



STORMWATER ORDINANCE UPDATE
STAKEHOLDER WORK GROUP
MEETING #7 - May 20, 2009

Water Resources Education Center
4600 SE Columbia Way
Vancouver, Washington
4:30-6:30 p.m.

The meeting was called to order at 4:32 p.m.

Members Attending

Mike Bomar, Brian Carlson, Bill Custis, Eric Golemo, Annette Griffy, Tim Kraft, Steve Madsen, Chad McMurry, Stephen Murphy, Greg Winters, and Al Schauer, facilitator

Staff

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

Public

Sean Darcy, Carol Panfilio

Mr. Schauer opened the meeting and asked for comments on last week's meeting minutes.

Mr. Murphy said that the break times in the minutes should be 5:37 and 5:45 not 6:37 and 6:45.

Mr. McMurry said that his comment on page 4 should be "would not be able to see."

Mr. Schauer asked if the Work Group finished Flow Control last week during his absence. The Group laughed. He said that next week was scheduled to be the last meeting but the Group is probably not going to be finished by then.

Mr. Carlson said the Work Group still needed to discuss infiltration, flow control and the schedule going forward. He said that a City Council Workshop regarding the ordinances is scheduled for June 1. The goal is to have the Council's first reading of proposed ordinance revisions on June 8 and Council's second reading and public hearing on June 15. The effective date of the proposed revisions would then be set for August 15. He said that the General Requirements clearly aren't going to be finished by ordinance adoption but have a reasonable degree of expectation they may be ready by August 15. He explained how General Requirements are adopted administratively, so the City can be nimble in responding to changes,

such as new approved best management practices (BMPs). He spoke of establishing a process and writing a policy for completing and updating the General Requirements, including an ongoing technical work group to develop and review changes over the next year or two when there are likely to be revisions and supplements that arise.

Mr. Schauer said that the General Requirements must meet Ecology's NPDES Permit requirements and with that general concept the City could be open to changes that meet needs and concerns.

Mr. Carlson said that he wants to set forth a process that could be taken to City Council at the coming workshop, which would make clear how the effort was being handled going forward. Mr. Schauer asked the Group for any comments.

Mr. Murphy asked how the public would know of changes.

Ms. Griffy said that the General Requirements are posted to the City's website. She said the General Requirements are currently updated every two years, are distributed to interested folks, and that there is a process for making requests for changes. She said interested persons can sign up for notification of web page updates, and one consideration would be to set up the site so people are notified as changes are being considered and made..

Mr. Carlson said that the General Requirements are technically oriented rather than policy. He said a lot of things are likely to come up in the next two years that may require changes. He said a process with a schedule may be needed so there is predictability and transparency, yet the City retains the ability to respond quickly to needed changes in the General Requirements.

Mr. Murphy wanted to be sure that outside people know of changes.

Mr. Schauer suggested one option might be an annual review with special meetings.

Mr. Madsen suggested that the process for updating the City's Critical Areas Ordinance could be a model for how this ordinance may evolve.

Mr. Carlson said that he envisioned this process for General Requirements as being more formal than that process.

Mr. Golemo said he is not comfortable and is concerned that once the ordinance is adopted, the process does not allow for a public forum to comment to Council.

Mr. Carlson said that was not correct. He said the public always has the option of going to a City Council meeting every other Monday, and bringing up issues during citizen comment period. He said he hoped, however, people would raise the issues with staff first and try to work out differences at that level. However, if anyone has any issue regarding this process or the results, it can always be taken to Council.

Mr. Murphy asked if the General Requirements were reviewed every six months, would it be done by just city staff or would engineers and outside experts participate.

Mr. Carlson said it would not just be staff, but it will be technical in nature. He reiterated his comments about how the General Requirements are adopted by cities. He said that the administrative oversight provides flexibility and allows a nimble, quick response when needed.

Mr. Golemo said that Clark County finished their General Requirements before the ordinances and they were approved together. He said he didn't think the changes to the General Requirements from that point on needed to be approved by Commissioners, which allowed that flexibility.

Mr. Kraft corrected the County process and said changes to the General Requirements going forward to have to be approved by Commissioners.

