

Exhibits to be entered into the Planning Commission record  
for Water Resource Area amendments  
(CDC-10-03)

from:

Greg Morse (dated January 6, 2014)

Robert E. McCarthy (date stamped January 9, 2014)

Ruth Grant (sent January 13, 2014)

Aaik van der Poel (sent January 14, 2014)

Jane Hickman (dated January 14, 2014)

Ann Miller (date stamped January 15, 2014)

Ed and Sheila Bietschek (sent January 15, 2014)

Brenda Ray Scott (dated January 15, 2014)

Peter Spir,  
January 6, 2014  
West Linn City Hall,  
22500 Salamo Road,  
West Linn, OR, 97068



Re: PC Public Hearing CDC-10-03

### **DON'T WEAKEN WETLANDS PROTECTIONS**

On January 15<sup>th</sup>, 2014, the City's Planning Commission holds a Public Hearing to **weaken** Stream and Wetlands protections that were finally enacted in 2007 - after years of foot-dragging and avoidance.

I was closely involved in the process creating the 2007 Water Resource Area code, with much input from the Audubon Society, local Defenders of Wildlife, Metro, West Linn High School students, and many involved citizens. The best available **science** (not politics) was used to protect West Linn's Natural Environment.

I have a Water Resource on my property and **oppose any weakening of the code**, let alone the "entire chapter" 32. Why?

- 1) **The City's own Sustainability study**, like subsequent ones, has shown that the natural environment is one of the greatest assets that attract residents to West Linn .
- 2) **State Planning Goal 6 states**, "Maintain or improve the quality of West Linn's water resources" (see p. 6 of Addendum of staff).
- 3) **Yet Peter Spir's letter** to the Planning Commission for the 1/15 hearing says that the "**amendments are intended to**"...:

- "Make reasonable **allowances to develop** for owners..." (p. 2)

- "**Add the option for property owners to create** (*their own*) **WRA boundaries ...based on** (*their own*) **...wetland biologists or similarly trained professionals.**"(p. 2)  
The italics are mine: we all know what happens when a landowner/developer hires their own expert: they always support the desires of the person who pays.

- "**Increase exemptions from the permitting process...**" (p.3)

Clearly, these amendments do **not** "maintain or improve" our water resources, but **add loopholes** to already weakly enforced wetlands protections.

Greg Morse, 18335 Nixon Avenue

To: West Linn Planning Commission and West Linn City Council

Re: Proposed Code Amendments for Chapter 32: Water Resource Areas

The proposed changes to the comprehensive plan make several improvements to protect wetlands that are desirable and well-considered. However, the proposed language regarding small structures and their possible impact on wetlands areas is unnecessarily burdensome, demanding and expensive.

I appreciate the need for a wetlands specialist to review the impact of a proposed large structure on wetlands areas. The same requirement should not apply to small structures.

It is unreasonable for a homeowner to hire a consultant at a cost of \$2,000-5,000 to evaluate the impact of a small structure on wetlands whose impacts are likely to be small or de minimis. Such a requirement imposes an unnecessary expense and a hardship on the homeowner.

A more reasonable approach that meets the test of common sense and protects wetlands is that the proposed ordinance include a provision whereby a structure of 250ft.<sup>2</sup> or less, would be evaluated and approved /disapproved by the planning director or his/her assignee.

I ask that make this reasonable change to the proposed code.

Sincerely,

Robert E. McCarthy

1535 Burns Street  
West Linn  
503-557-0941



## Spir, Peter

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**From:** Ruth Grant <snoozledog77@gmail.com>  
**Sent:** Monday, January 13, 2014 11:31 PM  
**To:** Spir, Peter  
**Cc:** CWL Planning Commission  
**Subject:** Subject: CDC-10-03 Notice

Planning Commission:

I own land in West Linn with a wet area. Property taxes have been paid a long time--since early 1970's.

The subject of runoff water has immense attention from councils for pollution and loss of water animals. However, pollution starts way above where it ends up in low areas.

