

Gearhart Planning commission Minutes for May 8, 2025

MEMBERS: Virginia Dideum, Russ Taggard, Don Frank, Eric Halperin, Emerson Fisher, John Mesberg, and Jennifer Grey

STAFF: Chad Sweet, Peter Watts, Garrett Phillips, and Angoleana Torres

Minutes

The regular meeting of the Gearhart Planning commission for Thursday, May 8, 2025, was called to order at 6:00 p.m. by President Virginia Dideum. *Staff members present were Chad Sweet, Garrett Phillips & Angoleana Torres.*

CONSENT AGENDA

On MOTION by Taggard, 2nd by Mesberg, the consent agenda was approved as presented with minutes edit. Said agenda approved Minutes for March 13, 2025, financial report for April 30, 2025. No Correspondence

7 - Approved (Dideum, Taggard, Grey, Halperin, Frank, Mesberg, Fisher)

0 – Opposed

STAFF REPORT

Sweet provided a staff report highlighting several ongoing and upcoming initiatives. A summary report on the implementation of the tree ordinance was made available to Planning commissioners, outlining the number of tree permits issued, the operational processes involved, and the staff time dedicated to administration. This report had also been presented to the city council the evening prior. Sweet noted that the ordinance has now been in effect for a few months, allowing staff to begin evaluating its practical impacts. Additionally, the city of Gearhart has officially submitted its water rights application, which marks a significant step toward securing independent water resources and reducing reliance on water purchases from the city of Warrenton. The city is currently awaiting feedback from the Oregon Water Resources Department. Important upcoming events were announced, the city Budget Committee meeting is scheduled for Tuesday, May 13th at 6:00 p.m. in the Council Chambers, and a Public Safety Building Community Forum will be held on Monday, May 19th from 6:00 p.m. to 7:30 p.m. at the Gearhart Volunteer Fire Department. During the forum, architects will present two refined design options for the proposed public safety building, discuss cost estimates and two options. Small groups will be facilitated for discussions for public input. Lastly, the Gearhart Firefighters' Ball is scheduled for Saturday, May 24th at 8:00 p.m., featuring traditional fundraising activities like blackjack and merchandise sales. Proceeds will go toward the purchase of essential emergency equipment used by the fire department.

COMMISSIONERS REPORT - None

VISITORS COMMENTS – None

PUBLIC HEARINGS

Dideum opened the public hearing at 6:12 p.m. on File #25-03TREE – Major Tree Permit to remove two trees exceeding 55 inches in diameter at 101 S. Cottage Ave. further described as asset Assessors Plat 61010BB06900.

Dideum read the hearing disclosure and asked if any planning commissioners had personal biases or conflicts to disclose. Mesberg noted that his sister-in-law lives across the street from the subject property and knows the owners and questioned whether this constituted a conflict. Watts responded that under Oregon law, the threshold for bias is very high. A commissioner is considered biased only if they have already made up their mind and are unwilling to change it based on evidence presented during the hearing. Citing legal precedent, Watts explained that having an opinion or personal connection does not necessarily equate to bias, as long as the commissioner is open to considering all evidence.

Based on this clarification, Mesberg chose to withdraw his initial intent to recuse himself from the hearing. Dideum, Fisher, Grey, Halperin, Frank, Taggard and Mesberg all visited the site. No conflict.

Dideum asked the audience if there were any concerns or challenges regarding the commission's ability to render an impartial decision. – No Challenges.

Phillips presented the staff report for the city's first major tree removal permit application since recent amendments to the zoning ordinance, which added new exceptions and protections for trees. The application involves the proposed removal of three trees, two of which meet the ordinance's definition of "55-inch trees" and therefore require a major tree removal permit, a decision that falls to the planning commission. Phillips explained that staff determined the request did not meet any of the listed exception criteria in the ordinance based on the original application. However, since the staff report was published, the applicant submitted additional documentation titled Tree Assessment for Removal Permit Proposal. The report provides updated justification for removal, citing safety and health concerns, including trees located too close to a fire pit, requiring regular trimming by the utility company due to proximity to power lines, and damage to one tree caused by chains that have become embedded in the trunk. Phillips explained that the chains are girdling the tree, cutting into the bark and restricting growth, which has led to splitting in the bark and compromised the tree's health. He noted that the fire pit appears to be a fixed and intentional landscape feature, not a temporary one. Phillips emphasized that because this is the first application under the revised ordinance, staff is not making a formal recommendation, and the planning commission has full discretion to interpret and apply the approval criteria. No public testimony was received.

