



STORMWATER ORDINANCE UPDATE
STAKEHOLDER WORK GROUP
MEETING #9 – June 2, 2009

Water Resources Education Center
4600 SE Columbia Way
Vancouver, Washington
4:00-6 p.m.

The meeting was called to order at 4:05 p.m.

Members Attending

Bill Custis, Eric Golemo, Tim Kraft, Chad McMurry, Stephen Murphy, Annette Griffy, Mike Bomar and Brian Carlson, facilitator

Members Excused

Steve Madsen, Al Schauer, Greg Winters

Staff

Kris Olinger, Mark Hazuka, Dorie Sutton, Nancy Brown, Rhonda Morgan, Mike Swanson, Loretta Callahan, Debbie Navatta

Public

Sean Darcy, Elie Kassab, Bart Hansen, Nancy Olmsted, Larry Moew, Wayne Monroe

Mr. Carlson opened the meeting and asked for comments on last week's minutes. He said he thought they were captured accurately but notify staff if anything is found later on. He said he would like feedback on the draft ordinance and the Council Workshop the previous day. He also said the Work Group could entertain any discussion or proposals that the members, as representatives of their respective groups, may have.

The minutes were accepted by the attending Stakeholder Work Group members.

Mr. Golemo referenced 14.24 and wanted clarification on the word "Permit" used in the ordinances. He said that the Permit is for the City not for developers and that the Work Group had said in previous meetings that they didn't want to have to address the Permit because it is more the responsibility of the City than potential applicants.

Ms. Griffy said the word "Permittee" was replaced with "City, as Permittee" to provide the proper reference.

Mr. Kraft said he thought the challenge staff and anyone else will face in the future is the need to be knowledgeable of four different documents – City codes, the Permit, the Ecology Manual and General Requirements. In addition, he said, some things are different between the Permit and the Stormwater Manual.

Mr. McMurry said that as of right now the City's Attorney's Office has said that General Requirements cannot supersede the other documents.

Mr. Kraft said folks will have to be familiar with all four documents to know what they are required to do.

Mr. Carlson said he didn't see any way around that, and there are some very technical aspects for which applicants will need to rely on engineers for guidance.

Mr. Kraft and Mr. McMurry discussed removing any reference to the Appendix I of the Permit from the ordinances the way that Clark County did.

Ms. Griffy said the General Requirements can be a resource to help bring clarity to that. She said we are putting Permit Appendix 1 in the code as reference because development must comply with it. She added that Appendix 1 of the Phase II Permit is different than Appendix 1 of the Stormwater Manual and that the General Requirements can spell out the details for, say, projects on less than one acre. She pointed out the difference between Phase I and Phase II permits in that regard. She said that if developers used only the Stormwater Manual, they may inadvertently apply a higher standard than is required by the Phase II Permit. The General Requirements are really intended as a clarifying tool, a supplement tool, and why the city hasn't been able to use the language supersede. She said any other manual that would be adopted would still need some direction for local conditions.

Mr. Carlson suggested that the members come back to this discussion of General Requirements at a later time and close out the discussion on the use of the word "Permit." He asked the Members if any of them had found a place where the word "Permit" was used inappropriately. He said he thought it was used properly in context in the appropriate places.

Ms. Griffy said that "Permit" is used in places where it needs to be used.

Mr. McMurry noted he no longer saw it in 14.25 where it had been questioned in previous drafts.

Mr. Kraft referred to Appendix 1 of the Phase II Permit and stated that it is very similar to the Ecology manual but it is difficult to tell where they are different unless you know where to look. He said it could be confusing to someone.

Ms. Griffy said that guidance will be in the General Requirements and that is the purpose and intent of that primary guidance document.

Mr. Carlson said let's use the word Law used - "primacy" - the General Requirements do not have primacy, they clarify. He said the Permit, the RCWs have primacy - the General Requirements supplement and clarify. He said that we can't put something in there that won't

hold up. He added that, in effect, the General Requirements can be overriding but they do not have legal primacy.