Maybe you've already made efforts to encourage clean up where pollution originates--at the highest flat lands with houses with concrete foundations and pretty lawns. I don't know. I have just returned from two decades in the midwest.

Runoff from lawns sends down contaminants from fertilizers, weed killers, and gas mowers into the lower areas, those basins of water that you want to protect. Also add to the lawn mess normal human trash and dirt from traffic.

Environmental groups-- promote the many alternatives to the common lawn !

And are you also looking for alternate building methods to replace failed homes with concrete bunker foundations that imprison the Earth and prevent any absorption of rain water?

A word to promote stilt / pier home construction: This method invades less land, allows for air circulation, and likely wouldn't have any kind of high maintenance lawn. It seems that this type of construction is discriminated against by most, and why is that so ? It makes less impact on the Earth than those homes on the flat lands.

My objective is to preserve the permission to build on my land.

I hope Environmental groups will work at cleaning up the water basins where pollution starts--from the Top !

R.G. Grant  
01-13-2014

## Spir, Peter

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**From:** van der Poel, Aaik <Aaik\_vanderPoel@mentor.com>  
**Sent:** Tuesday, January 14, 2014 3:09 PM  
**To:** Spir, Peter  
**Subject:** CDC-10-03  
**Attachments:** waterflow.gif

Hi Peter

Welcome back, didn't realize you moved to WL again!

I'd like to make an official comment on page 15 (the calculation) of the slope for CD10-03 to be discussed on Jan 15th. I believe Staff and Planning commission can save themselves headaches if they spend a bit more time nailing the measurement criteria.

As you recall we have had significant different interpretations in the past and even the example in the online doc will show multiple ways of calculating the slope.

In my humble opinion as an engineer there is ONLY ONE WAY to do this right and that is to go as the water flows, which is straight down hill.

Making 90 degree angles on the streambed is NOT always the right path calculation.

After all slope measurements are done because of erosion issues, and that is caused by the path the water follows.

So in the attached picture one can see the 90 degree to the creek blue lines (proposed) is very different in places from the red 90 degree to high lines (my suggestion to use as calculation)

In my experience applicants will find the 90 degree angles that benefit them, but it all comes down what nature does, and that is roll the shortest way down the hill, which is the steepest and most erosive way.

Please consider adjust the measurements method to 90 degree to the high lines (contours) instead of dominant contour (the creek bed)

I have other obligations on the 15<sup>th</sup>, please for the sake of a good applications consider the above.

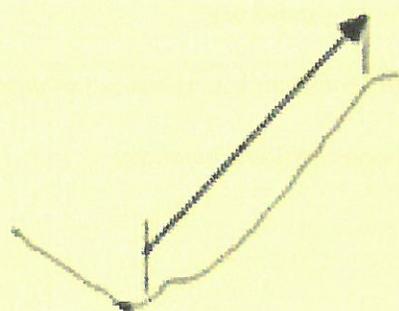
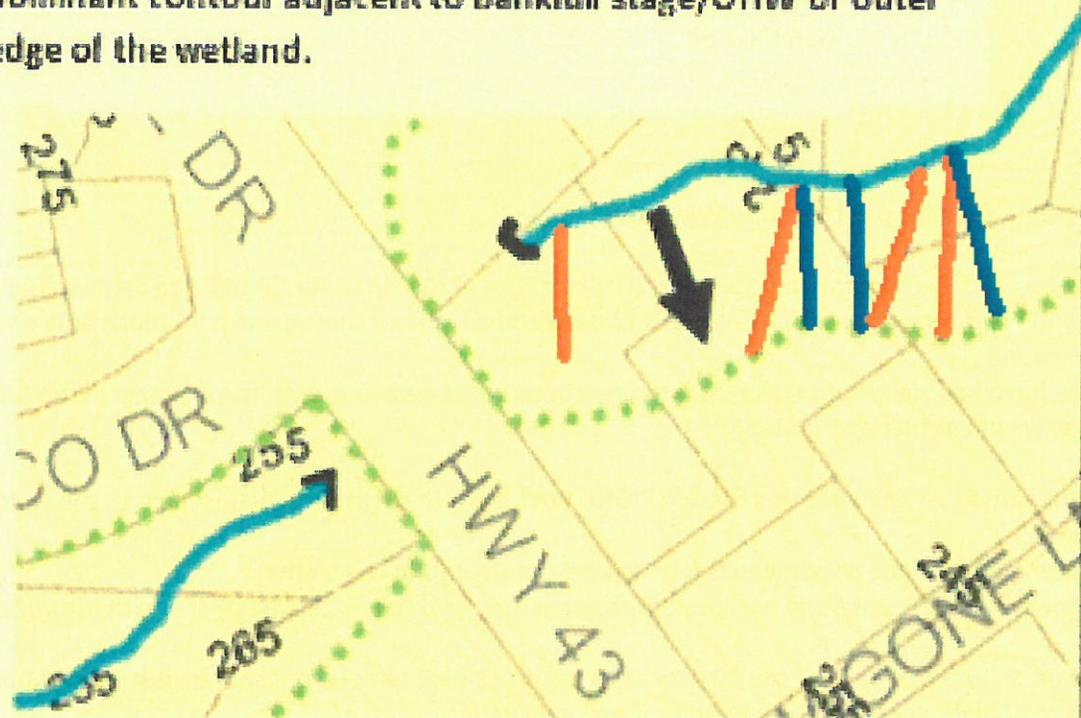
Thanks

