



# MILWAUKIE

*Dogwood City of the West*

## Advisory Group – Natural Resources Overlay Project

### Meeting Summary

6:30 p.m., Wednesday, March 10, 2010

(2<sup>nd</sup> Floor Conference Room, City Hall)

#### 1. Welcome

##### a. Brief re-introductions by attendees

**Public:** (*affiliation listed in parentheses*)

Robert Cseko (*Portland Waldorf School*)

Pat Carter (*Milwaukie Presbyterian Church*)

Don Jost (*affected resident*)

Jason Smith (*Blount, Inc.*)

Dave Green (*affected resident*)

Nikki Cerra (*Clackamas County Soil & Water Conservation District*)

Brad Smith (*affected resident*)

Ted Evans (*North Clackamas School District*)

Tonia Burns (*North Clackamas Parks & Recreation District*)

Shirley Stageberg (*Milwaukie Presbyterian Church*)

Dick Shook (*North Clackamas Urban Watersheds Council*)

Zac Perry (*natural resources manager*)

Scott Churchill (*Planning Commissioner*)

Gary Michael (*affected resident*)

Mart Hughes (*natural resources manager*)

Christopher Burkett (*affected resident*)

Steve Melnichuk (*affected resident*)

Teri Melnichuk (*affected resident*)

##### **City Staff:**

Brett Kelper (*Planner, project manager*)

Katie Mangle (*Planning Director*)

Nicole West (*Community Dev. Coordinator*)

##### b. Agenda preview, materials available

Next group meeting will be to focus on the proposed resource map.

#### 2. Group Discussion, continued from Feb 24

The focus of tonight's meeting was to resume the discussion of key policy issues regarding Draft 2 of the proposed code, begun at the meeting on Feb 24. Brett suggested that the group focus on fleshing out its concerns and questions about Draft 2 so that staff would be clear about where to concentrate its efforts before the next code-related meeting (gather info, do research, address particular code sections, etc.).

Brett reviewed some of the main ideas and questions that were discussed at the Feb 24 meeting:

- Trigger distance for applicability of the new rules = Should it be 100 feet or 50 feet or some other distance?
- Applicability of the rules in public rights-of-way (whether developed or undeveloped)
- Fees and process for construction management plans and boundary verifications = Can they be done just once and then kept on file? Can they expire?
- Accuracy of mitigation requirements, especially regarding tree replacement

- Concern about the rules inhibiting restoration activity instead of encouraging it
- Mapping issues (to address at a separate meeting) = Metro methodology for the designation of Habitat Conservation Areas (HCAs); map corrections; adding resources to the map in the future

Several of these topics warranted further discussion by the group tonight and staff had a number of specific questions for the group to cover as well. Other particular items would be addressed at a follow-up meeting, when staff will present proposed solutions and specific information requested by the group. Questions about maps and the mapping methodology would be dealt with more specifically at the next meeting.

### **Exempt Activities (322.4)**

Focusing first on exempt activities, Brett reiterated that the proposed 322.4 would establish two categories of exemptions: (1) those for activities within either a Water Quality Resource (WQR) area or a Habitat Conservation Area (HCA) and (2) those for activities only within an HCA. There are fewer exemptions within WQR areas because the code is geared to be especially protective of water quality resources.

Someone asked whether removal of invasive trees was an activity permitted outright and suggested that the code language be clarified. The current code in 322.4.A.4 uses the word “plants,” so it is unclear if this includes trees or only shrubs and herbaceous plants. There seemed to be consensus that appropriate action would depend on the specific conditions of the site and the species in question and that the code should not place any restrictions on the removal of invasive plants. However, removal of trees, even if invasive, could have impacts to the WQR area, so further study is needed to devise the best language. In general, the group recommended that the City think about the needs of these sensitive areas holistically, rather than focusing on the immediacy of one event to remove invasive plants.

There was a suggestion to modify the language of 322.4.A.4, an exemption for removal of invasive and noxious plants, to clarify that the exemption extends to planting native species as well. The group also discussed the requirement to replant open areas greater than 25 square feet, questioning whether it was always appropriate to immediately replant and whether 25 square feet was the best threshold number. The group reached consensus on the following language for this exempt activity:

**(322.4.A.4) Removal of plants identified by the City as invasive or noxious plants and/or the planting or propagation of plants identified as native plants. After removal of invasive or noxious plants, all open soil areas ~~greater than 25 square feet~~ must be replanted and/or protected from erosion.**

Brett explained that Milwaukie currently uses the City of Portland’s list of invasive and native plant species as the Milwaukie list. (Metro refers to Portland’s plant list as well.) Someone expressed the concern that referring to a single, region-wide list, could be problematic for two reasons: (1) there are minor disagreements between ecologists regarding the species content of these lists, and (2) the regional generalization may ignore smaller-scale ecological variations that occur within the region. A three-part alternative was suggested: (1) devise general language in the code that states “non-native trees, shrubs, and plants can be removed” and that clearly outlines an intention to “restore native plant communities” or “provide native habitats,” (2) develop a list of known invasive plants to identify problem species, and (3) develop a list of known beneficial native plants.

