how they felt about allowing A-frame signs. Currently they aren't allowed, but the City doesn't enforce the restriction. Commissioner Proctor suggested allowing A-frame signs if they were approved by the City Manager as not impeding foot-traffic or clear vision areas. Commissioner Hylton said she really liked that idea.

Commissioner Proctor said the City Council will have to update some of the rules for Planning Commission in terms of having the Vice Chair take over incase there is an appeal of a decision, and the Chair should recuse themselves if they were involved in the original appealed decision.

Commissioner St. John stated that she wanted to make sure all changes to the development ordinance were tracked so the City Council would know what parts were kept, what parts were changed, and what parts are totally new. Commissioner Proctor stated that Walt did not say what parts of his document were the same and what parts were totally new. The estuary section was carbon-copied from the current ordinance, even the parts that are incorrect.

The statement encouraging off-street parking for ADUs was added to the ADU definition as well as the parking section of the ordinance.

At the next meeting the Planning Commission will continue work on Planned Unit Developments.

Adjournment

Commissioner Hylton **made a motion to adjourn the meeting**. Commissioner St. John **seconded** the motion. **The motion was passed 4-0** (Yes: Proctor, St. John, Hylton, Donohue; No: none).

Commissioner Proctor called the meeting to close at 7:57pm.

Dated: February 1, 2024

Doug Proctor, Chair

Pax Broder, City Manager/Recorder