REDMOND CODE REWRITE COMMISSION MINUTES

March 22, 2010

COMMISSIONERS PRESENT: Steve Nolen, Chair, Sue Stewart, Vice Chair,

Robert Fitzmaurice, Nancy McCormick, Vibhas

Chandorkar, Robert Pantley

COMMISSIONERS EXCUSED: None

STAFF PRESENT: Lynda Aparicio, Jeff Churchill, Steven Fischer

RECORDING SECRETARY:

CALL TO ORDER:

The meeting was called to order at 6:02 p.m. by Chairman Nolen in the Council Chambers at City Hall.

APPROVAL OF THE AGENDA and MEETING MINUTES:

MOTION to approve the Agenda and Meeting Minutes of March 8th, 2010. Motion seconded. Motion carries unanimously.

Ms. McCormick asked to make a change to the March 1st minutes, which have already been adopted. She noted that in the discussion of that meeting, she had made a motion she believed was seconded by Mr. Pantley, and passed unanimously, to ask staff to go to the Planning and Public Works Committee to get their approval for staff to work over the course of the next year to develop draft regulations for green roofs, and come up with a plan for incentives that would come before the CRC at the end of the Commission's term.

MOTION by Ms. McCormick to amend the March 1st minutes, and include this item of concern. Motion seconded by Ms. Stewart. Motion carried unanimously.

Regarding the March 8th meeting summary, Mr. Nolen suggested a change under *CRC Reports*. This was in regard to the summary reflecting that Commissioner Fitzmaurice's stated that the City Council was adamant that the CRC not rewrite the code. Mr. Nolen stated he believed Mr. Fitzmaurice's intent was to state that the CRC would not set new policy related to sustainability in the rewrite of the Code, but that the Council appreciated the comments from the CRC about sustainability. Mr. Fitzmaurice confirmed that he intended to convey that message. MOTION by Mr. Nolen to amend the March 8th meeting summary to reflect the concerns listed above. Motion seconded by Mr. Fitzmaurice. Motion carried unanimously.

ITEMS FROM THE AUDIENCE:

None.

CODE REWRITE COMMISSION REPORTS:

Mr. Nolen noted he would like to make sure this meeting ended no later than 8:30.

COMMERCIAL, INDUSTRIAL, AND DESIGN DISTRICT REGULATIONS:

Mr. Churchill presented the transmittal report to the CRC.

MOTION by Mr. Fitzmaurice to move the staff's recommendations to the Council, understanding they are still open to discussion. Motion seconded by Ms. McCormick. Mr. Nolen made a minor amendment to the report in summary item #6, which deals with the harmonization of design district chapters with organization of other zone chapters, in preparation for possible elimination or consolidation in the next Comprehensive Plan update. Mr. Nolen wanted to amend the recommendation to read, *elimination or consolidation of the design district chapters* with the next update. Ms. Stewart agreed that amendment added a level of clarity. Mr. Nolen says the staff and commission did great work on this project.

Motion passes unanimously. Mr. Churchill will present this report to the City Council on May 4th. The Council's first study session on this, and administrative procedures, will be May 11th. There will be another study session in June. Mr. Nolen said he might be able to attend the May 4th meeting.

ENVIRONMENTAL REGULATIONS, PUBLIC HEARING AND CONTINUED DISCUSSION:

Mr. Fischer noted that the public hearing on this issue would open at 7:00 p.m., and could be closed on the CRC's prerogative this evening. Mr. Fischer said this was his third visit with the CRC regarding these regulations. He made these points:

- 1. The CRC has already discussed tree retention and noise.
- Critical areas regulations are the next item for the CRC to tackle, and there are a number of changes in definitions and the purpose statement for this section of Code.
- 3. Staff is proposing moving the bonding or assurances section to a separate section of the Code, in keeping with the other matters related to the Community Development Guide. Buffer width variance has been removed, as well as some redundancies.

With the first issue of tree retention, CRC members have wanted to see the code provision retained for the incentive program, where developers could save more than 35% of the trees on a project. Mr. Fischer is researching that issue. In terms of the definition for DBH, diameter of breast height is a standardized method of measuring trees that follows an international arborist's standard. Staff says this term is widespread in the industry, and is well-understood by tree experts. The height is 4.5', but Mr. Fischer would like to stay with the DBH designation. Ms. McCormick asked if 4.5' could be put in parentheses, and Mr. Fischer agreed that could happen. Mr. Fitzmaurice confirmed this term is in the list of definitions for the City. Mr. Pantley would like to make sure the measurement is taken from the uphill side, rather than average grade, which is the standard. Mr. Fischer noted that he has not experienced problems with measuring trees in

the past. Ms. Aparicio pointed out that the Shoreline Master Plan contains the average grade phrase. The CRC asked Mr. Fischer to look into Mr. Pantley's concerns.

