



STORMWATER ORDINANCE UPDATE  
STAKEHOLDER WORK GROUP  
MEETING #3 - APRIL 22, 2009

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

The meeting was called to order at 4:30 p.m.

Members Attending

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

Staff

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

Public

Sean Darcy, Carol Panfilio

Mr. Schauer opened the meeting and asked if there were any comments on the previous meeting notes. He complimented staff on how well detailed the notes were.

Ms. Griffy said staff is trying to capture the essence of the discussions and asked for comments. She proceeded to introduce Nancy Brown as another note taker who knows short hand. The City is hoping that this will help in capturing notes.

Mr. McMurry said the minutes were good but he would like to see a list of changes. He said he would rather gloss over side comments and identify issues.

Mr. Golemo complimented Debbie on her good work.

Mr. Schauer said that at the end he would like a compilation of notes and a list of the things that take some kind of response.

Ms. Griffy said that staff did put a list together of specific ordinance items and sent it to Law for review. Law suggested a change in format that would provide for tracking changes and the list is in the process of being reformatted. She said she hoped to get that out Thursday or Friday. She

added that the list that was provided last week with the General Requirements is, in part, a list of items that should be addressed prior to the ordinance going into effect.

Mr. Schauer asked if there were any other comments on the minutes. There were none and the minutes of April 15 were accepted.

Mr. Carlson briefed the Work Group about a letter that the City received from John Karpinski on behalf of Clark County Natural Resources Council (CCNRC). The letter, a copy of which was passed out, alleged a breach of a settlement agreement between the City, CCNRC and Rosemere Neighborhood Association (RNA) related to certain stormwater activities. He said he wanted the Group to be aware that there may be a story in the newspaper as reporter Jeff Mize had called for a comment. Mr. Carlson said there is an erroneous statement on page 2 of the letter regarding the Stakeholder group that he wanted to correct. The letter implies that the City did not ask RNA and/or CCNRC to participate in the Stakeholders Group. However, that is not accurate. On March 4, 2009, Mr. Carlson, Ms. Griffy and Ms. Callahan met with Mr. Bertish and Ms. Axel of RNA and invited them to have up to three representatives from that group to participate on the Stakeholder Work Group. On March 9, Mr. Bertish called Ms. Marousek in the City Attorney's office and indicated that RNA was declining to participate. Mr. Karpinski was apparently not aware of those discussions. Mr. Carlson said he spoke with Mr. Karpinski about this late Tuesday afternoon.

A question was asked about the lawsuit. Mr. Carlson indicated that the City was sued by RNA and CCNRC in 2004 alleging that the City was in violation of the Clean Water Act because the City did not have NPDES permit, as it had not yet been issued by Ecology to any of the Phase II municipalities. The City did prevail in the lower courts but that decision was appealed by RNA and CCNRC. Prior to the appeal court proceedings, the City and CCNRC/RNA were required to participate in a court-mandated mediation process to see if the matter could be resolved. Subsequently, the City and CCNRC/RNA did reach an agreement. That agreement addressed several stormwater related items, one of which was the City agreed to adopt those provisions of the Western Washington Stormwater Management Manual required by the NPDES permit within 18 months of that permit's issuance.

Mr. Madsen asked if the City had not received a letter from CCNRC stating that they would not do this.

Mr. Carlson reiterated that his intent in mentioning the letter was simply to prevent any surprises to the Work Group, and he declined to speculate or editorialize on the facts presented.

Mr. Schauer suggested that the Work Group to move on to the Stormwater Control discussion.

### **14.25 Stormwater Control**

#### **14.25.010 Findings and 14.25.020 Purpose**

Ms. Griffy said that most of the Findings and Purpose sections are existing language

#### **14.25.010 C**

Mr. Murphy was curious about the language "share the financial burden."

Mr. Carlson said that this phrase is reference to stormwater fees, and he explained that the City has stormwater fees that are charged on all developed properties within the city. Different fees are charged for different uses, so in essence all property owners contribute. The money is used to pay for things like maintenance of stormwater facilities, monitoring, enforcement, facility inspections, capital work such as the restoration of Burnt Bridge Creek and other retrofits. When future properties develop, those end up paying stormwater fees, too.

Mr. Madsen mentioned commercial tenant improvements.

Mr. McMurry spoke of equitable division of costs using the example his own older neighborhood that has no storm treatment system. He said that if someone wants to redevelop, it isn't fair that person should have to build to the new standards and bear the burden of the entire neighborhood.