There was also some discussion about whether to include an exemption for placing fish-enhancement structures in streams, with the consensus being that this topic was too complicated

and would involve too many other agencies to address with a simple exemption. However, there was agreement on establishing an exemption for removing man-made debris from streams and natural resource areas, with a note to encourage that activity during the window for in-stream water work as determined by the Oregon Department of Fish and Wildlife (ODFW):

- Johnson Creek – July 15 to August 31
- Kellogg Creek – July 15 to September 30

### **Tree Removal**

There was extensive discussion about whether and how to regulate the removal of downed trees from creeks and streams, especially when the trees have the potential of either creating “debris dams” or washing downstream to impact other creek-side properties. Several of the participating property owners talked about using “common sense” as a guide for tree removal. There was also an acknowledgement that some woody debris in the stream plays a beneficial role for habitat and water quality and that there should be some restrictions on removing trees and woody debris from streams and stream banks. It would be ideal to forge an agreement with an agency like ODFW that could assist the City in determining whether downed trees should be removed or left in place, depending on the specific conditions. Whatever the arrangement, it was noted that an assessment should be based on both hydrology/biology and safety. Property owners wanted to be able to address potentially dangerous downed-tree situations in a timely manner and without unnecessary process. Staff made a note to gather more information about this topic.

Should the code encourage or even require leaving a downed tree on the ground? Or should this issue fall into an education-outreach realm rather than a regulatory one? It was noted that many property owners have invested significant time, money, and energy in landscaping and that prohibiting them from removing downed trees in what they consider their yards seems excessive. Brett acknowledged that point, adding that the regulations can be viewed as limiting a property owner’s ability to control their land but also as protecting important resources that are held in the larger public interest. That is why the current code does not make tree removal very easy or an outright permitted use, especially within WQR areas. Someone asked whether removing a downed tree within a designated resource area (but not in a stream) could be considered “maintenance” of landscaping and therefore exempt as per 322.4.A.3. The group indicated that, in the context of tree removal, the new code should distinguish between living trees and downed or dead trees.

There was some discussion about whether there should be a requirement to replace a tree that is removed. It was noted that different situations would present different conditions and that it might sometimes be inappropriate to replant a tree. There was a suggestion that if replanting was required there should also be an opportunity for the property owner to make a case for why planting a new tree would not be appropriate. Staff added this issue to the list of topics it will work on for the next code-related meeting.

### **Natural Resource Management Plans**

In terms of the types of activities that require a natural resource management plan, the group agreed that restoration work involving any type of construction or earth moving should require review. There was discussion about whether there should be a fee for reviewing such a plan, with the note that property owners would be more likely to develop plans if there is no charge. Since the City does not have the expertise to review these types of applications in-house without hiring a consultant, we need to figure out some manageable way to handle the review of these plans.

Even if there is a fee for reviewing natural resource management plans, it would be helpful if property owners could get help creating the plan, since that kind of technical assistance can be expensive. It was noted that one source of technical assistance is the Clackamas County Soil Water Conservation District; others might be the Johnson Creek Watershed Council or the North Clackamas Urban Watersheds Council. In response to a question about the City's goal in requiring a resource management plan, Katie explained that having an approved plan would streamline the long-term approval process so the property owner could conduct their restoration activities over time without having to come back to the City for additional approvals.

For construction management plans, there was a suggestion to establish a standard plan format, (including some Best Management Practices) that applicants would simply fill in with the specific information for their project.

There was a brief discussion about whether the code could be used to encourage or establish a mechanism for an environmental easement, which is essentially a voluntary sale of the stream-side portion of one's property. In exchange for tax deferrals, the easement would fully protect the resource by ceding the development rights to that portion of the property without giving up the original landowner's right to access it and use it recreationally. Staff noted that the municipal code is not the appropriate place to establish that type of program, though it would be good to ensure that the new rules do not somehow make it more difficult to establish such easements.

### 3. Next Steps

Brett gave a quick overview of the upcoming project schedule, which includes additional Advisory Group meetings on the proposed maps and draft code as well as updates to the Planning Commission and City Council and a joint work session of the Advisory Group and Planning Commission. The group agreed to schedule the next meeting, which will focus on mapping issues, for **Wednesday, March 31 at 6:30 p.m.** The meeting will be at a different location than recent meetings, at the **Public Safety Building** in Milwaukie (corner of 32<sup>nd</sup> Ave and Harrison St).

**The meeting adjourned at approximately 8:40 p.m.**