Mr. Fischer noted the Code also contains a provision about trees moved from a site, and emphasized that replacement trees are not required for trees that are relocated, found in Section 080. Of the trees that are not significant trees, greater than 6" in trunk diameter, the only ones that do not require replacement are "save" trees. A "remove" tree has to be replaced. If a tree does not have to be replaced, it is a "save" tree, by default. Mr. Nolen asked about saving a tree to another parcel. Mr. Fischer says the Code does not address that issue. The existing Code does allow for thinning of existing landscaping, which means developers would not be required to replace some saved trees that would go to another location.

Mr. Pantley asked about moving a tree off site, perhaps to a park, and why staff would not want to make the point very clear to the Technical Committee that the tree in this case was "saved." Mr. Fischer responded that if the City had to look at a subdivision, for example, that has a tree preservation plan to transplant trees to other sites; the City could not easily monitor the health of the transplanted trees. Mr. Pantley wants to encourage neighbors to work together with an applicant, and make the transplant process easy. Mr. Nolen says such a plan would create an overall reduction of trees, in that a developer could take away trees without adding any. Mr. Pantley wants to make sure the applicant and the neighbor have the flexibility to work together, and wants to save more trees.

Ms. McCormick likes Mr. Pantley's suggestion. Mr. Fitzmaurice says this is a dilemma for the City, and asked why a covenant is placed on land to where trees are transplanted. Mr. Fischer said in large subdivisions, where larger portions of land are getting cleared, 35-40% of the trees remain, and more trees need to be planted. The concern is that at some future date, another person would come in and remove those trees that were saved, bringing the project below the 35% level. The intent is to give the homeowner fair warning. In years past, homeowners have claimed ignorance from the law, and trees have been cut down. That is why this tree retention plan is in place.

Mr. Fitzmaurice agreed with Mr. Pantley that it would be great to save trees through transplanting, but trees still need to be replaced if they are taken away from a property. Mr. Pantley agreed, but noted there is no incentive to save trees through transplantation that way. Mr. Nolen says some partial credit could be given to developers who transplant trees. Ms. Stewart says preserving trees for soil retention and other concerns could be a win-win, with what Mr. Pantley is considering. She noted, however, that such a piece of code could be a challenge. She asked if this issue should be moved to Council, as a possible new piece of policy.

Mr. Nolen says he would like to expand the opportunity to save existing significant trees through transplantation, and asked if the City has receiving areas for some of these trees. Mr. Fischer said those areas were for smaller trees, not larger trees. Mr. Nolen is concerned a transplanted tree put in a neighbor's yard could not be protected; such a situation would be difficult to enforce for the tree's sake. Ms. McCormick still thinks Mr.

Pantley's idea should be pursued. Even though some owners might chop down these transplanted trees, it is not likely, in her opinion, that a lot of owners would do that. Mr. Nolen suggested that developers might not have to replace as many trees. Ms. McCormick and Ms. Stewart agreed with Mr. Pantley that creating some incentives for transplanting was a risk worth taking. Mr. Chandorkar is concerned about significant trees being removed, and he says there is nothing in the code preventing transplanting. He would like to see developers replace trees on the site they are removing the trees from. Mr. Chandorkar says the spirit of the law is simple, to replace a tree for a tree, and he would like to keep the Code simple. Ms. Stewart says moving a tree with mutual consent of another property owner would be a very valuable idea.

Mr. Pantley says there is no incentive to move trees because there is no benefit for the developer, who can pay a lot of money for that transplanting process. Mr. Nolen told a story of a former neighbor of his who cut down all the trees on a four-acre plot, and perhaps did not know what the code requirements were. Mr. Pantley stated that a situation like that would be a clear code violation. He would like to save trees, especially significant ones. He says the current Code would only reduce the number of trees. Mr. Fischer noted he could have staff work on some other options and rewrite the Code again. Mr. Chandorkar asked how often a situation as Mr. Pantley describes actually happens. Mr. Nolen would like to resolve this issue at the next CRC meeting. Ms. McCormick asked Mr. Fischer to look into the history of tree planning for the City, which he agreed to do. Mr. Pantley wants to make sure the City's tree plan looks toward the future.

Mr. Fischer moved on to noise ordinance considerations.