Mr. Golemo said that later on we will see what happens with this in other parts of the County. He said there should be equitable payment. If someone puts in an apartment building, will they share the burden of the city as a whole? He said how things get interpreted is critical.

Mr. Schauer considered the legal issue of "occupiers" and stated that this ordinance will not bind someone illegally.

#### **14.25.100 - Applicability**

Mr. McMurry and Mr. Golemo agreed that this is similar to the previous ordinance and that they are still waiting for details.

Mr. Carlson said that the Work Group would not need to repeat the same discussion.

#### **14.25.105 - Adoption of Manuals**

##### **14.25.105 B - Low Impact Development (LID) Manual**

Audience Member Mr. Darcy said that the Puget Sound Low Impact Development (LID) Manual is not actually a design manual.

Mr. Madsen asked if the Clark County had an LID Manual.

Mr. McMurry responded that it is part of the County Stormwater Manual.

Ms. Griffy said that the City is adopting the Puget Sound LID Manual for general guidance and that staff will be reviewing Clark County's and other manuals for more specific local conditions and applications that the City can be included in the General Requirements. There are areas where there will be conflict and areas that need more work.

Mr. Golemo asked if there are any best management practices (BMPs) in the Stormwater Manual that the City is not adopting.

Ms. Griffy answered yes, for example in erosion control, the City does not approve the use of cinder blocks around catch basins as an appropriately protective BMP.

Mr. Madsen suggested that the ordinance should say "LID Manual as supplemented by the General Requirements."

Mr. McMurry said that other design manuals in the state are better and he would love to see any other manual adopted than the Puget Sound LID Manual.

Staff Member Mr. Hazuka said that new updates to the Puget Sound LID Manual are coming in the fall including soils mix and infiltration.

Mr. McMurry said that he will submit an email with recommendations for manuals other than the Puget Sound Manual.

Ms. Griffy said that staff are looking at the LID portion of the County manual and which to incorporate in the City's General Requirements.

Mr. Madsen asked if the last sentence about new development and redevelopment was needed.

Mr. Carlson said that staff will review that last sentence.

Mr. McMurry noted that 14.25.105 F is the same hierarchies discussion as happened last week. He then asked about LID modifications and public right-of-way.

Ms. Griffy said that public right-of-way projects require review by other City departments such as Transportation. On-site public facilities require a different level of review and if the facility meets intent, water quality, etc. of the requirements, some discretion is allowed. She said the City wants to give latitude and flexibility to property owners while providing for water quality and avoiding impacts to adjacent properties.

Mr. McMurry said that from developer's standpoint there is an issue of surety. Flow control and UIC make LID attractive but not knowing how it is going to be applied by the City makes it difficult to advise clients. He asked if Mark and he have a disagreement, what criteria will be used? He wants to have the framework for solving those issues ahead of time.

Ms. Griffy said those were good points. Staff will look at the known tools in the toolbox that can be applied under certain conditions. She said we don't want to go through every BMP every time.

Mr. McMurry and Mr. Madsen discussed categories of BMPs. Mr. McMurry said that approved BMPs in the context of LID is fuzzy.

Mr. Kraft said he had not seen a LID BMP that meets the flow control requirement.

Mr. McMurry said that Ecology does not have an approved list. He said he has a hard time with pervious pavement in Puget Sound LID Manual and finds it excessively restrictive. He pointed

out that the pavement at Grand Central works but it could not be been done today using the Puget Sound LID Manual.

Ms. Griffy said that Grand Central was one the first and staff learned some things. She asked if Mr. McMurry wanted surety before getting involved in a project to understand what the City will approve? She said the City can do that in the General Requirements.

Mr. McMurry said the scope is a little bigger and asked how detailed will that be.

Ms. Griffy said this is a lengthy discussion and that the City wants to have something workable and manageable in the General Requirements. She pointed out that Mark Hazuka is the city staff member that knows LID best.

Staff Member Mr. Hazuka said changes are happening at the state level and in County Manuals and asked the Work Group for other references. He said we have opportunities now to better refine standards for adoption.

Mr. Madsen suggested that City Council can require an ongoing technical advisory committee.

Ms. Griffy reminded everyone that the General Requirements is a living document.

Mr. Madsen stated that he did not want any ad hoc crisis management.