Aaik

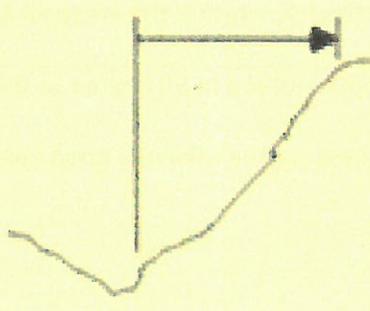
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Aaik van der Poel  
2408 Woodhaven Ct  
West Linn, OR 97068

Arrow indicates slope measurement at right angle to the dominant contour adjacent to bankfull stage/OHW or outer edge of the wetland.



Ground measurement



Plan View

January 14, 2014

To West Linn Planning Department: Following are my comments on the proposed Water Resource Area Code. Thank you for the opportunity to comment. My contact information follows the comments. Please give me notice of any responses to comments and public hearings and future opportunity to comment on any proposed rules related to water resources.

General Comments: The "About the WRA Rules" document on the city's website says the proposed changes to the CDC "should better protect WRAs." Nearly all of the proposed amendments provide less protection for water resource areas (WRAs), not more. The proposed code is arranged in a way that makes it difficult to ascertain what allowed in a WRA and what isn't.

Whether certain activities are allowed in a WRA often depends on whether there is a "disturbed area," yet I can't find any definition for that term. I found a definition for "temporarily disturbed area" but not for "disturbed area." It may be in the code, but I wasn't able to locate it. I suggest you include a "Definitions" section at the beginning of the code.

Many of the requirements are written in passive voice, with no subject, so the city may have difficulty enforcing such provisions if the code doesn't specify *who* is required to do X or Y.

Specific Comments: 32.030 Prohibited Uses: The listed activities are "strictly prohibited except as specifically allowed or exempted in this chapter." The chart is helpful, but I suggest you include a citation to the codes being summarized.

I oppose changing "minimum economically viable use" of the land to "reasonable use" of the land. "Reasonable" is in no way less subjective than the existing limitation. More importantly, the U.S. Constitution only requires the minimum economically viable use. Since protection of water resource areas is a designated public priority, and such areas are so important and at great risk of loss and degradation, I do not support this expansion of the ability to develop WRAs.

I oppose the addition of an "alternate discretionary review" so that property owners can argue that the code shouldn't apply to them. This review opens up the process to inconsistency and unfairness. One of the goals of the code amendments is to decrease red tape and promote efficiency. Allowing property owners to argue about why their property should be exempted from the rules will increase the burden on city resources.

While I strongly oppose this alternate discretionary review process, at a minimum, if the city decides to allow such a process, each time an exemption is granted, the city should be required to public a notice in the West Linn Tidings and on the city website in order to promote transparency and consistency.