Watts commented on ambiguity in the zoning code regarding the "solar access" criterion for tree removal. He noted that it could be interpreted in two ways: either as access to sunlight for solar panels or as general access to sunlight for uses such as gardening or enjoying a sunny yard. He suggested that either interpretation could be valid and possibly relevant in the current application, referencing a photo where the sun appears to be directly behind one of the trees, potentially supporting the applicant's claim of blocked sunlight. Watts concluded by stating that, in his view, this specific criterion is more ambiguous than others.

APPLICANTS TESTIMONY

Brett & Michelle McGinnis – 101 S Cottage Ave, Gearhart, OR. 97138 –

Michelle testified that they purchased the home three to four years ago and have since made significant interior and exterior improvements. They are now focused on the yard and intend to make the property their full-time residence upon retirement. They requested removal of the trees due to poor health as noted in the arborist's report,

and ongoing aggressive pruning by Pacific Power, which has left the trees as large stumps with minimal foliage above the power lines. She expressed interest in replanting more manageable trees that wouldn't interfere with power lines, pose safety risks, or drop debris on the house, while also allowing more sunlight into the yard.

Brett further testified that the existing trees are clearly in poor condition, particularly one with a chain embedded in it for decades. They noted the trees' abnormal growth patterns, multiple trunks rather than a single healthy one, suggesting long-term structural issues. They emphasized commitment not just to remove the trees but to replant them with more suitable species. Their landscape architect is leading the effort, and the planned replacement trees would grow to about 15–20 feet, providing some canopy while allowing more sunlight into the backyard. The applicant expressed a personal connection to the property and Gearhart, sharing that they were married in town and wish to continue enjoying and improving the space.

Commissioners posed several questions to the applicant to clarify details about the tree removal request. They inquired about the type of existing trees, which the applicant identified as likely shore pines, distinct from the more common spruce pines. The presence of chains embedded in one of the trees was discussed, with the applicant speculating they were remnants of a hammock setup from a previous owner. Commissioners noted the arborist report's mention of girdling from the chains and asked the applicant to confirm this concern, along with the observed split trunks, which can indicate future structural hazards. The applicant affirmed both issues and shared that tree debris, particularly pine needles, frequently accumulates on the roof due to southern winds, necessitating regular gutter cleaning. Questions were also raised about the applicant's replanting plan, specifically whether trees would be planted in the same area and if the proposed number might be excessive. The applicant explained that a landscape architect is guiding the planting plan, which includes trees better suited for the site that will grow to a more manageable height and allow for increased sunlight in the yard. There was an explanation provided of "included bark seams" and their impact on tree stability to contextualize concerns raised in the arborist report.

In response to questions about their replanting plan, the applicants explained that their landscape architect, Craig, had convinced them of the design after seeing a similar project he completed in Portland. They were impressed by the aesthetic and privacy benefits the proposed canopy would provide, especially in screening the house from the street and a nearby light pole. The replacement trees will be thinner in trunk, each with multiple stems, and will be approximately 10 feet tall upon planting. These trees will be placed on both sides of the cottage with a pathway underneath, offering both visual appeal and some noise buffering. The applicants acknowledged they are not professionals but are excited about the design and eager to enhance their enjoyment of the property.

Proponents: None

Opponents: None

Neutral: None

Dideum closed the public hearing at 6:30 pm.

Frank questioned whether the application had been included in the April 14th tree ordinance performance report. Staff clarified that it had not been included in the main body but was mentioned at the end as part of that evening's agenda. He inquired whether the applicant had been denied by staff and if it was their right to appeal to the planning commission, to which staff confirmed that such an appeal is allowed. It was also noted that filing a major tree removal permit in the city currently costs \$0.

Mesberg expressed support for approving the application, citing the applicant's plan to plant new trees, the thoughtful landscaping, and their experience with the tree species in question. Another commissioner voiced support but raised a legal concern regarding precedent, noting that the application doesn't clearly meet the permit requirements aside from a potential solar access argument, which was not a focus in the applicant's testimony. Despite this, they believed the end result would be a visual improvement and benefit the neighborhood.