Mr. Shauer said that lot of people are looking at this and that the Work Group should move on.

#### **14.25.106 - Cross References**

Mr. Schauer asked if there were any questions about Cross References. There were none.

#### **14.25.110 - Definitions**

Mr. Golemo asked why so many definitions are crossed out and if it is because they are terms not used in the ordinance.

Ms. Griffy answered yes.

Mr. McMurry wondered about Stormwater site plan thresholds and who is going to do what when.

Mr. Golemo asked why Total maximum daily load (TMDL) in defined here.

Ms. Griffy answered that it is included in anticipation of the completion of Ecology's study.

Mr. Golemo asked if it is anything that the City or developers need to worry about.

Mr. Griffy answered yes, possibly both and mentioned Lacamas Lake. She said the City will not know until the TMDL study is finished.

Mr. Golemo asked if the Underground Injection Control (UIC) definition is consistent with the UIC Manual.

Staff Member Ms. Olinger clarified that it is the Washington Administrative Code (WAC) definition.

Mr. Golemo asked about the depth requirement.

Ms. Griffy replied that the UIC requirements are safer.

#### **14.25.120 - Enforcement**

Mr. Golemo stated that he is not familiar with Vancouver Municipal Code (VMC) 22.

Ms. Griffy said that this is the City's Unified Enforcement Code and is used, for example, in erosion control for fines, enforcement, and appeals.

#### **14.25.130 - Liability**

There were no questions or comments regarding liability.

#### **14.25.200 - Stormwater Site Plan Submittal Requirements**

Mr. Golemo asked if item A meant complying with all adopted Manuals.

Ms. Griffy answered yes.

Audience Member Mr. Darcy asked why "(detention ponds or infiltration facilities)" was included in item B.

Staff Member Ms. Olinger replied that it was added for clarity due as a response to previous public comments.

Mr. McMurry had concerns about the words may and shall.

Mr. Golemo had concerns about adopting the ordinance without manuals in place.

Audience Member Mr. Darcy asked if A and C should be combined.

Ms. Griffy responded that A is an Ecology requirement and C is a City requirement.

Mr. Madsen asked, in regard to B, what, if any, projects do not involve engineering.

Staff Member Mr. Hazuka replied that single family residences might not.

Mr. Carlson asked if Mr. Golemo's question about timelines was answered.

Ms. Griffy agreed that the General Requirements need to be revised along with the ordinance.

Mr. Carlson said that this is a Parking Lot discussion we need to come back to and that it is the effective date of the ordinance matters most.

Mr. Golemo asked if the City will put together an ongoing technical group.

## **BREAK**

### **14.25.210 - Runoff Treatment**

Mr. Golemo suggested that the crossed out a.4.B "shall take precedence" should be the language used 14.25.105F.

Mr. McMurry said that one of the concerns is several new technologies coming on board and the State is withdrawing funding to adopt those new methods. We really ought to be thinking about some new mechanism by which we can bring in alternative BMPs, but they are killing that program. How do we move forward in treatment? If Ecology isn't going to review new technologies and products, how do we make that happen? We have the opportunity to adopt an equivalent that would meet the need and give us access to tools to meet stringent requirements we are being asked to meet.

Ms. Griffy said it is Ecology's decision.

Audience Member Mr. Darcy said that King County experimental pilot program with monitoring requirements.

Mr. Carlson asked what amount of discretion he has as Public Works Director to approve these things.

Ms. Griffy answered that it has to be approved by Ecology and suggested that advancements may be made through Phase I testing.

Audience Member Mr. Darcy said they are only testing existing BMPs not new ones.

Mr. Carlson said he did not know how to solve this and suggested the Group come back to this when Mr. Winters returned.

### **14.25.215 - Source Control**

Mr. McMurry, Mr. Hazuka and Mr. Kraft discussed VMC 14.26, thresholds and the language.

Ms. Griffy said that staff will look into this before we get to 14.26.

### **14.25.220 - Flow Control**

Audience Member Mr. Darcy asked about the language in item B natural drainage flow.

Staff Members Mr. Hazuka and Ms. Olinger both replied that the language is from the Permit.

Mr. McMurry asked if discussion about flow control should happen here or during the General Requirements discussion. He said there are significantly impacted areas of the City.

Ms. Griffy asked him if he wanted a whole two-hour session for this.

Mr. Carlson asked if it should be done at the next meeting. He said it may be a meeting all by itself.