What is the justification for decreasing protection for ephemeral streams? Such intermittent streams fall within the definition of "waters of the state" in ORS 468B and there are no exemptions in state statute from protection. Ephemeral streams play an important role in the ecosystem and serve many of the purposes listed for protection in 32.010.

Regarding removing protections for roadside ditches, please see the comment regarding ephemeral streams. It is fine to save landowners from costly permits as long as protections for roadside ditches and ephemeral streams are not reduced -- as long as the landowners are required to still protect these areas from development and impact.

32.040 Exemptions: There needs to be an introductory sentence providing context for the following sections, which as proposed consist of a list with no explanation about what they are "exempted" from, and where physically these exemptions apply.

32.040C Nonconforming structures -- There needs to be a definition of "non-conforming structures." Change the word "will" in C.1.a. to "must" so that this requirement is enforceable.

32.040C.1.d. and e. should be deleted, because they have the potential to result in additional negative impacts to WRAs.

32.040D.1. and 3 should be deleted, because they have the potential to result in additional negative impacts to WRA.

32.060E - Roads, Driveways and Utilities: Subsection 1 - Delete this exemption, or at a minimum modify it to require the applicant to show that without the new road, driveway or utility located in the WRA, the applicant will be unable to achieve the minimum economically viable use of the property. Otherwise, the subsection as drafted undermines protection of the WRAs. There is no definition of "practical," which leaves too much discretion up to city staff and will cause inconsistency, more work from city staff to make the determination about what is "practical." Destruction or degradation of WRAs should be allowed only to the extent required by the U.S. Constitution. Same comment specifically for E.1.c. "where possible."

Require mitigation for any such disturbances, since it appears from 32.090 that no mitigation plan is required unless specified in the code.

Please include a definition for "PDA" in the definitions section requested.

Please include definitions for terms such as "practical," "possible" and "reasonable" if these terms are used in the code (which I oppose) in a separate definitions section.

Please include a definition for "MDA" in a definitions section.

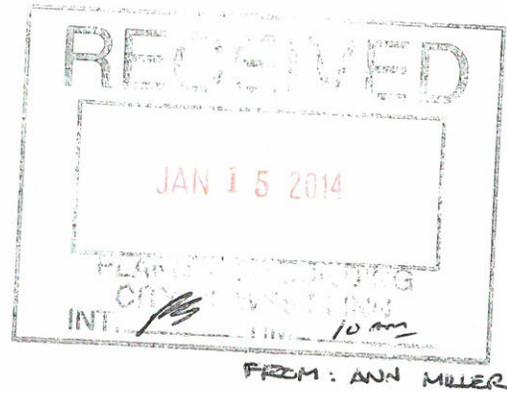
Ditto for "TDA"

32.110 - Hardship Provisions: I oppose reducing protections for WRAs so that an owner can get "reasonable use of land." The state has identified protection of WRAs as being a compelling public interest. Private interests should be protected to the extent required by the Constitution and no more. Do not expand availability of the hardship provisions. Expanding the use of hardship provisions will increase the potential for inconsistency and lack of transparency in implementation of the Code and result in use of city resources to evaluate such claims. Many

owners were aware of the existence of such resources on the land when they purchased the land, and it is not necessary or fair or protective to uphold private interests over the public interest.

Respectfully submitted by:

Jane Hickman  
22030 Shannon Place  
West Linn, OR 97068  
(503) 656-2083 (evening)  
(503) 229-5555 (day)  
Email: oregonhickmans@comcast.net



## Planning Commission Hearing

First I would like to thank the citizens who gave their time to revise the WRA protection code amendments. As some of you know from previous hearings I have been seriously impacted by the existing code. I own 2.34 acres that were originally intended to be 2 lots as per my first pre-application conference in 2003. Subsequent code changes resulted in this property, that I have owned and paid taxes on since 1986, becoming worthless. I had counted on the development of this property to fund my retirement after my husband passed away.