Watts explained that the commission must interpret the application's facts carefully and apply the new standards as a quasi-judicial body. He noted the presence of a fire pit near the trees and suggested the commission consider whether it is reasonable to believe embers could pose a fire risk. Watts emphasized that different commissioners might reasonably arrive at different conclusions about that risk. He highlighted the importance of balancing the applicant's desire for lower tree canopy and some sunlight, noting testimony about power lines near the trees, which can raise safety concerns since power line proximity to trees has been linked to fire hazards elsewhere. Watts also discussed the unique physical characteristics of the trees involved, such as multiple trunks at a height of 4.5 feet, which may affect safety considerations. He advised the commission to determine if the fire pit and power line proximity create actual safety issues and to weigh additional factors raised during testimony, such as the type of foliage (leaves versus needles) and solar access to the yard. Watts clarified that the commission has flexibility in how to interpret "solar access," whether meaning sunlight for a yard or a solar panel and should apply whichever interpretation seems reasonable based on the evidence. He cautioned that if the fire pit is deemed a safety hazard due to its proximity to trees, mitigation measures would be appropriate. He also noted that consistency with past decisions matters: if similar cases involved fire pits near trees deemed hazardous, the commission could reference this precedent. Watts highlighted that some concerns, like the unique condition of the tree trunks girded with a chain, may be specific to this case, potentially distinguishing it from future applications.

Emerson expressed concern after reviewing the photos presented, stating they clearly show the trees have structural defects that will likely pose a fire or safety hazard now or in the future. He pointed out a specific photo illustrating power lines running through tree branches, noting that while the visible cable was for TV and not electrical power, such proximity complicates safe installation and maintenance. Taggard raised confusion regarding references to tree sizes, specifically about the significance of trees measuring 55 inches versus 37 inches in diameter and questioned whether the city council had previously denied permits for trees over 55 inches, implying these larger trees might be considered more critical in permit decisions. The discussion highlighted safety concerns related to the condition and location of the trees and the importance of understanding size thresholds in permit approvals.

Sweet explained that following the adoption of the tree ordinance, staff sought clarification through a work session due to lingering questions about its application. During that session, most of the council confirmed their intention that trees measuring 55 inches or more in diameter cannot be removed unless they meet the specific criteria required for a major tree removal permit, such as being dead, diseased, dying, or posing a legitimate issue like obstructing solar access. As a result, one of the trees in the current application, which is under 55 inches, was approved for removal by staff. However, the remaining two, being over the 55-inch threshold, were not approved by Sweet, as he stated he is not qualified to determine the long-term health or structural risk of a tree. The applicant subsequently consulted a tree specialist, who provided the photos used to support their case.

Taggard sought clarification on the tree ordinance, specifically questioning the process when a tree over 55 inches in diameter is not allowed to be cut down unless it meets certain criteria. He expressed concern, stating that in their view, the trees in question should be removed despite the size restriction, suggesting a disconnect between the intent of the ordinance and the observed conditions of the trees.

Sweet clarified that although the ordinance prohibits removing trees over 55 inches in diameter unless specific conditions are met, the Planning commission still has discretion. She explained that the ordinance outlines criteria provided in the council packet, that the Commission can use to determine whether the trees qualify for removal under a major tree permit. If the trees meet any of the listed conditions, such as safety concerns or solar access, the commission has the authority to approve their removal.

Watts advised the commission that if they believe the trees pose a public safety issue or impact solar access, those are valid grounds under the ordinance to approve removal. While concerns about tree health were mentioned, he noted there wasn't strong evidence in the record to determine the trees are diseased. However, Watts emphasized that only one of the listed criteria—public safety, solar access, or health, is required to justify approval of a major tree permit.

Taggard expressed that although the trees in question technically meet the 55-inch threshold set by the ordinance, they personally do not view them as significant trees due to their structure, specifically, that they have already branched from a single trunk into multiple smaller ones. He acknowledged the ordinance's criteria but emphasized their broader perspective that these particular trees may not warrant protection based solely on their size.

Watts explained that he and Garrett initially had differing interpretations of the tree ordinance, which prompted a city council work session for clarification. Watts had believed that only trees over 55 inches required special criteria to be removed, while trees between 37 and 55 inches could generally be removed unless designated heritage trees. Garrett, however, interpreted the ordinance to mean that trees over 55 inches could not be removed unless they met specific criteria, and council ultimately agreed with Garrett's interpretation. This clarified that removal of trees over 55 inches requires meeting at least one of the ordinance's exceptions, public safety, solar access, or health. Watts emphasized that commissioners must now weigh the evidence and determine whether any of those exceptions apply in this case. He also noted ongoing discussions with the council about potentially expanding the list of exceptions, acknowledging that many trees in town exceed the 55-inch threshold.