Mr. Golemo had concerns with the way the word "Permit" was being used in VMC14.25.100B and asked why new development would comply with the Permit.

Mr. Carlson said that is the exact reason it is in the Applicability section. He said that the City has to make sure that any development that City staff review and approve complies with the Permit. He stated that it is the City's permit and the City is held responsible and accountable.

Mr. Golemo said other cities use the Applicability section to follow the General Requirements and ordinance. The word "Permit" could be confusing but maybe for now we have to leave it there. He said it has to be in compliance.

Mr. Golemo, Mr. Carlson and Ms. Griffy continued to discuss this. Ms. Griffy noted Item A, because it says provisions of the Chapter as defined and regulated by the Permit. Mr. Golemo said if a reference was added to the General Requirements, that might reduce some of the confusion. Ms. Griffy said that was a question for legal staff and she would make note of it.

Mr. McMurry wanted to discuss the hierarchy issue. He said he hoped to take the question to some attorney and look at what language could be added so the city can still comply with its Permit. He said he had received a clarifying email from City legal staff from law regarding definitions. He said that the General Requirements should supersede the State Manual when there are conflicts with local conditions. He said he agrees with the definitions but disagrees with the language that was chosen by legal staff to implement the changes required.

Ms. Griffy said that was a reference in the ordinance to the State Manual but that Mr. McMurry wanted the General Requirements to supersede the State Manual, which was different.

Mr. McMurry said but that is the intent.

Mr. Carlson said he thought Mr. McMurry had said that City legal staff had said what he wanted it to say.

Mr. McMurry said that staff's definition of supplement was to "add to or clarify" but one cannot supersede. He said legal staff will not allow the city to change the language in the Western Washington manual to reflect specifics. He said he agreed 100 percent with staff's definitions but that the city is picking the wrong word to reflect the Stakeholder Group's intent. He said that if he has a project that is allowed by the General Requirements and he is challenged by someone in the community and if the General Requirements do not supersede and he has designed to those and someone says "no, you need to use these because they are more stringent," then he has an immediate conflict.

Ms. Griffy said that the city is clear on intent and it is a word choice.

Mr. McMurry said that legal language dictates how to apply that.

Ms. Griffy said she thought "supersede" was very strong. She said that Law chose "supplement" for the word to be used in the ordinance that would still allow for local conditions.

Mr. Carlson asked Mr. McMurry to come back with very specific language from lawyers that could be considered to resolve the language question.

Mr. Murphy agreed that there could be an open door and the language needs to be reworked.

Ms. Griffy said she has worked with law and they informed her which words can and can not be used.

Mr. McMurry said design by General Requirements.

Mr. Murphy said when someone goes before the Hearing Examiner, the Hearings Examiner will look at intent and overrule.

Mr. McMurry said if the Hearings Examiner works with the definitions out of the law dictionary, he or she won't follow the intent of the Work Group if the language remains as currently proposed. He said he will ask his attorney for specific wording.

Ms. Griffy said it needs to be allowed by Ecology and the Permit. She said that it was agreed to use the General Requirements as a guide for local conditions.

Mr. Bomar asked if the Department of Ecology reviews the General Requirements.

Ms. Griffy replied no.

Mr. Bomar said that the General Requirements should supersede the State manual.

Mr. Carlson said that Mr. Bomar wants the General Requirements to have primacy but they don't. He added that they do have to be equivalent.

Ms. Griffy said this was a roundabout discussion.

Mr. McMurry said that the burden is on developers of the General Requirements to prove equivalency.

Mr. Carlson said the burden is on the City of Vancouver to make sure that the General Requirements meet Ecology's approval. The City can't just pick and choose what it wants to include.

Mr. Bomar said it sounded like it would benefit to get buy off from DOE.

