

Springfield Planning Commission  
Regular Session  
Wednesday, January 20, 2021

*Note: On March 2, 2021, the Planning Commission approved the minutes for the first portion of the meeting including Item 1: **Formal Interpretation of Terms Requested by Springfield Utility Board: 811-20-000248-TYP2**. The remaining portion of the minutes starting with Item 2: **Marcola Meadows Master Plan Modification: 811-20-000248-TYP3** is presented to the Planning Commission for approval at the April 6 meeting.*

Planning Commissioners: Vice-Chair Kuri Gill, Sophie McGinley, Andrew Landen, Grace Bergen, Michael Koivula and Matthew Salazar. (one open position)

Absent: None

Staff: Sandy Belson, Comprehensive Planning Manager; Brenda Jones, Planning Commission Assistant; Kristina Kraaz, Assistant City Attorney; and Andy Limbird, Senior Planner.

Council Liaison: Leonard Stoehr

Each Planning Commissioner introduced themselves to our new Planning Commissioner Matthew Salazar.

Vice Chair Gill took a few moments to thank Commissioner Sherwood for his service as Planning Commissioner.

Business from the Audience- None

**Item 1: Formal Interpretation of Terms Requested by Springfield Utility Board: 811-20-000248-TYP2**

Kristina Kraaz, Assistant City Attorney read the Statement of Rights.

Public Hearing opened by Vice-Chair Gill

Vice-Chair Gill asked each Planning Commissioner to disclose any ex-parte contact and/or conflicts of interests:

- McGinley: No conflict of interest or ex-parte contact.
- Landen: No conflict of interest or ex-parte contact.
- Gill: No conflict of interest or ex-parte contact.
- Bergen: No conflict of interest or ex-parte contact.
- Salazar: No conflict of interest or ex-parte contact.
- Koivula: No conflict of interest or ex-parte contact.

Vice-Chair Gill asked if there are any challenges from the public to the impartiality of the Commissioners or objection to the jurisdiction of the Planning Commission to hear the matter before us? None

**Staff Report**

Andy Limbird, Senior planner gave a brief introduction and orientation as to the site that is subject to this Formal Interpretation request. This property is in Glenwood on East 22<sup>nd</sup> Avenue just east of Henderson Avenue and abuts I-5 along the Southern boundary.

This site was subject of the Site Plan Review for an electrical system sub-station, the conditional approval was subsequently appealed, it was heard by the Planning Commission for this particular property being inside the City limits. Other portions of the project that are outside the City limits were concurrently heard by the Hearings Official. After the Planning Commission and Hearing Official decisions were issued the matter was subsequently appealed to the Land Use Board of Appeals. After a lengthy period of review, and Covid intervened, the Land Use Board of Appeals issued their opinion which remanded the decision to the City of Springfield, with the request to address some deficiencies in the arguments. Among these deficiencies was clarification of terms that were used in the decision, specifically the definitions, of wetlands, water quality limited watercourses, and watercourses, all of which have different meanings and specificity within the City's Development Code.

The natural resources map that the City has published on the Springfield website indicates that there is a non-locally significant wetland on the property that was identified through the application materials and other water features within the project area.

Kristina Kraaz, Assistant City Attorney, provided an overview of the criteria for Formal Interpretation. The first part of the criteria is to look at the text and context of the code itself and include sections and chapters where specific terms were used. The code then allows but doesn't require the City to use legislative history to support an interpretation. Legislative history helps to show what City Councilors who adopt Code amendments were considering and what the code would have meant at the time it was adopted. If the text and context of past Code amendments and recent history are not helpful, then the City would rely on common dictionary meanings of terms. There are plenty of clues in text and context in prior legislative history from this application, so there is no need to resort to dictionary definitions. The staff report concludes that the criteria are met, and the definitions are consistent with current and recent past practice. The request from Springfield Utility Board (SUB) is to interpret the meaning of the terms "watercourse," "riparian area" and "water quality limited watercourse", as these terms relate to the water quality provisions of Springfield Development Code Section 4.3-115. The Code section is included in the commission's appendix to the staff report along with Sections 4.3-110 and 4.3-117 that are referenced in the staff report.