Taggard expressed concern that the three established criteria, public safety, solar access, and tree health, might be too narrow and limiting. While acknowledging that, in this case, the power lines and solar access could justify removal under the ordinance, they suggested that the ordinance itself may be flawed. He implied that a broader, more subjective standard might be necessary to allow for reasonable decision-making in complex or unique situations not fully covered by the current criteria.

Halperin pointed out a contradiction between the applicant's responses on the tree removal application and the tree assessment provided. The application answered "no" to whether the trees posed a safety hazard, were diseased, or were being removed for solar access. However, the accompanying arborist assessment indicated otherwise, citing safety concerns related to a fire pit and power lines, and signs of disease such as bark inclusion. He emphasized that, despite the application's answers, the evidence in the report supports removal under the criteria of safety and health, and recommended approval on those grounds.

Grey expressed concern over the inadequacy of the arborist inspection report. They noted that while the report included observations, such as bark seams, a nearby fire pit, and girdling roots, it lacked clear conclusions or recommendations regarding the health or safety of the trees. She highlighted that terms like "bark seams" had to be independently researched due to lack of explanation, and no timeline or definitive statements were provided about whether the trees posed an imminent hazard. The chain girdling was noted to affect only one of the two trees over 55 inches in diameter, leaving the status of the second tree unsubstantiated. She emphasized that, based

solely on the report, they did not believe there was enough evidence to justify granting the removal permit. However, while personally uncomfortable with the limited information, they acknowledged the possibility of safety concerns and stated they would defer to the broader commission's decision and not vote against it.

Watts advised the commission to consider the totality of the evidence presented when making their decision. This includes input from the city planner, his own legal guidance, testimony from the applicants, the arborist's report, despite its limitations and supplemental information provided by staff to clarify technical terms. Watts acknowledged that the evidence might not be ideal or complete but emphasized that the commission should evaluate all available information and assign it the weight they believe it deserves in order to make an informed and legally sound decision.

Mesberg expressed concern that the original application did not clearly state any of the required conditions, such as safety hazards or disease, that would justify tree removal, which is troubling. They suggested that the applicants should consider withdrawing their current application and resubmitting one that explicitly identifies at least one qualifying condition outlined in the ordinance, since the existing application specifically denies those conditions, making it difficult for the commission to properly evaluate or approve the request.

Watts clarified that although the original application submitted in March did not identify any qualifying criteria for tree removal, the applicants have since provided supplemental evidence that can be considered in the commission's decision-making. He emphasized that the applicants may have gained a better understanding of the process since their initial submission and have now submitted additional testimony, including input from an arborist. Watts acknowledged the challenge of interpreting vague terms like "solar access" and "needle dropping," noting that this is the first time the commission is discussing those standards without any guidance from the city council. Because there is no appeal process for the commission's decision, he stressed the importance of providing clear reasoning based on one or more of the ordinance's criteria, such as power lines, fire hazards, or girdling, to justify approval. He also urged the commission to strive for consistency in applying these criteria so staff can better inform future applicants and avoid contradictory rulings. Lastly, he indicated that if more precise direction is needed, the city council can revise or clarify the ordinance in the future, but for now, the responsibility rests with the commission to interpret and apply the standards.

Grey clarified their understanding of the legal guidance provided by Watts. They confirmed that the commission must clearly state the specific criteria used to justify their decision, whether approving or denying the application.

Dideum affirmed this, emphasizing that any approval must be supported by at least one of the ordinance's allowable criteria, such as public safety, solar access, or tree health, and that the rationale must be clearly documented. It is not enough to simply state approval; a well-reasoned basis tied to the ordinance must be provided.

Dideum expressed concern over the justification provided for tree removal in the application. They confirmed that any decision made by the commission must be supported by clear and specific criteria outlined in the ordinance, not just a general approval. She pointed out inconsistencies in the application, such as the claim that the fire pit posed a safety hazard, despite appearing to be much newer than the trees themselves. They also questioned whether the applicant met any of the ordinance's valid reasons for removal, such as danger or interference with solar panels, stating their belief that the original intent of "solar access" likely referred to solar panels, not general sunlight. She emphasized that the fire pit could be moved and that the purpose of the ordinance was to preserve Gearhart's existing trees. Despite acknowledging the trees may be unattractive and the applicant's intent to replant

smaller trees, she ultimately felt that none of the allowable criteria had been convincingly met to justify removing the existing large trees.

