



STORMWATER ORDINANCE UPDATE
STAKEHOLDER WORK GROUP
MEETING #8 - May 27, 2009

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

The meeting was called to order at 4:33 p.m.

Members Attending

Mike Bomar, Brian Carlson, Annette Griffy, Chad McMurry, Stephen Murphy, Greg Winters, and Al Schauer, facilitator

Members Excused

Bill Custis, Eric Golemo, Tim Kraft, Steve Madsen

Staff

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

Public

Sean Darcy

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

Mr. McMurry asked if the draft ordinances were ready.

Ms. Griffy said that the revised drafts were sent to the City Attorney last Friday and she had only received one ordinance back one hour before the meeting. She said that the revised Table of Suggestions, which included many of those ordinance revisions, was available for discussion at this meeting.

Mr. McMurry had comments regarding changes to last week's minutes. He said that on page 7 he was not referring to the UIC rules but to setbacks from on-site sewer systems of open ditches, foundations, etc. as required by WAC246-272A Table 4. He said that on page 8 he intended the comment to include that one must demonstrate "that sufficient downstream capacity exists."

Mr. Carlson spoke of last week's questions regarding contingent vesting and said that vesting will be applied for these ordinances the same way as in VMC 20.210.

Ms. Griffy referred to the Stakeholders Suggestions Table with 43 items and suggested the Work Group look most closely at the "open items."

Mr. Schauer suggested concentrating on the most controversial of the items.

Ms. Griffy pointed out item number 3 and said that staff is still working on the Applicability chart.

Ms. Olinger said that she is pretty close to finishing it. She also stated that it will pretty much stay the same with only very small revisions.

Mr. McMurry asked about the Manual and hierarchy.

Ms. Griffy said there are still questions.

Mr. Carlson asked if it was still open because of review by Law.

Ms. Griffy said that the word "supplemental" was acceptable by Law, but "supersede" was not.

Mr. McMurry said that using "supplement" instead of "supersedes" will cause the General Requirements to lose the pushing match if a project is appealed.

Ms. Griffy said that the intent is the same but it is a matter of making it defensible.

Mr. Carlson said that Work Group members, including the City, are all still on the same page.

Audience member Mr. Darcy asked if the State Manual could be referred to as guidance.

Mr. Schauer recalled a recent RCW/WAC issue where the WAC ruled because it was a clarification of the RCW.

Mr. Carlson said that there are two purposes for the General Requirements - supplement and clarification.

Mr. McMurry is concerned about the "most stringent" language and that we will end up not doing what we wanted to do.

Mr. Winters said that the language in Appendix 1 of the Permit rules.

Mr. Schauer said yes, as long as Appendix 1 is clear.

Ms. Griffy said that she would take it back to Law. She said that the General Requirements would be used for each specification, for local conditions and justification. She said the message

is document, document, document. However, she said, that doesn't necessarily answer any questions the Hearings Examiner may have.

Mr. McMurry wondered if "supplement" might mean something different in legal terminology.

*[NOTE: Definition from Black's Law Dictionary - **Supplemental**. That which is added to a thing to complete it. See also Amendment.]*

Mr. Schauer said that he didn't see any other controversial issues on Table pages one and two, and recommended moving along to page three.

Ms. Griffy pointed out items 17, 18 and 19 regarding Erosion Control Plans and said that the question is SWPPPs and Applicability.

Ms. Olinger said that if a project requires a SWPPP, then just submit that for the Erosion Control Plan.

Ms. Griffy added that the city wants to make sure it's not required to have a SWPPP for less than an acre.

On page four, Ms. Griffy referred to item 22 regarding Adjustments and said many of these issues occur between the Staff Report and Final Design in the civil review process. She said that staff has been researching the processes in Phase I communities and that it appears this would be most adequately clarified in the General Requirements rather than in the ordinance.

Ms. Olinger referred to these as "technical deviations."

Mr. McMurry asked if that meant a modification to the Minimum Requirement for Flow Control would be an Adjustment or an Exception.

Ms. Griffy said that would be an Exception.

Mr. McMurry said that this is a different approach than when the Work Group started.

Ms. Griffy said that it was consistent with the Permit and process.

Mr. McMurry said he wasn't sure he liked that.

Mr. Schauer referred to item 24 and said he didn't remember a discussion about TMDL in the ordinance.

Ms. Griffy said that TMDL is defined but not used at this time in the ordinance. She said the TMDL on Burnt Bridge Creek is in progress and that TMDL was included in the ordinance in anticipation of future requirements. She said by including it in the definitions, it may not be necessary to do an ordinance revision for that in the future.

Audience member Mr. Darcy referred to item 2 and asked why water bodies that will be included by annexations in the future couldn't be included in the ordinance now.

Ms. Griffy said it has to do with Law. These ordinance changes are to be specific to permit items.

Mr. Schauer asked if there had been any feedback from Law regarding item 29, LID.

Ms. Griffy said that it was still a hierarchy issue. She said the city will need to adopt the LID Manual. She said allowable better design and BMPs (best management practices) can be specified in the General Requirements.

Mr. Carlson asked why the issue was still open.

Ms. Griffy said that some still don't like the Puget Sound LID Manual and that we need to clarify the intent and make sure the language is correct. She said the issue is open in the sense of getting language that is legally defensible and gets to the intent.

Mr. Murphy referred to item 32 and the deletion of Minimum Requirement 9. He said he had number 7 in his notes.