Ms. Kraaz explained that the Code uses the language in describing what certain riparian area regulations apply to the watercourses shown on the City's water quality limited watercourses map. Ms. Kraaz identified the version of the map that the City currently has posted on its website, which was compiled in July 2019. The current map was created using the original map that was adopted by the City Council on July 2002 and dated August 2002 which was the effective date of the ordinance. However, the current map has updated base line information. Essentially, the underlying tax lots and street configurations that have changed and have been updated.

Kristina showed the original August 2002 water quality limited watercourse map. This version is the only version that has been specifically adopted by the City Council as part of the Development Code referenced in Ordinance 6021. The Code specifically states that the map cannot be amended unless by action of the City Council per Ordinance. No Ordinances have amended this map since Ordinance 6021, which was adopted in 2002.

Ms. Kraaz provided a summary of the current mapping, the difference between the map adopted by Ordinance 6021 and the map shown on the City's website, and the changes to various Code sections arising from new policies and regulations adopted since 2002. The subject Code sections 4.3-110 and 4.3-115 have been re-numbered since 2002 but the content is substantially the same in those sections. Kristina stated she was not aware of any text changes to SDC 4.3-115 between July 2002 and now.

The staff report concludes that the official version that relates to the Development Code and referenced in the Development Code is only the 2002 version and not the recently published versions. The LUBA opinion states that definitions of "Watercourse" and "Water Quality Limited Watercourse" that were added by adoption of Ordinance 6021 are very broad. Springfield Development Code 4.3-110 includes very specific criteria for identifying a water Quality Limited Waterways and the context doesn't support the conclusion that every item listed in the broad definition of "Watercourse" would be "a watercourse shown on the Water Quality Limited Waterway map" that is subject to setbacks. The conclusion is that "shown on the Water Quality Limited Watercourse map" means specifically those bodies of water that are labeled with the blue, green or orange lines as Water Quality Limited Watercourses with specific flow rates, or their tributaries, and are identified by name or callout. Ms. Kraaz advised that it doesn't support the conclusion that every body of water on the map was intended to be treated as a Watercourse on the Water Quality Limited Watercourse map and is subject to setbacks in Section 4.3-115.A.

Ms. Kraaz also provided an overview of the legislative history and noted that there were comments at the time regarding the Pierce Ditch, which is subject of the second item on the public hearing agenda for tonight's meeting. . . . . Elements of the water quality limited watercourse mapping and regulations were explained by Ms. Kraaz.

Kristina stated that there is also a question about what "Riparian Areas" mean. These regulations show that there are different meanings of "Riparian Area" depending on the section of the Code. For purpose of Section 4.3-115, Riparian Areas are those associated only with delineated portions of the WQLW Map, which is interpreted to mean only those identified by a call-out on the adopted map. Kristina stated that the Code uses different categories of "riparian area" depending on the context of the section and that the regulations in question are found in Section 4.3-117. She also summarized the standards in Section 4.3-115 and how these were applied to the SUB Electric substation project on the property. The Planning Commission reviewed and discussed at length the local wetland inventory that includes a site shown on the subject property before it was adopted in February 2011 by Ordinance 6265.

Andy commented that the City received one (1) written comment regarding the Wetland feature on the property. Notification for this item was posted on the subject property, the local newspaper, the City website and mailed to adjacent neighbors. Andy also received

at the end of the business day today a submittal by the applicant consisting of several technical studies that had been performed previously regarding wetlands and analysis of riparian areas. This material was added to the webpage for the meeting, but he doesn't believe this gave the Commissioners sufficient time to review this material.

Commissioner Gill asked for questions from the Commissioners.

Commissioner Koivula asked about the procedural finding. He also asked about Attachment 3 page 25 of 188, which appears to have some pages missing, and item 6 appears to have some pages missing.

Brenda reviewed the documents and all the pages are included.

Commissioner Gill asked if there were any other questions from the Commission. None

#### Applicant Presentation:

- Attorney Michael Gelardi representing Springfield Utility Board; PO Box 8529; Coburg, Oregon 97408  
Gave some background on what has happened to SUB's Glenwood Project since the City approved it, and how this relates to the specific proceeding tonight.