Taggard made a motion to approve the tree removal permit based on reasons for solar access and needle deposits on the roof. Commissioner Mesberg seconded the motion.

On MOTION by Taggard, 2nd by Frank, to approve the tree removal permit based upon solar access and needle deposits on the roof.

Commissioner Don then proposed an amendment to the motion to also include safety hazards due to power lines as a justification for removal, which commissioner Emerson seconded. The commission voted in favor of the amendment, and the motion was officially modified to include safety concerns along with solar access and needle deposits.

On MOTION by Frank, 2nd by Emerson, to amend the motion to include the power line issue with the trees as a safety hazard.

6 - Approved (Taggard, Grey, Halperin, Frank, Mesberg, Fisher),

1 - Opposed (Dideum)

During discussion on the original motion with the amended motion, Commissioner Halperin expressed concern about the strength of the stated reasons. He felt that solar access and needle accumulation were too weak and ambiguous to justify tree removal and warned that approving removals on those grounds could create a broad and problematic precedent. He stated he would support removal based on safety and health hazards, but not on the grounds listed in the current motion, and therefore said he would vote no.

Dideum stated if the amended motion failed, a new motion could be made. Commissioner Halperin indicated he would bring forward a new motion to approve the removal based on safety and health reasons if the current motion was voted down. Dideum also reminded the commission that any conditions of approval, such as requirements for the size of replacement trees, should be included at the time the motion is made so they can be clearly documented in the staff report.

On MOTION by Taggard, as amended by Frank, 2nd by Fisher, to approve the tree removal permit based upon solar access, needle deposits on the roof, and the power line issue as a safety hazard.

Motion Failed

3 - Approved (Taggard, Frank, Fisher),

4 - Opposed (Dideum, Grey, Halperin, Mesberg)

On MOTION by Eric, 2nd by Taggard, to approve the application on the basis that the trees pose safety hazards related to the fire pit and power lines, and that there is evidence of disease, with the condition that the replacement tree plan presented in their application be implemented.

Motion Passed

5 - Approved (Taggard, Halperin, Frank, Mesberg, Fisher),

2 - Opposed (Dideum, Grey)

Dideum opened the public hearing at 7:14 p.m. on File #25-01ZTA – Zoning Text Amendment replacing the entirety of Gearhart Zoning Ordinance Section 3.10 Flood Hazard Overlay Zone with text implementing the Oregon Model Floodplain Management Ordinance including Endangered Species Act Pre-Implementation

Compliance Measures (ESA PICM). The amendment does not change the boundaries of the Flood Hazard Overlay Zone.

Dideum read the hearing disclosure already and asked if any planning commissioners had personal biases or conflicts to disclose. No conflict.

Dideum asked the audience if there were any concerns or challenges regarding the commission's ability to render an impartial decision. – No Challenges.

Garrett Phillips explained that the proposed amendments serve two primary goals:

1. To update Gearhart's zoning ordinance to meet basic flood safety and risk reduction requirements that have been missing for several years, as identified by FEMA and DLCD.
2. To comply with FEMA's implementation of the Endangered Species Act (ESA), specifically the Puget Sound Implementation for Compliance with the Endangered Species Act (PICM), which aims to protect salmon habitat in floodplains. All Oregon communities must adopt compliant ordinances by July 31, 2025.

To achieve these goals, the proposed ordinance:

- Replaces the entire text of the existing flood hazard overlay zone with FEMA's and DLCD's model ordinance, plus additional FEMA-required provisions.
- Does not change the geographic boundaries of the overlay zone—only the regulations within it.

The yellow-highlighted text in the ordinance draft reflects changes required for ESA/PICM compliance, while the non-highlighted text pertains to basic flood safety standards.

Key ESA-related standards include:

- Tree protection: Trees larger than 6 inches in diameter must be replaced if removed, based on mitigation ratios.
- Impervious surface management: Any added surfaces (e.g., driveways or roofs) must either be offset by removing an equivalent amount elsewhere or managed through on-site infiltration (stormwater mitigation).
- Floodplain fill compensation: Any added fill (e.g., dirt, posts, foundations) must be balanced by removing equivalent volume elsewhere to preserve fish habitat.