- 1. There is a list of designated areas that could be expanded where loud noises are prohibited.
- 2. Staff is recommending a rewrite that would say *other such areas* as opposed to *other designated areas*, which makes this sound like more of an official action.

Mr. Nolen would like to see a phrase that reads something like, where quiet is necessary to meet the objectives of this section, to give more definite direction to which other areas might be applicable. Mr. Fischer said that idea makes sense, and could be amended to the end of the Code. In this way, necessary is no longer a subjective term. Mr. Fischer received agreement from the CRC that this section of Code would be closed.

Mr. Nolen opened the public hearing at 7:00 p.m. regarding environmental regulations. Mr. Fischer pointed out there were six sections to these regulations:

- 1. Tree retention
- 2. Noise standards
- 3. Critical areas
- 4. Shorelines
- 5. Environmental review (the SEPA section)
- 6. The critical areas reporting requirements.

Of all of these, there are many changes proposed to the tree retention section to improve clarity.

- 1. Also, the definition of *landmark tree* has been changed, and staff is recommending the removal of the incentive program for saving more than 35%.
- 2. The noise standard has several small changes, including the temporary running of a generator.
- 3. In critical areas, staff is recommending changes in several definitions and the purpose statement.
- 4. The bonding and assurance section would be moved to a new section of the code.
- 5. Buffer width variances have been removed; those are addressed under the procedures portion of the code.
- 6. In the Shoreline Master Program, no program changes have been proposed. Any changes to this program would happen at the end of the Code rewrite, under what is known as Phase 2.
- 7. Under the environmental review, this is mainly where the City adopts portions of state code. This section has been renamed, and changes have been made to incorporate the Overlake Neighborhood Plan.
- 8. The last piece of code is the critical areas reporting requirements. Wetland mitigation now has its own section to address the new state mitigation requirements. This issue will be in front of the Commission in two weeks, and staff would like to wrap up this issue on April 19th. No emails, phone calls, or letters from the public have been received on this section of Code.

With that, Mr. Nolen officially opened the public hearing on environmental regulations. No one was in attendance from the public. Mr. Nolen recommended leaving the hearing open to give the public a chance for input at the next study session. The CRC was in agreement with that idea.

Moving back to the study session, Mr. Fischer talked about emergency generators, and what constituted an emergency that would allow a person to run a generator. The Code speaks to residential generators, but does not speak to residential zones. Mr. Nolen asked if staff was confident in the language of the Code made a clear distinction between residential areas and residential land uses. Mr. Fischer says the staff is confident in that language, which does not say residential zone" particularly. The City Attorney has reviewed the issue, and does not see a problem with using the phrase residential generator.

Mr. Chandorkar asked if there was an issue regarding a generator put to use in one specific house that is having an emergency, not a city-wide emergency. Mr. Nolen asked if it was an *emergency* when a contractor was doing electrical work at a home, and did not hook up the utility properly. Mr. Fitzmaurice asked if eliminating the word *emergency* and replacing it with *backup* would help avoid confusion. There is no definition of *emergency* in the Code. Mr. Nolen asked if adding *power outage or other emergency* would help clarify the Code. Mr. Fischer said he would review the language of the Code to allow for not only power outages, but for other emergencies if life safety was at stake.

Mr. Chandorkar asked if the malicious use of a generator could be prohibited. Mr. Nolen reiterated the idea of a rewrite to speak to a power outage or any other emergency that threatens life or safety of property. Mr. Pantley wonders if all that language should be included in the Code. Mr. Fischer asked that Code Enforcement officers not be put in the position to determine if people should have heat and light. Mr. Chandorkar is trying to figure out if there is a way to codify the actions of a person who is determined to be a nuisance. Mr. Fischer says that type of person has not been an issue in the past. The CRC discussed whether the word emergency modified the generator itself, or its use. Mr. Fitzmaurice says using a residential generator for an emergency use makes the most sense; the common dictionary definition of emergency was accepted by the Commission. Mr. Fischer said he would make some changes in the Code to clarify this idea over generator noise concerns, and the issue was closed.

Staff has been working to change *should* to *shall* in many Code areas, especially regarding noise walls. The CRC was concerned in the last meeting that such language could result in the loss of developable land through the use of berms when noise walls might be used. The CRC also asked about *blank walls*. Mr. Fischer pointed out several options to reduce outside noise, including berms. The Code expresses that noise walls are less desirable to other expressed options, and staff has proposed to remove the word *blank* for clarity. So, the Code would read that noise walls along the perimeter shall only be considered after all other measures are determined not feasible or impractical.