Mr. Gelardi started with Spring 2019 when SUB applied for three (3) land use applications to implement the Glenwood Refinement plan to improve the electrical infrastructure needed to serve redevelopment of the Glenwood area. Staff approved all three (3) of the permits, all three were appealed to the Planning Commission and the Hearings Official. The Planning Commission and Hearings Official affirmed the permits. These permits were then appealed to the Land Use Board of Appeals (LUBA), this was right as the Pandemic started.

The Appellant brought 24 different issues before LUBA, one of the issues was about the wetland. Mr. Gelardi refers to these as the three tiers of issues, the first tier was about Planning and Zoning, is the SUB project consistent with the Comprehensive Plan for Glenwood, and the City's Glenwood Zoning rules. LUBA determined that yes, it is consistent. This is important because all the decisions the City makes flow from those decisions.

The second tier of issues was about Natural Resource Management. The main one that got the most attention was about tree cutting. The Appellant made a variety of arguments that all amounted to: SUB was proposing to cut too many trees, specifically, in order to have a 100' clear zone around the transmission line for fire safety. LUBA rejected those arguments as well.

There were two other Natural Resource issues: 1) The Geotechnical studies. LUBA also affirmed the City's decision, but the opponent has appealed that decision to the Oregon Court of Appeals. This is in front of the court now and Mr. Gelardi will be arguing the case on January 21, 2021; and 2) The Wetland. SUB has appealed this issue to the Oregon Court of Appeals, and this is in front of the court now, they will be arguing this case on January 25, 2021.

The third tier of issues in front of LUBA were really about the specific design of the transmission line and the aesthetics of that design, and whether those aesthetics were consistent with the City's goals or the Refinement Plan for the Glenwood Riverfront. LUBA remanded several related issues about aesthetics, those issues are coming back to the Springfield Planning Commission in the remand proceeding.

Mr. Gelardi provided an overview of wetland development which is regulated by Federal, State and Local law, also by the Clean Water Act on the Federal level and by the Removal Fill Act on the State level. He noted that the City has been inventorying wetlands for over 20 years. Mr. Gelardi also summarized the status of the wetland on the SUB site, which were determined to be locally non-significant under Goal 5, when the City inventoried Glenwood wetlands in 2010, and the applicable state and federal regulations that apply to wetlands in general. Mr. Gelardi concluded by stating that he believes LUBA has made a mistake in their ruling. The City now has an opportunity to adopt a Formal Interpretation as a way to fix the issue, assuming the Planning Commission makes the interpretation that SUB has requested and as staff has laid out in the report. SUB requests that the Planning Commission forwards this Interpretation to the City Council to have them ratify the decision. Under state land use law, if the governing body of a local government makes an interpretation of their own local code, then the courts must defer to that interpretation, if it's plausible. Kristina wanted to let the Planning Commission know that the Planning Commission Packet is complete, not missing any pages. There was mis-scanning with page 23 where an additional page cut off after it, but the whole ordinance is completely loaded in SpringfieldOregonSpeaks.

Questions from the Commission: None

Public Testimony: None

Staff Comments:

- Andy added that a Wetland Delineation was prepared by the applicant and they must obtain wetland fill/removal permits. As Mr. Gelardi pointed out, obtaining permits from State and Federal Agencies tends to be far more onerous than the approvals issued by the Cities because there is a very high bar that is set for Wetland removal.

Commissioner Koivula asked Andy about the 2010 delineation of the insignificance for this wetland, whether there is anything in the package that shows how this was done, and who makes that determination.

Andy answered that would be part of the Natural Resources Study that was done for Glenwood. They would be comparing it to not only to other wetlands in the area, but also wetlands elsewhere in the City.

Kristina replied that a consultant did prepare the findings for the Glenwood Natural Resources Study. The criteria for declaring a wetland significant are in Goal 5 regulations. Applicable state law requires a determination of significance to be made, and it is adopted via ordinance by the City Council.