Additional considerations:

- Stricter mitigation is required for activity within 175 feet of a stream, due to greater impacts on salmon.
- There is a concern about whether the ordinance, as written, provides clear and objective standards for residential development, as required by Oregon law. Staff are monitoring how other cities are addressing this issue.

Phillips noted:

- Gearhart has received written confirmation from FEMA and DLCD that the current draft ordinance would be acceptable.

- Delaying adoption beyond July 31 could jeopardize Gearhart's participation in the National Flood Insurance Program (NFIP), though there is some limited flexibility in timing.
- Staff received one written comment from a citizen requesting clarification about how the standards apply to their property.

He concluded by recommending adoption as soon as possible, with the option to continue discussion at the June planning commission meeting to refine any issues before city council adoption in July.

Dideum expressed confusion and concern about the length and complexity of the draft flood hazard overlay ordinance. He asked if the Planning commission was expected to review and "pick apart" the document in detail that night, as he personally found it overwhelming to analyze thoroughly.

Phillips explained that the draft ordinance is largely based on a model ordinance created by DLCD and FEMA and is intended to be adopted with minimal changes. The non-highlighted text was developed through a stakeholder process involving Oregon local governments and is already in use by many communities. The yellow-highlighted sections were created directly by FEMA (without Oregon's input) and are required to meet Endangered Species Act (ESA) compliance.

Phillips clarified that while the Planning commission has the authority to scrutinize and modify the document, it's not expected to heavily revise it. He offered to walk through the document and highlight key sections if that would be helpful, but emphasized the goal is to adopt it largely as-is due to FEMA and DLCD expectations. He encouraged commissioners to start reviewing it soon if they want to propose changes.

Watts, acting in his legal capacity, began by confirming that the DLCD model language is necessary for the city to adopt in order to comply with state law. He noted that the broader FEMA requirements have been confusing and unpredictable, describing the situation as a "wild ride." He recounted that even after the Governor asked FEMA to pause the implementation, FEMA refused. Recently, Watts heard from an elected official, through Representative Fences' office, that there's a possibility the entire FEMA ESA-related program might be discontinued, though he wasn't sure how likely or accurate that is. This program originated from a lawsuit in Washington and may no longer be a high federal priority.

Watts expressed legal concern about the lack of clear and objective standards in the current draft, echoing Phillips' earlier point. He explained that although Phillips had asked FEMA for guidance on aligning federal requirements with Oregon's legal standards, FEMA refused to weigh in on state compliance matters. Watts concluded by saying the Commission could act on the ordinance tonight or delay until June in case FEMA officially withdraws or changes course, which, given shifting federal priorities, is plausible.

Mesberg clarified confusion about the draft document's formatting, noting that their copy lacked some of the colored text, specifically red and purple italics, that others referenced. However, they did confirm seeing the yellow-green highlighted FEMA language at the end. He pointed out difficulty distinguishing colors in the chamber's lighting and wanted to confirm their understanding of the draft.

He summarized that most of the unhighlighted (black) text appeared to be standard updates recommended by both the city planner and legal counsel, essentially long-overdue housekeeping measures that bring the city's ordinance in line with state standards. He asked for confirmation from staff (Garrett and legal) whether the commission could move forward by adopting all the non-highlighted (non-FEMA) portions now and defer the FEMA-specific

(green/yellow) sections. This would allow the city to make necessary state-level updates without immediately committing to the more controversial FEMA-driven amendments.

Peter Watts explained that if the planning commission wants to move forward by adopting only the Oregon-recommended portions of the draft ordinance at this meeting and holding off on the FEMA-related sections until June, that would be a reasonable approach. He cautioned against adopting FEMA's provisions now, only to reverse them later if the federal government backs away from the program. Watts referenced a credible source closely connected to Representative Bentz and his chief of staff, suggesting that FEMA may soon pull the entire initiative. Given that possibility, Watts believes it would be wise to wait a month for potential clarity.

If by June it's confirmed that FEMA is abandoning the directive, the city can avoid unnecessary regulatory changes. If not, the city would still have time to adopt the FEMA required language in July without jeopardizing compliance. Watts emphasized that FEMA's expectation is "good faith compliance," and given the city's ongoing engagement and communication with FEMA and the state, he feels confident the city has built a strong record of cooperation that would protect residents' FEMA flood insurance status even if there's a short delay.

