



Memorandum

Date: February 5, 2014

To: Planning Commission

From: Peter Spir, Associate Planner

Subject: Staff response to questions raised at the January 15, 2014 hearing on the proposed Water Resource Area code amendments (CDC-10-03)

Purpose

At their hearing date of January 15, 2014, the Planning Commission took public testimony. The Planning Commission continued the hearing to February 5, 2014 to allow staff to develop responses to questions or concerns raised in the testimony; most of which was tied to specific properties and site conditions. Staff responses are provided below to each of the individuals who testified.

Staff is also including "Attachment B" in this packet. It comprises minor changes to the proposed amendments. In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing.

Discussion of Public Testimony

Ann Miller

Ann Miller testified in support of the amendments; in particular, the hardship provisions that will allow 5,000 square feet or 30% of WRAs to be developed, whichever is greater, in those cases where the property is fully or partially within the WRA. She also supported the provision to exclude "temporarily disturbed areas". Mrs. Miller expressed concern that proposed section 32.110(A) states:

- A. *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. The lot of record may have been, subsequent to that date, modified from its original platted configuration but must meet the minimum lot size and dimensional standards of the base zone.*

Mrs. Miller would like the 2006 date eliminated or extended to allow partitioning of her property.

Staff discussed this with Metro's planner who manages Title 13 compliance, Miranda Bateschell. Her response to the proposal was as follows:

"Title 13 was adopted on September 29, 2005. The provision / statement in the model code you asked about (Section 3(B)) was to recognize that some development projects may have been approved by cities/counties but not developed yet by the T13 adoption date (originally up for adoption on 9/22 but continued / adopted on 9/29). Those projects would move forward as approved and not be subject to the provisions in Title 13.

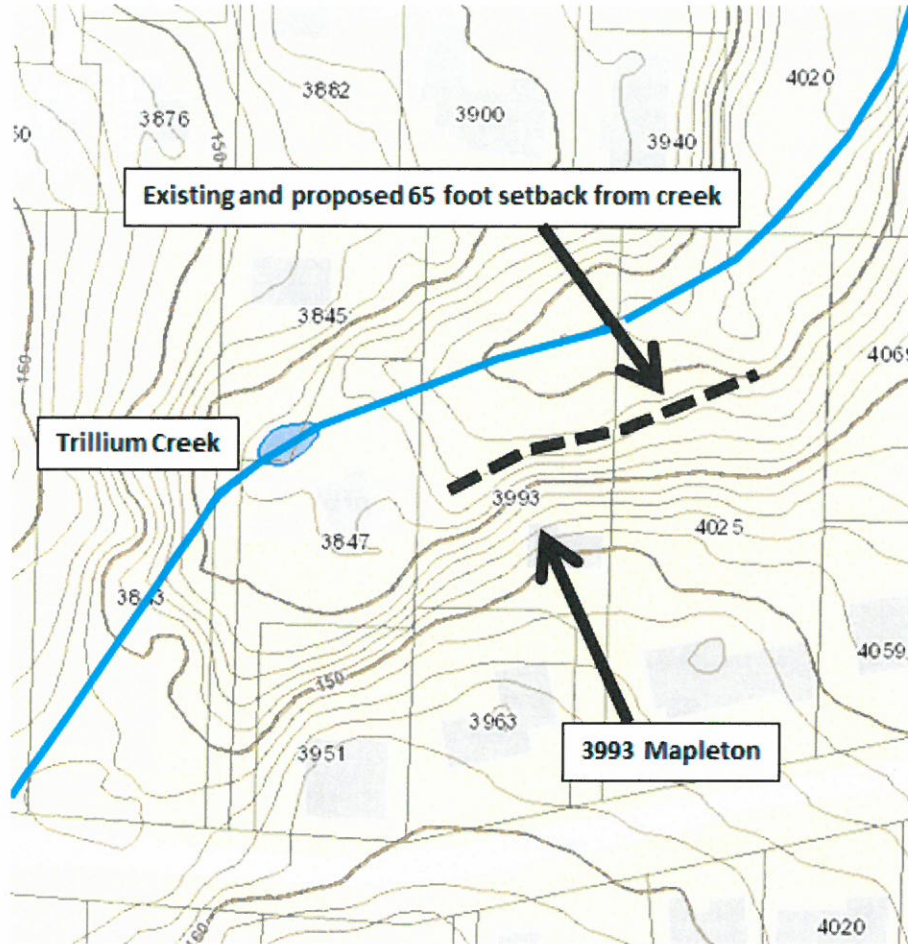
In your code, changing it to January 1, 2013 would not make sense / work because this whole issue and exemption is in the past."

So like most programs that "grandfather in" properties, there has to be a cutoff date or deadline to establish grandfather status. According to Metro, selecting a contemporary date would not be sanctioned.

It is noted however that Mrs. Miller will, under the proposed code language, have the ability to develop three lots of record under the hardship provisions and utilize lot line adjustments to configure the lots so as to minimize disturbance of the WRA.