Ms. Kraaz clarified that this formal interpretation is not to decide whether this wetland is significant or not significant. That determination has been made and could be examined through a comprehensive plan amendment process but not as part of this Formal Interpretation.

Commissioner Salazar asked staff about the WQLW map that is generally available on the website that is useful to staff and the public. Mr. Salazar commented that if it is different because of the base layer data that has been added to the map that was adopted in 2002, those differences are more in style than substance, but are the differences enough that it be worth asking City Council to consider a new ordinance to adopt?

Andy responded that the City's Environmental Services and Comprehensive Planning Divisions that have been working on updating the Wetland Inventory.

Sandy Belson, Comprehensive Planning Manager added that if the Planning Commission makes a decision affirming that staff has been interpreting the terms as we have been using them, and Council does as well, she doesn't think that there would be a reason that we would need to update the WQLW map and then have Council adopt it. The City is in the middle of an inventory project that is not specifically to look at a WQLW map update, but depending on the findings by the City's consultants, there could be changes to the WQLW Map required to conform with the current project. Council would be asked to approve any WQLW Map amendment.

Commissioner Landen asked when it first appears on a diagram where someone thinks it's a riparian area and if it wasn't a designated riparian area, why would it be now, what has changed?

Kristina answered that, when the map was initially adopted in 2002, the wetlands in Glenwood had not been inventoried in the way they were later in 2010. The ordinance was adopted in 2002 with a map that was published, and it showed the local wetland inventory that existed at that time. In 2010 the City updated the local wetland inventory by Ordinance and added this property as a locally non-significant wetland and it became part of the local wetland inventory as a non-significant wetland. At some point after 2011 the City's GIS division republished the 2002 map on the Springfield website. Because this was now part of the base layer of the local wetland inventory, those sites in Glenwood appeared on that map. This supports the interpretation that those wetlands are for reference and not a watercourse on the WQLW map because they are considered just a base layer that the City updated later without formal ordinance amendment. If the Commission disagrees with the reasoning in the staff report, to the Commission could alternatively conclude that this is not "a watercourse on the WQLW map" simply because it was never added to the 2002 version by formal amendment.

Commissioner Landen asked Kristina to define a non-significant wetland.

Kristina responded that it's not directly relevant to tonight's interpretation and then explained what Goal 5 requires.

Commissioner Gill asked for the consensus of the Planning Commission whether to close the public hearing and record.

Commissioner Landen proposed to close the public hearing and public record. His questions have all been addressed.

Commissioner Koivula recommended to close the written record but would like to extend the public hearing until the Commission is able to review all the new documents submitted into the record.

Point of clarification from Kristina, that the Planning Commission cannot close the record and leave open the hearing. The Planning Commission can close the hearing and the record and then deliberate at a new date, if needed.

Kristina took some time to explain to the Planning Commissioners what is and what is not part of this Interpretation Request.

Mr. Gelardi also explained what documents he submitted into the record and then explained why.

Commissioner Koivula responded that after Kristina's and Mr. Gelardi's explanations, he no longer needs the record to be held open.

Commissioner Gill reminded the Commission that she needs a motion to close the Hearing and the Public Record.

Commissioner Koivula so moved and it was seconded by Commissioner Landen.

Commissioner Gill took roll call for the recommendation to Close the Public Hearing and the Record.

Commissioner Landen- Aye  
Commissioner Bergen- Aye  
Commissioner Koivula-Aye  
Commissioner McGinley- Aye  
Commissioner Salazar- Aye

Commissioner Koivula would like to delay deliberation of the Planning Commission to the next meeting so that he can read the additional information submitted into the record.

Commissioner Landen was able to read most of the new materials and does not need extra time.

Kristina wanted to give the Planning Commission a heads up that the decision made on this Interpretation will also affect the decision they make on Item 2 for tonight. She recommends that the Commission wait to make final decision on the other item tonight until they make an interpretive decision on this application, so that the Commission can make those two decisions consistently.

After some conversation from the Commissioners, Commissioner Gill's understanding is that the Planning Commissioners would like time to review the additional information before making a decision.

After much discussion regarding Planning Commission dates, it was recommended that this Interpretation item be scheduled to February 2, 2021 for deliberation.