The exclusion of previously disturbed area, PDA, in the revised code would allow me to benefit from the 5000 square foot square hardship provision included in the current code. Another feature in the revised code seems an even more equitable provision because it allows development of larger lots, such as mine, based on 30% of the total area of the WRA, which is a more proportional approach than a flat 5000 square foot hardship provision. I would encourage you to accept this revision to prevent financial hardship for owners of larger properties. I am also encouraged by the revision that Temporarily Disturbed Areas will not count against the maximum amount of the WRA that a property owner can develop.

I remain concerned, however, about 32.110 A that states “the right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor’s Office on, or before, January 1, 2006. Some effected property owners may not have sub-divided and recorded lots because of the increased property taxes they would incur, because they worked full time and lacked the time or resources to take on property development or perhaps had confusion about the former code. These same people, like me, may be counting on the value of developed land to see them through their retirement. I would hope ownership of their property by that date would be sufficient.

I sincerely hope these code amendments can move forward and allow citizens like me to feel some confidence we are being treated fairly and that we can enjoy some financial benefit from the land we have cared for and paid taxes on without inflicting undue harm on the environment.

Respectfully submitted,

Ann Miller

## Spir, Peter

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**From:** ann miller <annivancade@yahoo.com>  
**Sent:** Wednesday, January 15, 2014 10:07 AM  
**To:** Spir, Peter  
**Subject:** Fw: Planning Commission Hearing Tomorrow

I sent my notes for the hearing to Ed and Sheila Bietschek and they agree with my position as noted in his attached e-mail. Thanks again. Ann

On , ann miller <annivancade@yahoo.com> wrote:

Sorry you can't attend, I will let you know how it goes. I will forward your e-mail to Peter Spir so that it can be part of the record.

On Wednesday, January 15, 2014 12:48 AM, Ed F Bietschek (TMS) <ed\_bietschek@toyota.com> wrote:  
Thanks ann

I will be out of town traveling for work. I read your statement and agree. Thanks for getting this into the record. Please feel free to note that we feel the same if it helps

Thanks again.

Also we are planning to attend the task force meeting regarding the new owners of the pond and will let you know what their plans are and how they may affect us all

Thanks again

Sent from my iPhone

On Jan 14, 2014, at 7:15 PM, "ann miller" <annivancade@yahoo.com> wrote:

Just in case you want to attend I'll remind you the hearing for the revised Water Resource Code is tomorrow, Wednesday, at 7PM. I've attached a draft of my comments that I will send to Peter Spir for the record. He suggested I also testify. They have a work session at 6:30 and the open meeting starts at 7PM. I plan to get there early to sign up to be heard, Hope to see you there.

Ann

<Planning Commission Hearing.doc>

# TERWILLIGER PLAZA FOUNDATION

Creating a secure future and enhancing the quality of living for Plaza members

January 15, 2014

City of West Linn  
Planning Department  
22500 Salamo Road #1000  
West Linn, OR 97068

Dear Planning Commission:

I am writing on behalf of the Terwilliger Plaza Foundation and Terwilliger Plaza Foundation Holdings LLC to express support of the proposed changes to the West Linn Community Development Code. We are writing as property owners who will be impacted by the changes proposed in an ordinance relating to Water Resource Areas as described in the notice for the Planning Commission Meeting taking place on January 15, 2014. Terwilliger Plaza Foundation became the owner of a 15.89 gross acres located at 1270 Rosemont Road (the intersection of Salamo and Rosemont Roads) in December, 2006.

The property came to the Terwilliger Plaza Foundation through a charitable gift made by a generous donor. The property has been held by the Terwilliger Plaza Foundation Holdings LLC during this time. The intent of the donor is that the proceeds from an eventual sale be used for charitable purposes.

Thank you for this opportunity to express our support for these proposed changes and to let you know more about how we came to be in possession of this property. Please feel free to contact me at 503-808-7884 or by email at [bscott@terwilligerplaza.com](mailto:bscott@terwilligerplaza.com) with questions regarding this letter or the Foundation.

Sincerely,



Brenda Ray Scott, CFRE  
Executive Director

cc: Dee Sellner  
Diane Gibson  
Joe West  
John Junkin