Mr. Carlson said it would be good prudent business practice to ask for DOE blessing of what goes into the General Requirements, because not doing so puts a lot of people at risk.

Audience member Mr. Darcy asked if there was a way to separate it out. He said the General Requirements are intended to be science-supported, and good science supports changes to BMPs in the Western Washington manual.

Mr. Carlson said the City has the burden in the General Requirements and will accept new BMPs and technologies that emerge if staff believes they will work and the City can defend them.

Ms. Griffy said there are a number of things in the County manual that were approved by Ecology - such as infiltration in the "White Paper" - that the City can incorporate into the General Requirements. She said new things will continue to arise and the City needs to be able to document, justify and support any new BMPs in the General Requirements.

Mr. McMurry referred to 14.25.220 and said that the Work Group had worked on differences in the General Requirements less than 1 acre and more than 1 acre sites but the differences are not reflected in the code. He said there should be a pointer to the General Requirements.

Staff member Ms. Olinger said she agreed and had already red lined this section and will revise it.

Mr. Golemo stated that he noticed not much was revised on VMC14.25, page 15, item G, related to capacity and hydraulic requirements.

Ms. Griffy said that she had brought that to the Work Group's attention for suggestions a couple of times but had not received any feedback.

Mr. Golemo suggested adding "increased flows from," to accommodate the "increased flows from the proposed project." He said that would clear up some issues.

Mr. Carlson and Ms. Griffy agreed on the wording.

Ms. Griffy asked if this language would work with sub-basin analysis.

Mr. Golemo said it could. He also provided an example.

Ms. Griffy said that was something different. Future discussions could be on sub-basin plan proposal to look at for General Requirements, but she didn't know if Ecology would agree.

Mr. Carlson said that the primary concern was to be able to make sure that it has the proper authority or control so it can be accommodated.

Ms. Griffy asked if Mr. Golemo was comfortable with this wording.

Mr. Golemo said that it leaves the door open but that wasn't the intent. This is large water bodies. He said it leaves the door open for others.

Ms. Griffy said the focus today is to make sure staff gets the code language correct and staff doesn't want to change the code if it will mean future conflicts.

Mr. Carlson said just like the Critical Areas ordinance, the city can go back and tweak code language if other issues arise.

Mr. McMurry referred to 14.25.210 B and C, and referring to B he said what about when we want to have a water quality facility draining to infiltration facility. He said the Stormwater Manual doesn't leave that door open so we don't require continuous flow model.

Ms. Griffy asked Mr. McMurry what were his concerns about C.

Mr. McMurry said that it didn't account for other documentation from Ecology that is not in the Stormwater Manual or the General Requirements.

Ms. Griffy said BMPs won't be allowed unless Ecology approves.

Mr. Carlson said the language stops short at Stormwater Manual.

Mr. McMurry said that "supplement to" would be appropriate in this case.

Ms. Griffy said that all three, A-B-C, should read similarly. She said this section is all about water quality treatment. She asked if the Work Group thought they could come up with wording that would be consistent for all of those items or do they need to be dealt with separately?

Mr. Murphy asked if B was about water quality

Mr. McMurry said that the whole section is about water quality. He said he thought there could be consistent wording if the General Requirements addressed each of them specifically.

Ms. Griffy said in item C there is still the issue with the fact that some things that Ecology did approve won't be incorporated in the General Requirements and asked how that should be dealt with.

Mr. McMurry asked about BMPs that the City might not accept for public facilities, but might ok for private systems. He mentioned the TAPE program and said that this language doesn't allow for other manuals.

Ms. Griffy said that there are two methods available to address this: 1) Exceptions and 2) administrative updates to the General Requirements.

Mr. McMurry said that his concern is until something new is officially amended in the General Requirements there is a built-in disincentive for someone to use that technology and there is another administrative hurdle to pass in order to apply that.

Mr. Murphy asked the Work Group how they found out about these new technologies.

