

1. Call to Order. Chairperson Kelly Stravens called the special meeting of the Millwood Planning Commission to order at 6:02 p.m. Other commission members present were Bobbie Beese, Josey Booth and Dan Hansen. Staff present: Tom Richardson, City Planner, Ray Oligher, Assistant Planner, and Brian Werst, City Attorney.

2. Approval of Minutes – September 24, 2012. Ms. Beese said the minutes do not show all of Wayne Frost's comments regarding the hearing examiner. She recalled that Mr. Frost said the hearing examiner would not be local or have the local knowledge that the planning commission could provide. Mr. Stravens agreed and asked Mr. Richardson to review the recording. Mr. Stravens then moved to approve the minutes with Ms. Beese's expansion. Motion seconded by Mr. Hansen. Motion carried unanimously.

3. Public Hearing- continued: Shoreline Management Program Update. Mr. Stravens reopened the hearing on the Shoreline Management Program..

Mr. Oligher reviewed the staff report which responds to each of the issues raised by Futurewise, Department of Ecology and Inland Empire Paper.

Mr. Stravens asked if any commission members had any additional conflict-of-interest disclosures to be made since the last meeting. There were none.

Mr. Stravens asked for public comments.

Rial Moulton, 3611 N. Dale, said he is an attorney representing himself and his neighbors, the Mortons. He showed photographs of the city's right of way where Dale Road reaches the river next to his property. He said the street is not wide enough for vehicle traffic. The pavement is mostly on Morton's property. Landscaping and retaining walls have encroached onto the right of way on the west side. There is no room for a turn-around unless people drive onto his property or the Mortons'. There are also safety concerns for pedestrians trying to get down to the water due to a retaining wall. He said the city would have to install a fence to protect the Morton's house which is built right up to the property line. He is concerned about alcohol-related problems with the people that would use the access. He said he would file suit against the city if necessary.

At 6:45 p.m. Mr. Stravens called a 15 minute recess to allow the commissioners to read the three written comments submitted by Futurewise, Gonzaga University Legal Assistance and Inland Empire Paper. The meeting was reconvened at 7:00 p.m.

Mr. Werst said the draft does not give everyone what they want but it is a workable framework considering Ecology's stance on public access.

Nathan Smith, Witherspoon and Kelly, representing Inland Empire Paper explained the letter he submitted on October 15. Mr. Stravens said he was frustrated with the late submittals of Mr. Smith's comments. He asked why Smith's comments had been submitted so late today. Mr.

Smith said he did not receive the agenda packet until October 12 which included the staff's response to their previous comments.

Mr. Smith said the city's proposal is a uniform requirement. It is not balanced and it violates *Nollan* and *Dolan*. The nexus requirement requires individual analysis and is a fundamental component if the city would take the property rights of an individual land owner. The justification required under *Dolan* is that the city must demonstrate that it can exact the property right as a condition of approval. The proposed plan puts the onus on the property owner. This shift is unconstitutional. IEP is the only property owner that would be subject to these requirements. Mr. Stravens said it is incorrect that IEP would be the only property owner; they would apply to any new development.

Mr. Smith said there needs to be the individualized determination, and that the onus is on the City to demonstrate that the constitutional requirements of *Nollan* and *Dolan* are satisfied.

Mr. Smith said changing the language from "encouraged" to "required" would have a coercive effect on the kind of application that the owner would submit, which is what *Nollan* and *Dolan* is trying to avoid. He also referred to WAC 173-26-221 General master program provisions, which uses the words "should provide" public access.

Shirene Young, Inland Empire Paper, said that IEP is glad to have participated throughout the process for the past 16 months in the stakeholder meetings. There were changes made in the draft since it has come to the planning commission. It has evolved substantially since the stakeholder meetings and that is why IEP has continued to make their comments.

Mr. Smith said there are three references to public access in the Public Access section, and they are not consistent with each other.

There being no further public comment, Mr. Stravens closed the public hearing at 7:24 p.m.

#### Deliberation:

Regarding item #1 of the staff report dated October 15, 2012, Mr. Stravens moved to accept Futurewise's recommendation to renumber the paragraphs in chapter 18.12 to allow for additions over time and to match the numbering scheme for sections 18.14 and 18.16. Ms. Beese seconded the motion. There were four aye votes, no nays. Motion carried unanimously.

Regarding item #2 of the staff report, Mr. Stravens moved to reject Inland Empire Paper's recommendation and to retain the language of Objective EE 3 and Policy EE 3.1 contained in the draft plan. He said the existing language is consistent with the Millwood Comprehensive Plan and zoning code. Mr. Hansen seconded the motion. There were four aye votes, no nays. The motion carried unanimously.