Mesberg asked Watts whether he would recommend proceeding with adopting only the Oregon based portions of the ordinance and holding off on the FEMA-related components. In response, Taggard questioned the need to delay any part of the ordinance, arguing that the FEMA standards should also be adopted now. He pointed out that homeowners still rely on FEMA policies for insurance, and even if the federal program is in flux or challenged in court, having the standards adopted locally ensures protections are already in place. Taggard suggested that potential litigation between executive and legislative authorities over FEMA's role should not deter the city from acting now to safeguard residents' access to flood insurance.

Watts cautioned that adopting FEMA's proposed language without clear necessity could create legal risks. Specifically, if a property becomes undevelopable due to a regulation the city adopted thinking it was required by FEMA, when in fact it wasn't, this could be problematic. He used the example of the 175-foot setback from the bank, explaining that FEMA's model assumes typical terrain, but doesn't account for variations like steep embankments (e.g., the Grand Canyon analogy). He emphasized that the Governor had asked FEMA to pause implementation due to conflicts between federal and state law, particularly since federal law typically preempts state law when there's a conflict. Watts noted the draft FEMA language was expected in August of the previous year, but significant delays occurred before cities were suddenly put on a compliance clock. With FEMA now possibly reversing course, Watts said the city could adopt the ordinance now if it chooses but should do so understanding the uncertain legal and regulatory implications.

Phillips explained that staffing reductions at both the Department of Land Conservation and Development (DLCD) and FEMA's Region 10 floodplain teams, DLCD from two to one staff member, and FEMA from ten to two, have added to the uncertainty surrounding the FEMA floodplain amendments. Despite these reductions, FEMA has still issued a deadline for adoption. Phillips supported Watts' suggestion that it would be reasonable to wait before adopting FEMA's highlighted language, especially given the uncertainty about its future. He clarified that even if the planning commission recommended adoption of the draft ordinance, staff would not advise the city council to make a final decision in June. However, Phillips emphasized his interest in moving forward with the "black text," which reflects Oregon's baseline regulatory requirements, and separating it from the FEMA-related sections. That said, he reassured the commission there's no obligation to recommend adopting even the state model ordinance right away.

Taggard suggested that rather than the planning commission deciding whether to separate the FEMA specific language from the Oregon required text, that responsibility should be left to the city council. He reasoned that since the city council ultimately makes the final decision; the planning commission could recommend approval of the entire package during the current public hearing. Then, if the council chooses to delay adoption of the FEMA provisions but proceed with the Oregon required “black text,” they could do so at their discretion.

Phillips confirmed that the city council ultimately makes the final decision. He emphasized that if the planning commission chooses to recommend the full package to the council, they should clearly note in their recommendation that the clear and objective standards still require further work. Therefore, the recommendation would not be an unqualified endorsement of the current draft, but rather a conditional one, acknowledging the need for continued refinement.

Halperin asked for clarification about the clear and objective standards for residential development, specifically whether these standards apply to the PICM or if they relate more broadly to the basic safety standards.

Phillips clarified that the clear and objective standards apply broadly to all development standards, specifically including residential development.

Halperin clarified that even if the commission were to recommend approval of the basic safety standards, the black text, there would still remain some ambiguity and lack of clarity concerning the clear and objective standards, including those in the model ordinance platform.

Phillips responded by confirming that the standards endorsed by the State of Oregon meet the clear and objective requirements.

Halperin clarified that the clear and objective standards issue only pertains to the pre-implementation compliance features, which Phillips confirmed. Halperin then raised some minor bookkeeping issues in the draft ordinance, such as numbering errors and typos, suggesting these could be addressed separately, possibly by sending corrections to Torres for revision since she does not have the document on hand.

Dideum agreed that the commission should first decide on the overall approach before tackling such details. He recommended tabling the pre-implementation compliance (PICM) issues due to ongoing uncertainty about their necessity and focusing instead on addressing the basic safety standards. He suggested the commission either approve or reject the basic safety measures tonight to keep the discussion manageable.

Halperin asked Phillips if the document they were considering was the same as the one planned for a vote in January or if it had been changed. Phillips responded that there were two main updates: first, the numbering scheme was revised, and second, an edit was made to create a pathway for applicants to demonstrate that their development would not impact fish, even under a 100-year flood condition. He noted that the practical application of this provision is uncertain and that they would look to other communities with more frequent floodplain permit experience for guidance and lessons learned.