Mr. McMurry said people like Mr. Darcy, new product announcements, the TAPE program, Ecology, for example.

Mr. Murphy said if you don't use a particular BMP unless you know about it or what it can do, so it makes sense then that you would want these approved first, before they are put into the process.

Audience member Mr. Darcy said there are a variety of things like treatment trains, flow rates that don't match and there are also proprietary systems. He said this sometimes results in a system that is four times bigger than it needs to be.

Mr. McMurry asked how to deal with that. He suggested maybe the way was to go back to the General Requirements and get those administratively handled.

Ms. Olinger said the city does that now.

The Work Group agreed.

Mr. Carlson addressed Mr. Murphy's earlier question and said that there may be something that the City will accept on the private side but not in the public right-of-way which can be clarified in the General Requirements.

Ms. Griffy said that the City does have some pilot BMPs in place.

The Work Group continued to discuss the options for section 14.25.210 A, B, and C until it was concluded that the General Requirements should be added, the Stormwater Manual should be deleted, item B should be deleted, item C would be the new B. Staff said they would take the proposal to City legal staff.

Mr. McMurry referred to 14.25.220, item F on page 15, and asked if the changes were due to the less than 1 acre clause.

Mr. Golemo referred to Basin Plans 14.25.300 on p.18 and asked about Ecology approval. He asked what if Ecology doesn't have the resources to review and approve these.

Ms. Olinger said that the Permit says there has to be approval.

Ms. Griffy said that Ecology gave themselves a mandate.

Mr. Carlson said if there weren't resources to approve them, it would probably be a similar situation to what exists with water rights.

Mr. McMurry reviewed the Exceptions section 14.25.320 and said he had nothing else in 14.24 and 14.25.

Mr. Golemo said that 14.26 looked pretty good and he liked the definition change from "Infiltration Facility" to "Direct Infiltration Facility."

Ms. Griffy reported to the Work Group that Mr. Hoiland met with representatives of the Port of Vancouver just before the beginning of this meeting and that there may be a language change to 14.26.125 B3 on page 14, regarding the list of who must provide notification. She said the Port was looking at language to allow the person responsible for day-to-day operations, to be among those providing notification.

BREAK 5:25

Mr. McMurry referred to 14.24.070B and asked about the 1-acre threshold and what standards apply at what levels. He suggested that the language should be changed as was done in the other section.

Ms. Olinger agreed that this should be fixed to reflect that plans should be prepared according to General Requirements which will refer to the Stormwater Manual. She pointed out new item C regarding the thresholds for SWPPPs.

Mr. Carlson asked Ms. Griffy to briefly outline the next steps for the General Requirements.

Ms. Griffy said that there was understanding last week about this as to what expected, and she referenced what Mr. McMurry had stated then. She referred to the Council Workshop on Monday and said staff had told the Council it wanted to have a draft General Requirements document out for review by the end of June. She said that some items have already been submitted to the Stakeholders for review and that there has been some good feedback.

Mr. Carlson suggested that there be discussions within the week about who should be involved with the technical General Requirements process and when that group will meet.

Mr. Golemo expressed concern about checks and balances and how the General Requirements are adopted. He said he was concerned that the ordinances will be approved and a lot of what's in it, related to flow control, is going to be handled in the General Requirements. He said he'd like to see General Requirements handled by the city working with the community and development and building community. He asked what about basin planning- not studies – what about payment-in-lieu-of for very difficult sites. He wanted to know how that would get addressed.

Mr. McMurry reminded Mr. Golemo that there is recourse. He said Mr. Carlson approves the General Requirements and if we don't like them, then the recourse is to go back to City Council.

Mr. Carlson said they certainly have that recourse.

Mr. Golemo said he wasn't sure City Council understood.

Mr. McMurry referred to the recent Council Workshop and said he thought that Council did now have a better handle on the issues.