Mr. McMurry and Ms. Olinger said that is allowed by section 7 of the Permit Appendix 1.

Mr. McMurry referred to item 31 and said the information he had provided earlier that day regarding septic drainfields, setbacks and the WAC can be addressed in the General Requirements later as a Technical Work Group goes through those revisions.

Mr. Carlson asked about item 30, Wetlands.

Mr. McMurry asked how item 30 fits with Minimum Requirement 8 and the Critical Areas Ordinance.

Ms. Griffy said that Law said this is standard consistent language and that there are often inadvertent conflicts. She said as there will probably be conflicts, which code do we change?

Mr. Carlson said so when dealing with code, the more stringent "shall" is used instead of "may." He then asked about item 38 and where the definition for "Municipal Waste" came from.

Staff member Ms. Morgan said that Mr. Golemo had questions regarding municipal waste disposal sites and Mr. Hoiland had added the definition in response.

Ms. Olinger said it was on page 8 of 14.26.

Mr. Carlson said that there was more to it than that and the definition need to be fixed.

Mr. Bomar referred to item 35 and asked whose discretion determined "severe and unexpected economic hardship."

Mr. Carlson said it would be the City's.

Mr. Bomar asked if the City had any guidance to determine.

Mr. Carlson said it refers to truly unintended consequences in situations that had not been contemplated at the time of writing the original regulation. He said these situations are clear when they arise.

Mr. Winters said that it could be an extreme weather event.

Mr. Bomar asked if there was any case law as precedence.

Mr. Carlson asked whether some case law was needed to provide guidance. He said that this needs to be clarified by Law.

Mr. Schauer remembered Mr. Madsen had talked of this phrase. He said he thought that Mr. Madsen felt, from the development community's standpoint, that it needs to be vague because you don't want it to be so hard and fast that you don't have any options.

Mr. Carlson asked what the benchmark was and if it was necessary to go back to the original code when something that was never expected happens.

Mr. Winters related recent problems in the City of Aberdeen with hurricane force floods.

Mr. McMurry referred to item 40 and said that the original issue was source control and Volume 4 does not include all of the facilities listed in the section of 14.26. He said the maintenance issue was still there and maintenance is not covered in Volume 4. He said as it is written, volumes 3, 4 and 5 will all need to be referenced.

Mr. Carlson said this is about operational BMPs.

Mr. McMurry said that the whole section needed to be reworded for source control only.

Ms. Griffy pointed out that VMC 14.25 regards development construction and VMC 14.26 regards ongoing pollution issues in existing development. She suggested deleting "Volume 4 of" from the section.

Mr. Carlson agreed that would make more sense.

Mr. McMurry said then it must be reworded.

Ms. Griffy said we would look at including flow control, runoff treatment and source control BMP's in this language.

Mr. McMurry said maintenance guidelines for BMPs as described in the Stormwater Manual.

Mr. Schauer referred to item 42 and asked if many people were installing new heating oils tanks.

Ms. Griffy said no, but there was recently an issue regarding what she thought was a replacement tank.

Mr. McMurry asked what the Special Protection Areas were.

Ms. Griffy said 1,000 and 1,900 feet around the water stations.

Mr. Murphy asked why only heating oil tanks and not other tanks.

Mr. Carlson said that the others are covered already, that there are prohibitions on gas stations, etc.

Mr. Schauer asked about the next steps for the Work Group.

Ms. Griffy said that staff will be bringing forward ordinance changes on the Erosion sections, Adjustments, modifying minimum standards for storm treatment system, definition for municipal waste and clarifying hardship.

Mr. McMurry asked when the code changes might be available for review.

Mr. Carlson said that a Council Workshop is scheduled on Monday June 1 5:00-6:00 p.m. and on June 2 the Work Group will meet 4:00-6:00, then there will be an open house for the public from 6:00-7:30 p.m., to be advertised on the Sunday Columbian weather page and the website distribution list. He asked Mr. McMurry what he thought the process for the General Requirements should be.

Mr. McMurry said that an ongoing separate technical group from the engineering community, not just the development community, should be formed to review specific sections of the General requirements and act as a sounding board for staff. He said he would recommend the city consider if that may be coordinated through ASCE.

Ms. Griffy said that sounded good.

Mr. Carlson said the General Requirements are a substantial body of work and there needs to be a good degree of comfort with where the city is heading on that.

Mr. Carlson passed out a spreadsheet of 2008 projects that he will be providing to City Council. He said this provides a snapshot in time and asked the Work Group to get back to him if something doesn't look right.

Ms. Griffy said this was an internal analysis of how the Permit impacts, specifically, Vancouver. She said while it is not a true prediction of how projects might fare in the future, it was a snapshot in time to give a general view of where the City stood with this issue.

Mr. Murphy commented that most of the projects on the sheet were east of I-5 and asked Mr. McMurry if he continued to have concerns about Fruit Valley.

Mr. McMurry said yes.

Mr. Carlson asked about "prairie conditions."

Ms. Griffy said prairie conditions can be determined on a case-by-case basis. She asked Mr. Carlson if he would like to move forward with the process of looking at such a map of the entire City, which could be developed for the General Requirements.

Mr. Carlson said yes.

Mr. Bauer asked if anyone on the Work Group had anything else to add.

Mr. Carlson said he appreciated the effort and time by Work Group members and added that he thought the past couple of weeks meetings had been especially useful.

Mr. Bauer said he thought the Work Group had accomplished quite a lot.

Meeting Adjourned 5:55 p.m.