Mr. Schauer agreed that everything has to go through the Clark County Commissioners, and he added that makes it part of the political process rather than strictly technical.

Ms. Griffy spoke of the differences between Phase I and Phase II Permits. She said that under the City's Phase II Permit, Vancouver can supplement the State Stormwater Manual, provide local guidance for local conditions, meet the standards of the Permit, but amend over time as new BMPs, LID (low impact development) measures and performance data emerge, which provides the kind of flexibility the Work Group has requested.

Mr. Madsen asked if the City will develop a map of local Prairie conditions that can be incorporated into the General Requirements. He asked if it meets equivalency, will Ecology need to approve that.

Mr. Carlson said he has had some lengthy discussions on that issue and believes if the map is based on credible, valid information, the City will be able to address any challenges that may arise.

Mr. Madsen said without editorializing then, that's how other similar addendums could be handled.

Ms. Griffy agreed but said she also has been told by Ecology to "document, document, document."

Mr. Winters affirmed Ms. Griffy's comment. He said the State will be doing audits in the coming years and that documentation is key so an auditor can clearly see why you do things this way, they can see that's it's because.

Ms. Griffy said that everything still needs to meet water quality protection.

Mr. Winters said that Ed O'Brien emails are documentation. He suggested keeping copies of everything, all public disclosure, for a good audit trail.

Ms. Griffy said she believed that's exactly what the staff has been talking about, putting this out to the public and giving people an opportunity to make comments.

Mr. Madsen said that most challenges will be site specific so he wasn't worried about that.

Mr. Carlson said that there have been discussions that it's appropriate to have a citywide map, not to say in a case-by-case basis someone couldn't do a site analysis.

Mr. McMurry asked if he was hearing "Basin Planning."

A variety of Work Group members said no and laughed.

Ms. Griffy said that it must be based on the best available information at the time.

Mr. Winters said that things will change and that Ecology is looking into revising LIDs.

Mr. Carlson asked if the Group was ready to discuss infiltration and flow control.

Ms. Griffy asked if anyone had any comments on the proposed changes to 14.26 Water Resources Protection in the handout from last week. She said if not, then staff will incorporate.

Mr. McMurry and Mr. Golemo said that they had not yet reviewed.

Mr. Schauer asked for a copy as he did not get one last week. (He was provided one.)

Mr. McMurry asked about the effective date of the General Requirements and was concerned about projects coming in without knowing the "goal posts."

Mr. Carlson asked if Mr. McMurry was asking about vesting. He explained the City's current position on vesting as occurring at Fully Complete, with a caveat of some disclaimer statement for indemnification. He said this position is due to Ecology's recent FAQ statements regarding vesting.

Mr. Golemo said that vesting has nothing to do with an NPDES permit, adding that NPDES is not a development regulation. He said NPDES basically advises that vesting follows local code.

Mr. Carlson said that there are still issues but staff are willing to go down that road.

Ms. Griffy said that the City needs indemnification.

Mr. Carlson said that the City needs to lessen theoretical exposure.

Mr. McMurry provided an example of project timelines and asked how situations of this kind would be handled.

Ms. Griffy said the Work Group has already talked about a lot of it that already has Ecology approval. She said the handouts have some areas that need filling in. She said it can be discussed with staff in the interim period on a case-by-case basis.

Mr. McMurry asked if that meant if someone had a project in the interim they should come to staff, for example, July 1 or July 15, and asked what it looks like going forward.

Ms. Griffy said that it may only be a couple of projects.

Mr. Carlson asked Mr. Winters about the August 16 ordinance adoption and effective dates.

Mr. Winters said that changes have been discussed at Ecology and are currently being digested. He said the modifications should come out mid-June to be effective mid-July.

Ms. Griffy said that with the current economic situation, the number of applications and with the change in vesting, even if the City adopts by a certain date, she didn't know how the 60 window applied. She said the intent is 60 days.

Mr. Schauer said wouldn't it be nice if we had projects.

Mr. Golemo asked about the City code on contingent vesting and why it would be done differently here with vesting at fully complete. A discussion by the Work Group followed.

Mr. McMurry said it is 180 days if the project requires a pre-application conference. If you make completion within 180 days, you're vested as of the pre-app.