Mr. Carlson said if there are any proposals out there regarding the General Requirements, City staff would sure like to hear them.

Ms. Griffy referred to a list of items on proposed changes that she distributed to the Work Group at the second meeting. She said the list has everything Mr. Golemo spoke of except payment-in-lieu. She listed Permit Appendix 1, LID, Applicability for less than 1 acre, Large Water Body Exemption, downstream capacity, placeholder for basin planning, forest and prairie condition analysis. She added that the White Paper in the Clark County manual had been approved by Ecology.

Mr. McMurry said only the infiltration section, not the whole White Paper. He said that the document wasn't finished yet by the ASCE group.

Ms. Griffy said that although it still needs work, the White Paper brings with it a lot of credibility and has the support of the regional professional community. She said it would provide a high level of local condition documentation and asked Mr. McMurry if it could be finished by the end of June so that it might be incorporated into the General Requirements.

Mr. McMurry said that he didn't know if it could be finished by then and that he would have to get the guys going on it.

Ms. Olinger said that it would be nice to be able to refer to that document in the City's General Requirements.

Ms. Griffy said that a scientific paper on local conditions written by ASCE (American Society of Civil Engineers) would carry a lot of weight in the future if changes need to be made.

Mr. McMurry said that it needs to be finished and he would see what he could do.

Ms. Griffy said that it could be included in the General Requirements as a draft. She then continued with the list of items with UIC (Underground Injection Control) rules, which models need consideration, and local calibrations.

Mr. Golemo referred to the Council Workshop the previous afternoon and asked what the public and privates shares would be. He asked about comprehensive watershed plans and payment-in-lieu.

Mr. Carlson said Mr. Golemo was asking about regional facilities.

Mr. Golemo suggested that pipes currently draining stormwater to Burnt Bridge Creek be replaced with perforated pipe.

Ms. Olinger said that could violate UIC rules in certain cases.

Mr. Golemo said it was part of a comprehensive way of looking at flow control.

Ms. Griffy said that there is the practical and then there is Permit compliance. She said that Ecology has the final say.

Mr. Golemo again asked about the consideration for public and private share, and who should pay for structures put in place. He also wanted to know how Exceptions are going to be applied. He said he thinks they are too subjective and he wants some kind of certainty.

Mr. Carlson said not every project reflects a public and private share. He said some difficult projects will likely qualify for Exceptions and that the concern was based on a handful of projects. He said all he had heard so far are very generic proposals. He said that staff is willing roll up their sleeves to work on specific ideas but he hasn't heard or seen any yet.

Mr. Bomar referred to some recent emails and said part of what the County has been looking at is beyond the scope of the Work Group. He asked Mr. Carlson if, looking at ways beyond the scope of this discussion, that might be possible with the City.

Mr. Carlson said that was a "different bus" because that involves going up to Olympia.

Mr. Bomar said that the BIA (Building Industry Association) is looking for local leadership to stand up to DOE (Department of Ecology) for what BIA thinks is a fair ordinance.

Mr. Carlson said he can understand the concern with some of the Ecology requirements. However, he said, that requires a consortium of more than elected officials. He said the City did show that leadership and was part of a coalition of Permittees that did sue. The ruling came out and the City has gone as far as it can down that road by itself. He said it was not only City and County leaders, but leadership from all parties that was needed if the issue were to be addressed, and that was a different bus, to Olympia. He reiterated that changing the Permit is outside the limitations of this Work Group which was asked to focus on ordinances to meet Permit requirements.

Mr. Bomar said that he did not want to undermine what this group has done but that BIA has to stand up for what they believe in. He said that is what BIA is asking for from our leaders, not staff.

Mr. Carlson said that if something does change, the City's ordinances can incorporate those changes and are flexible enough to accommodate them. He then asked if there was anything else. There was not. He announced that this was the last meeting of this group and expressed his appreciation for the group's time and efforts.

Meeting Adjourned 6:10 p.m.