Regarding item #3 of the staff report, Mr. Stravens moved to accept Futurewise's recommendation to transfer the authority for approval of conditional use permits and variances to a Hearing Examiner. Mr. Hansen seconded the motion. Ms. Beese said Futurewise's recommendation was to make the process similar to the one we use for zoning to make them consistent; she thinks Futurewise misunderstands our process. She said the citizen advisory committee recommended that these be reviewed by the planning commission; the language was changed on the recommendation of Futurewise. She said she is also concerned about the cost of hiring a hearing examiner. Mr. Stravens said review of shoreline conditional use permits and variances by a hearing examiner is more appropriate in this case because it is much more technical and does not require the planning commission's expertise to hear different sides. Mr. Richardson said shoreline decisions are more technical decisions that need to be based on state regulations, not so much on the local feel of the neighborhood. Ms. Beese said we need to decide between the hearing examiner's lack of local knowledge versus the need for a theoretically totally impartial decision. The motion carried unanimously.

Regarding item #4 of the staff report, Mr. Stravens moved to reject Futurewise's recommendation to include additional language in 18.14.200(A)(1) to remove any confusion on when Public Access should be incorporated into new public and private development. He said this is already covered in (C) of that section. Mr. Hansen seconded the motion. The motion carried unanimously.

Ms. Beese said the terms "shall" and "should" are very different. Ms. Beese was looking for the language in the draft that "dangles the carrot" to allow the city to negotiate for public access; but she has not been able to locate the language. Mr. Hansen recommended that we avoid using either require or encourage, and instead use the language from 18.14.200(A)(1), i.e. "Public access should be incorporated..." Mr. Oligher said "should provide" would match the WAC language. Mr. Werst noted that "should" is the defined term in the list of definitions: "a required action unless there is a demonstrated, compelling reason, based on policy of the Act, against taking the action. Ms. Beese said Ecology has approved Spokane County's "should" language. Mr. Werst said Ecology has made it clear that they would like consistent regulations among the jurisdictions along the river. He said this is essentially the Department of Ecology's plan, and it must be approved by them. He said for Ecology "should" means "required" in their vernacular. Mr. Stravens said he likes the word "require" as Ecology had previously requested, with the exceptions listed, because it is a clear mandate from the WAC. Ms. Beese asked about the difference between the RCW and the WAC. Mr. Werst said they are very different.

Mr. Hansen moved that 18.14.200(B)(3) be changed to read "New private shoreline development should provide public access except for in the following conditions." Ms. Beese seconded the motion. The motion carried unanimously.

On 18.14.200(A)(1), Mr. Hansen moved that the language should read "Public access should be provided in all new private and public developments except for the following types of uses." This would replace the word "incorporated" in order to be consistent.

For Policy EE3.1, Mr. Werst said the phrase “shall require public access” is unnecessary; it has already been stated in other sections. Mr. Stravens moved to delete “and shall require public access” from Policy EE3.1. Seconded by Mr. Booth. Motion passed unanimously.

Mr. Hansen withdrew his motion on 18.14.200(A)(1).

Mr. Stravens moved to add sub-section (10) be added to 18.14.200(B) to read “Public access requirements on privately owned lands should be proportional with the scale and character of the development.” This is to conform to the nexus and proportionality requirements. Mr. Hansen seconded the motion. Motion carried unanimously.

Mr. Stravens moved to add “Residential subdivisions of four parcels or fewer” as 18.14.200(A)(1)(C) and to renumber the existing subsection (C) as (D). Ms. Beese seconded the motion. The motion carried unanimously.

Regarding item #6 of the staff report, Mr. Stravens moved to reject IEP’s recommendation to remove the last statement in 18.16.020 that discusses the hypothetical loss of the current industrial use, and to keep the language in the draft plan as is. He noted the WAC citation in the staff report which requires the city to consider “reasonably foreseeable future development.” Ms. Beese seconded the motion. Ms. Beese referred to the comment on this issue submitted by the University Legal Assistance. The motion carried unanimously.

Regarding item #7 of the staff report, Mr. Stravens moved to reject Futurewise’s recommendation for 18.16.025 Size of Native Conservation Area, to increase it from 50 ft to 100 ft or 150 ft. to better protect the riparian buffer area. He said the plan can be periodically updated and we can revisit the issue at a later time. Ms. Beese said 100 ft might be ideal in a lot of circumstances but this is where local knowledge comes in and it is just not practical. Mr. Booth seconded the motion. The motion carried unanimously.

Regarding item #8 of the staff report, Mr. Stravens moved to accept a part of Futurewise’s recommendation for the Restoration Plan to commit to identifying projects that should be done as part of the funding plan, and to add the language recommended by staff to Restoration Plan section 7.3 Project Monitoring, Benchmark 3, Monitoring Method: “Identify and order projects that will be completed.” This would give the City time to properly plan and identify available funding resources. Ms. Beese said she was disappointed that we had not identified projects, and asked about funding for projects in the Public Reserve Environment. Seconded by Mr. Hansen. The motion carried unanimously.

There being no further changes, the commission concluded its review of the SMP, and requested staff to draft the written recommendation for approval at its next meeting.

4. Staff Report. None.

5. Adjournment. Mr. Stravens moved to adjourn. Motion seconded by Ms. Beese. Motion carried unanimously. The meeting was adjourned at 8:50 p.m.

Mr. Stravens said the next meeting will be on October 29, 2012 at 6:00 p.m.



Chairperson



Secretary