Ms. Griffy said there is contingent vesting under land use because the intent might have been fully complete and that's what staff needs to clarify with the City Attorney's Office.

Mr. Carlson said the City will need to clarify this more. He said that the body of case law in this area is not well defined, and there are some interpretations regarding vesting and pollution control requirements, and this is a pollution control requirements, and that's why it's murky.

Ms. Griffy asked Mr. Golemo if his questions were 1) Does contingent vesting apply? and 2) What will the clause to be added?

Mr. Golemo said he had a potential client who found the language in the pre-application presented too much risk. He said that vesting is a significant issue and there is too much uncertainty.

Mr. Carlson said that what the State says is what the City will do.

Audience member Mr. Darcy asked if it would be possible to tie it to publication of the draft General Requirements.

Mr. Golemo and Mr. Carlson said it needs to be on the effective date.

Mr. Carlson said that projects should follow the old approach until the effective date.

Mr. Golemo said if the City sets a date and the process takes longer, there should be some kind of extension if the General Requirements don't get done.

Mr. Madsen found the language for contingent vesting in VMC 20.210.110.

BREAK 5:25 - RESUMED 5:36

Mr. Schauer said he would like to finish the meeting by 6:30. The Work Group agreed.

Ms. Griffy said that the last meeting on Flow Control ended with three areas that affect sites: 1) Prairie condition has been covered and there will be a well-documented map in the General Requirements eventually; 2) Large Water Body Exemption and how it applies to existing sites, especially the downtown area - we want specific, clear code language in 14.25.220G; and 3) Exceptions and the process which is most related to Flow Control but also includes any of the other Minimum Requirements. She said that staff had reviewed the Ecology approved parts of the Clark County Manual and ordinances on Flow Control and staff could not see anything the City would want to or can adopt.

Mr. Kraft asked about the hierarchy and the standard for requiring monitoring for groundwater elevations vs. what Ecology has stated.

Ms. Olinger said that staff had not discussed it yet.

Mr. McMurry said that it requires applications to initially drill and then again to abandon wells.

Ms. Griffy asked if it was in the White paper.

Mr. McMurry said it is only touched on in the White paper as the requirements were in the process of development when the White paper was written.

Mr. Carlson said he doesn't want unnecessary holes in the aquifer and that there are other ways to get that information.

Mr. Golemo said that it pertains to drinking water and going down so many feet below pit, the five foot separation.

Mr. Kraft said Ecology requires three test wells unless groundwater is fifty feet down, Clark County requires one well if groundwater is at fifteen feet.

Mr. Carlson asked if Ecology had weighed in.

Mr. Kraft said Ecology had no problem.

Mr. Carlson said though it won't be 100 percent of the time, the city does have a goal of having as much consistency with the County as possible.

Mr. McMurry asked about setbacks and referred to Clark County.

Ms. Olinger said that there are several things in Clark County Manual that are different than the White paper and State Manual.

Mr. McMurry said that there had been clear guidance from Clark County Health regarding setbacks of open ditches, foundations, etc. from on-site septic systems as required by WAC246-272A Table 4.

Mr. Schauer asked the Work Group if they liked the Clark County approach and wanted City staff to look at it and get back to the Group.

Mr. Carlson asked if there were any other infiltration issues and if the Work Group was good with the single event model.

Mr. Golemo said it looked very well thought out.

Ms. Griffy referred to 14.25.220G on page 15 of the ordinance and said that there have been a lot of comments and discussion but no specific changes or revisions. She said the Group needs to look at this and get it right for the General Requirements. She said we want everyone to be comfortable with the language and that there will still be opportunity for case analyses.

Mr. Madsen asked about the state of the existing infrastructure and what could be done about improving the capacity of that.

Mr. McMurry referred to a project downtown with underground parking and the lot entirely covered by the building. He said the project must infiltrate the sidewalk and street runoff or connect to the storm sewer.

Ms. Griffy said that some areas have capacity analysis and some projects will have to discharge to the City's system.

Mr. McMurry asked if the project engineer will have to dye test all the way to the river.

Mr. Kraft asked about basin analysis.

Ms. Griffy said we do know of tributary areas and not all is infiltration.