Ms. McCormick liked that idea; Mr. Pantley pointed out this could create a challenge as Redmond builds with more density. He would rather have a flat yard with a well-landscaped fence than a sloping yard with a berm. The CRC discussed the merits of walls and landscaping; some walls help with noise reduction, while other walls, like concrete poured walls, have little or no aesthetic appeal. Also, many wood fences or walls do not mitigate noise levels, which are why berms are a good, natural option, in Mr. Fischer's opinion. Mr. Fischer says that noise walls are not off the list; he says the City has a list of options. Mr. Pantley says noise walls are often a better option than berms, and he disagreed with the idea of the hierarchy. Mr. Nolen suggested that defining the words noise wall in the Code might help. He does not like walls up against roads and streets, but he believes there are times noise walls are needed. Mr. Nolen does not want to make noise walls difficult to obtain, but also does not want to make those walls ugly. Ms. McCormick says walls are not conducive to the pedestrian city Redmond is trying to be.

The CRC talked about whether the City was trying to prevent the building of sound walls or blank walls, and many members said *blank* walls were the biggest concern. Members also talked about removing the term *berm* from the Code, and making the Code performance-based without enumerating the list of options. Mr. Pantley suggested making a limit of 8' in height for a noise wall. Ms. McCormick said such an option appears to be in line with the Council's practical approach to the fencing Code. Mr. Fischer said he would add fences to the list of options in the Code, notate the idea of no blank walls, and express that walls in excess of 8' in height shall only be considered unless all other mitigation measures are infeasible or impractical.

The CRC took a five-minute break at this point, and returned to discuss critical areas. The issue of using tools within a buffer came up first. Mr. Fischer noted that hand tools are allowed in this area, because the use of those tools is exempt. Backhoes, mowers and weedwackers cannot be used without a permit, due to fuel concerns and overall destruction of the area. Mr. Pantley noted that, in some cases, power equipment makes sense. Mr. Fischer said that regulations allow for power equipment, but a permit is needed. The buffer with variances concept was discussed next, which allows a person to vary the buffer width.

Staff recommends bumping the buffer with variances to the reasonable use provision, which is a hearings examiner process and allows relief from the critical areas ordinance. Mr. Pantley is concerned with the degree of changing the buffer. If it were a modest change, that should not be a hearing examiner situation, in Mr. Pantley's opinion. Mr. Fischer noted that the Code and the reasonable use provision offer two ways to deal with the buffer width variance. CRC members are concerned changing the Code makes the process more difficult. Mr. Nolen, Ms. McCormick, and Mr. Pantley asked the staff if having this measure in the Code causes any problems, and if it could not be retained. Ms. Aparicio pointed out that every other section of Code dealing with a variance requires the reasonable use process, and she would like to keep the Code consistent. CRC members says the Code is clear about requiring good science for the administrative decision, and said if staff did not like a particular application, it would go through the reasonable use process anyway. Staff will consider the retention of this part of the Code.

Mr. Pantley discussed the reasonable economic use of private property in the critical areas section, and why the staff moved it to the administration and procedures chapter. Staff members said they would review that decision. Mr. Fitzmaurice next brought up the critical area protective measures section, wherein markers, signs, boundaries and outer edges of critical area shall be delineated with permanent survey stakes using iron and concrete markers as established by local survey standards. He described the surveying process in critical areas, and how different surveyors use spacing of 10' to 100' on different sites. Small wetland areas, in some cases, can have multiple concrete monuments, which Mr. Fitzmaurice would like to caution against. Ms. McCormick said the Council has talked about this issue of small wetland areas before. Mr. Fischer asked Mr. Fitzmaurice to send an email with this concern and others, so that he can respond to them, and keep the CRC in the loop, before the next meeting.

Mr. Pantley asked Mr. Fischer why the City is not considering buffer averaging. Mr. Fischer did not know why that was the case. Mr. Pantley suggested the CRC should ask the Council about this issue, because buffer lines are very rarely straight. He would like to make the measurement of these buffers more practical, which could make land use more productive in general.

STAFF REPORTS AND SCHEDULING:

Ms. Aparicio confirmed the CRC would have a June 22nd meeting with the Council at 7:30 p.m. There will be a study session on the rewrite scheduled for that evening, as well. The CRC confirmed it would still have a Monday meeting in that week. At the first

meeting in April, the CRC will see the draft Planning and Public Works Committee report. There will be a CRC monthly report at that meeting, as well. The CRC will also soon be considering the residential and urban recreation zones.

ADJOURNMENT:

Chairman Nolen adjourned the meeting at approximately 8:30 p.m.

Minutes Approved On: 4/12/10

Code Rewrite Commission Chair