Frank explained that the commission had been prepared to pass the ordinance in January, but due to a storm and the complexity of discussing it over zoom, the decision was postponed, causing a delay of about four months. He acknowledged that while the commission could thoroughly review and debate the details, ultimately, the city council would make the final decision and might take a different approach based on their own views. Frank noted that the draft ordinance incorporates required language from the State of Oregon and FEMA, so the commission might not want to make many changes. He agreed with a colleague, Russ, that giving the city council more time,

through additional meetings in June and July, would allow them to deliberate with clearer information, especially regarding FEMA's intentions. Frank suggested minor editorial fixes could be handled separately but emphasized that because of time constraints and some uncertainties, it was best to pass the draft on to the council, who are the ultimate decision makers.

Mesberg expressed disagreement with the previous approach, recommending that only the "black text" portion of the ordinance be sent to the city council. He argued that there is no need to burden the council with a more complex document that includes the uncertain FEMA related provisions, especially given the unpredictability of FEMA's actions in the coming months. Mesberg suggested excluding the FEMA content at this stage, allowing the council to focus on the clearer, more straightforward "black text" items. He emphasized that this would at least finalize that portion, while FEMA related issues could be addressed separately later, leaving the council the option to decide whether or not to act on FEMA matters in the future.

Grey sought clarification about the document's color coding, asking whether the "theme" includes everything except the yellow sections. She questioned if it's just the black text or more. It was confirmed that the "theme" encompasses everything except the green sections (noting a color difference between versions, where one showed green and the other yellow). She directed the question to Phillips for confirmation on the correct interpretation of the color coding.

Phillips clarified that the yellow or green highlighted text represents the language that would be excluded from the current recommendation. He noted that there is also different text colors used in the document. Phillips explained that if the city council is to proceed with the basic standards, the recommendation would include all the non-highlighted colors, that is, everything except the yellow or green highlighted sections.

Fisher expressed support for the current proposal, agreeing to send everything except the yellow or green highlighted material to the city council. He believes this portion should be approved promptly, while the excluded sections can continue to be worked on and potentially sent to the city council later for their consideration and possible incorporation.

Taggard raised a concern about flood insurance, emphasizing the urgency from months prior to ensuring flood insurance coverage for homes in affected areas. He questioned what would happen if FEMA were to disappear or be canceled since flood insurance is subsidized by FEMA. Commissioners then clarified that while they were separating the text by color to distinguish FEMA related content (yellow/green) from non-FEMA content, this distinction isn't entirely accurate because even the black text covers FEMA required basic safety standards. They agreed that typos and scrivener errors could be sent directly to Angoleana for correction, making the process more efficient without reviewing every page again. It was also discussed that if a motion were made to recommend the city council adopt the text shown in black, red, purple, and blue, leaving the yellow/green text aside, then if between now and June it is confirmed FEMA requirements will proceed, that portion could be brought back for further consideration.

Phillips clarified that while there is still uncertainty surrounding the salmon-related (yellow/green highlighted) FEMA text, it is possible those requirements could be withdrawn. However, if they are not rescinded by June, he would return to the Planning commission to request a recommendation that the city council adopt those provisions in July. He emphasized the importance of being ready to act quickly, both to adopt the standards if necessary or to repeal them promptly if they are no longer required. Phillips concluded by underscoring the risk of inaction, noting that he does not want to be in a position later in the year, such as in December, having to explain to DLCD

or FEMA why the city allowed development to proceed without complying with known standards ahead of the July 31st federal deadline.

Watts stated commission could still submit scrivener's corrections (typos and formatting issues) to staff (Torres and Phillips) prior to final council review.

On MOTION by Mesberg, 2nd by Halperin, to recommend to the city council the adoption of all text in the model floodplain ordinance excluding the chartreuse. This includes the text in black, red, purple, and blue, as well as any italicized text and text highlighted, if present. This recommendation represents the Model Oregon Floodplain Ordinance without the PICM standards, which we understand as addressing the basic FEMA requirements.

UNFINISHED BUSINESS – None

NEW BUSINESS – None

INFORMATION / DISCUSSION – None

CONCERNS OF THE COMMISSION – None

QUESTIONS FOR LAND USE ATTORNEY – None

The meeting was adjourned at 7:57 p.m.

Angoleana R. Torres, Secretary

Approved