Mr. Kraft asked about hydraulic grade line work.

Mr. Carlson asked if the stormwater could not be captured and reused.

Mr. McMurry said that you need a water right.

Mr. Swanson said that nothing is changing and this has nothing to do with adopting the ordinance or the General Requirements. He said that developers still have to prove that they can get the water to the river and that this is nothing new.

Mr. McMurry said that it is critical because changing infiltration to surface discharge subjects us to flow control and we are stuck with a burdensome detention standard.

Mr. Carlson asked if this was something that Exceptions apply to.

Ms. Griffy said that this is a conveyance/capacity question.

Mr. McMurry said that you can't qualify for Large Water Body Exemption unless you can demonstrate that sufficient downstream capacity exists.

Ms. Griffy said that it is similar to what we have today.

Mr. Swanson said that the City does not require ponds downtown but requires infiltration if opportunities exist. He said that this is not too burdensome and that enough information exists.

Mr. Kraft said so one project is going to be allowed to use up all the capacity.

Mr. Swanson said that there is not a lot of surface parking downtown.

Ms. Griffy said that downtown is at full buildout and is 100 percent impervious. She said downtown redevelopment is using less impervious surface and there may be less flow in pipe. She added that some people like LEEDs and LIDs.

Mr. Carlson asked what drainage problems existed downtown.

Mr. Schauer said not much and spoke of a project where there were a number of old drywells.

Mr. McMurry asked if 14.25.220G should refer to the General Requirements.

Ms. Griffy said that was what staff thought. She said there we can define typical cases and specify how conveyance is calculated.

Mr. Schauer asked if there was anything else.

Ms. Griffy referred to the revised Applicability chart. She said it will be modified and be called "Optional Table for Less than 1 Acre." She wanted to confirm that's where everybody is at.

Ms. Olinger said that it is "Use Existing Code" -OR- "Use Minimum Requirements."

The Work Group agreed that it was good.

Ms. Griffy asked if anyone had comments on Exceptions.

Mr. Golemo said it would be great to get the subjectiveness of “person of average sensibilities” out.

Ms. Griffy said that is Ecology's and City Attorney language.

Mr. Golemo asked if an example of an Exception could be included in the General Requirements.

Ms. Griffy said that there is not a threshold and that there's a whole list in the Permit that need to demonstrate.

Mr. Golemo asked what was to be expected.

Ms. Griffy said that we have not gone through this yet with an actual project and don't have enough thresholds. She said there are two other things that need discussion: 1) LID - staff is looking at supplement treatment similar to Clark County ...

Mr. McMurry said that he still wants only specific sections used.

Ms. Griffy said that staff will look at that.

Mr. Hazuka said that Mr. McMurry isn't required to use every section in the LID Manual.

Mr. Swanson asked Mr. McMurry if he was worried about certain BMPs.

Mr. McMurry said yes and site development criteria that would not meet urban requirements, conflicts with zoning.

Mr. Swanson said that it is a guidance manual that the City is simply pointing to.

Mr. Carlson said so if we come up with language ...

Ms. Griffy suggested the word "supplement."

Mr. McMurry said he wants to pull specific sections.

Mr. Schauer suggested the language "they shall use manual for guidance" and said that maybe the word "adoption" is the problem.

Mr. Carlson said that we are on the same page, we need guidance on guidance.

Ms. Griffy asked Mr. Carlson if he wanted to discuss SEPA.

Mr. Carlson said he thinks it will be beneficial to have an additional Work Group meeting followed by an Open House for the public during the first week of June. He said that the SEPA was filed based on the last version of the ordinances but he didn't want anyone to be surprised.

Mr. Schauer said that many have done SEPAs prior to final draft and substantial conformance is what matters.

The Group discussed the best evening during the first week of June for the final meeting. It was determined that Tuesday June 2 would be best for most everyone.

Audience member Mr. Darcy said he recently attended an APWA Stormwater conference and learned that ninety percent of LID manuals do not contain any design. He also mentioned that Pierce County is doing Watershed Characterization.

Mr. Kraft asked if it was like King County's.

Mr. Darcy said it was a little different.

Mr. Schauer asked if there was anything else. There was not.

Adjourned 6:36 p.m.