Mr. Kraft asked if the Work Group had approved any of this. He said that there is nothing in here to talk about.

#### **14.25.220 G Sufficient downstream capacity**

Mr. Madsen, referencing item G, asked if there are receiving bodies where the hydrology and hydraulics have not been established.

Mr. McMurry said that overall developers cannot increase or exacerbate. He said you have to demonstrate it is an existing problem and that nothing is being done to make it worse. He also asked about large water body slope projects.

Mr. Golemo added that downstream analysis must demonstrate no impacts and provided an example of an 8" pipe on-site but the downstream culvert still will not have enough capacity.

Mr. Madsen asked about Mr. Karpinski's comment on 99% of all projects.

#### **MR. WINTERS RETURNED TO THE MEETING**

Ms. Griffy said staff spent a lot of time crafting this language for just those situations, particularly regarding development in downtown Vancouver. She said there can be low impact development and sufficient capacity can be demonstrated. She added that this would be a really good topic for a technical group to look at different cases, a number of scenarios to make sure we get the wording right and to make sure this correctly addresses concerns about surety.

Mr. Golemo asked about emergency overflow.

Ms. Griffy said that there is a requirement for emergency over flow but that this code does not stand in the way of working that out. She suggested the topic be revisited in the upcoming discussion of flow control.

Audience Member Mr. Darcy asked if the point should be made that this doesn't apply to groundwater.

Mr. McMurry said that the conveyance system would not allow groundwater.

Staff Member Ms. Olinger said that the City does not want to preclude the rest of the City's system and mention the Cascade Park interconnected drywells as an example.

#### **14.25.220 F Hydrologic and hydraulic analysis**

Mr. McMurry asked about the Clark County version of Western Washington Hydrology Model (WWHM). He said he wants the Clark County inputs for rainfall data, soils, calibration, etc. but without the County's restriction to use WWHM.

Ms. Griffy said that was a good question and asked if it needs to be codified or is it ok to include in the General Requirements.

Staff Member Mr. Hazuka said maybe if Ecology approves the inputs to Flood.

Staff Member Ms. Olinger said that the City uses the free version because the City does not have any money.

Mr. Kraft asked if item F should be in the Flow Control section.

Staff Member Ms. Olinger replied that staff was going to change that but ran out of time.

Ms. Griffy said that local conditions can be addressed in the General Requirements.

Mr. Golemo said that there is no reference to the General Requirements and it needs to be added.

Ms. Griffy directed him to look at item C and said the reference can also be added here.

#### **At 6:18 p.m. Mr. Schauer requested Comments from Audience**

Audience Member Mr. Darcy asked to go back to Mr. Winters and the questions about new BMP approvals.

Mr. McMurry asked Mr. Winters what local jurisdictions can do to approve new BMPs and what latitude there is to adopt processes for local BMPs.

Mr. Winters replied that he had no idea and would not know until Ecology's budget comes out.

Audience Member Mr. Darcy said that the City of Tacoma will accept new technologies with monitoring.

Mr. Carlson asked if this is approved by Ecology.

Audience Member Mr. Darcy said no.

Mr. Madsen said that it probably will not violate the Permit but that nobody has the guts to try it.

Mr. Carlson asked if it needs to be approved by Ecology. He said we all need to know.

Mr. Madsen said it is not out of compliance if it meets the standard.

Mr. Schauer mentioned the risk of third party lawsuits.

Mr. Winters suggested sending emails to Ed O'Brien at Ecology.

Mr. Golemo wondered if Ecology is passing on responsibility.

Mr. Carlson said that would be considered an unfunded mandate.

Ms. Griffy expressed concerned about the risk.

Mr. Madsen said we can still submit proposals.

Ms. Griffy asked what the Phase I's were doing with this issue.

Audience Member Mr. Darcy said that Tacoma is the only one and King County has pilot projects.

Mr. Kraft asked if Tacoma received a Notice of Violation.

Mr. McMurry said that Tacoma is on the March 18 Equivalent list.

Mr. Winters responded that the public comment period is open until May 1 and Tacoma cannot be approved until the public process is complete.

Mr. Schauer said that the Stakeholders had not solved anything in this section and asked if next week the Group should finish 14.25 or revisit flow control. It was determined that the Group will “park” flow control and move on to the next 14.25 section.

**The meeting adjourned at 6:37 pm.**