**Item 2: Marcola Meadows Master Plan Modification: 811-20-000248-TYP3**

Kristina Kraaz, Assistant City Attorney read the Statement of Rights.

Public Hearing opened by Vice-Chair Gill

Vice-Chair Gill asked each Planning Commissioner to disclose any ex-parte contact and/or conflicts of interests:

- McGinley: No conflict of interest or ex-parte contact.
- Landen: No conflict of interest or ex-parte contact.
- Gill: No conflict of interest or ex-parte contact.
- Bergen: Has a potential conflict of interest as a Real Estate Agent and no ex-parte contact.
- Salazar: No conflict of interest or ex-parte contact.
- Koivula: No conflict of interest or ex-parte contact.

Andy Limbird Senior Planner presented his staff report with a PowerPoint. The developer of the Marcola Meadows neighborhood initiated a Metro Plan amendment and Zone Change that was approved by the City Council on November 2, 2020 upon adoption of Ordinance 6422. The Applicant is now proposing modifications to the Final Master Plan to bring it into conformity with the adopted Metro Plan diagram amendment and Zoning Map amendment, and to implement the developer's vision for the neighborhood.

The Applicant is requesting to amend some of the conditions of approval. Staff might be okay with some amendments but some of the conditions are there for a reason.

Testimony from the Applicant:

- AKS Engineering; Marie Holliday; 12965 SW Herman Road; Suite 100; Tualatin, Oregon 97062

Testimony in support of the Application: None

Testimony neither in support of nor opposed to the application: None

Testimony opposed to the application: None

Summation by Staff:

- Andy submitted that staff is amendable to revisions to conditions 9 and 10 but not to 3 and 5.
- Assistant City Attorney, Kristina Kraaz is okay with conditions 3, 5 and 9 but wants to work with staff and the applicant regarding condition 10.

Rebuttal from the Applicant:

- AKS Engineering Monty Hurley, PE, PLS; AKS Engineering; 12965 SW Herman Rd Suite 100; Tualatin, OR 97062

Planning Commission Question:

- Kristina Kraaz recommended that the Planning Commission wait to make a decision regarding this application until the Planning Commission makes their decision regarding the Formal Interpretation of Terms requested by Springfield Utility Board 811-20-000248-TYP2.
- The Assistant City Attorney and staff answered the Planning Commission's questions regarding why the decision of these two applications should continue to a date yet to be determined. Application 811-20-000248-TYP2 should be decided prior to application 811-20-000225-TYP3.

Commissioner Koivula requested that the Planning Commission delay the decision regarding application 811-20-000225-TYP3 until staff and the Planning Commission can review the additional information that was submitted late in the process.

There was a discussion on what the timeline would look like for these two applications to get a decision from the Planning Commission.

Commissioner McGinley moved to close the public hearing and to keep the record open for an additional 7 days for public comment and then another 7 days for rebuttal by the applicant prior to the next Planning Commission meeting. Seconded by Commissioner Salazar. Approved 6:0.

Next Public Meeting dates:

- February 2, 2021 for application 811-20-000248-TYP2
- February 17, 2021 for application 811-20-000225-TYP3

Approval of Minutes:

- December 15, 2020- Motion to approve minutes as written by Commissioner Landen and seconded by Commissioner Koivula. Approved 6:0.

Report of Council Action:

- January 4, 2021 – Commissioner Koivula

Business from the Planning Commission:

- Election of Chairperson, Vice Chair and Committee Appointments- After some discussion, the assignments are as follows:
  - Chair: Sophie McGinley
  - Vice-Chair: Andy Landen
  - Council Liaison: Kuri Gill
  - Bicycle Pedestrian Advisory Committee Liaison: Andy Landen
  - Community Development Advisory Committee Liaison: Mike Koivula
  - Governance Committee for Development Code Update Project: Sophie McGinley and Grace Bergen

Business from the Development and Public Works Department: Sandy Belson discussed

- Wetland and Riparian Project and asked the Commission to check-out their new website.
- Housing House Bill 2001 Implementation.

Adjourned: 10:40 p.m.