Cindy Kaufman

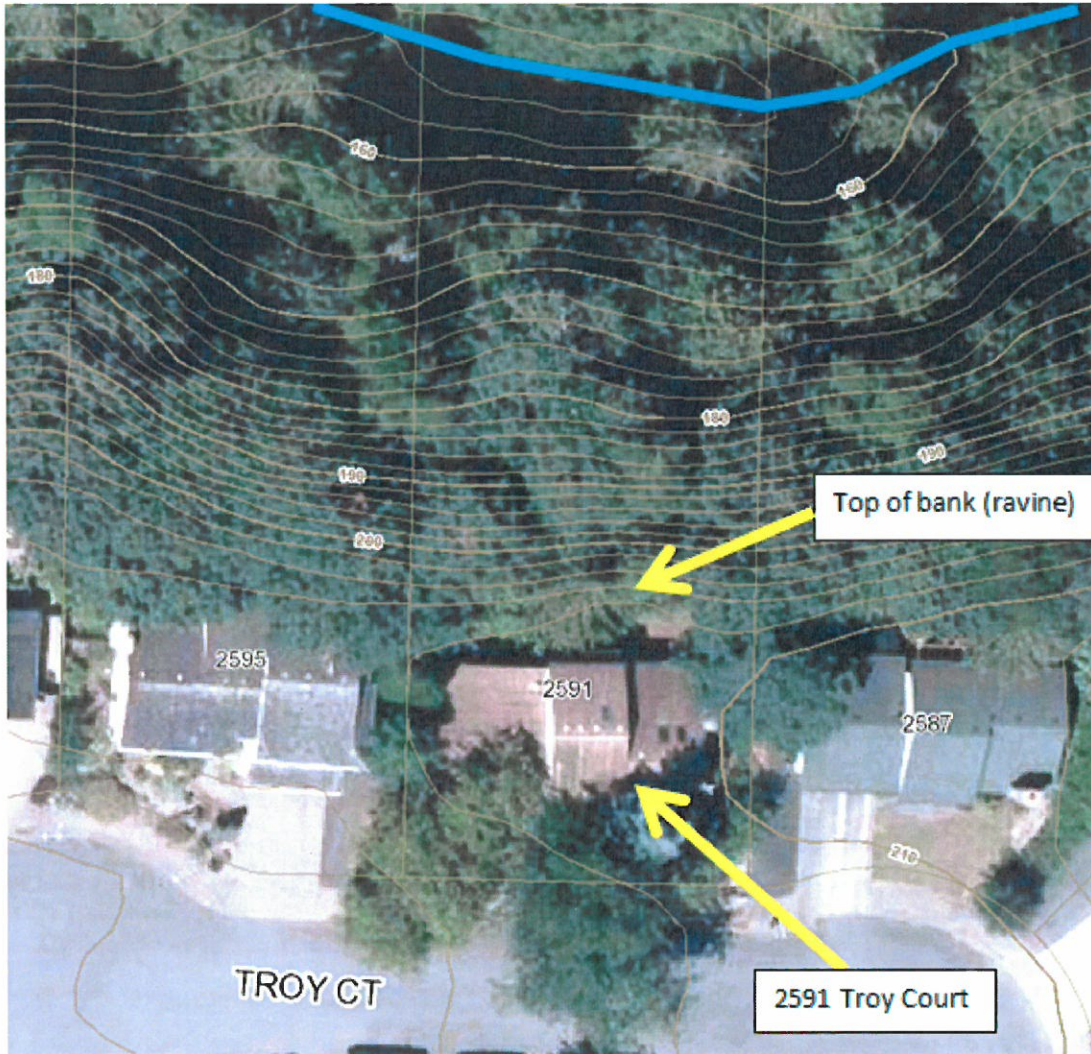
Cindy Kaufman of 3993 Mapleton Drive expressed concern about the possibility that the new code will allow increased density in her area. The map below shows the WRA's existing 65 foot setback at 3993 Mapleton, and the proposed 65 foot setbacks. The new language would not change developability in this area.



Scott Warner

Scott Warner of 2591 Troy Court asked why the City is not required to disclose WRA and other zoning restrictions at the time that property purchases occur. Disclosure is the responsibility of the seller per ORS 105.464. It requires the seller to make known to the prospective buyer known easements and zoning regulations that may impact the home and the property. ORS aside, many purchasers of properties accept responsibility to find out the zoning restrictions prior to purchase. No city or county has the legal obligation and, most importantly, the technical ability, to search out unknown prospective purchasers and provide that information during the sales/purchase process.

Regarding the existing rear deck, the deck may be replaced so long as it does not come closer to the WRA than the existing one. Staff has recommended changes to the draft language to allow lateral additions to the deck so long as they go no closer to the WRA than the existing deck.



Ole Olson

Ole Olson of 3993 Kenthorpe Way stated that several neighbors and the Robinwood Neighborhood either did not receive notice and/or did not have the chance to properly review the proposed language and Mr. Olson's rebuttal to the proposed amendments. Staff reviewed the mailing list and found that Mr. Olson and the Robinwood Neighborhood Association received Measure 56 notice.

Mr. Olson cited ORS 92.040 as applicable. The relevant section of ORS 92.040 is:

(2)After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government

That ORS provision sets a default period of 10 years for the applicability of regulations in place at the time a subdivision's initial application. ORS 92.040 does not apply in this case since no subdivision is proposed on, or nearby, Mr. Olson's property.

Mr. Olson questioned the city's authority to establish resource protection areas. The city is legally required and empowered by the State of Oregon to adopt comprehensive plans and implementing regulations that meet the Oregon Statewide Planning Goals including Goal 5: "Natural Areas".

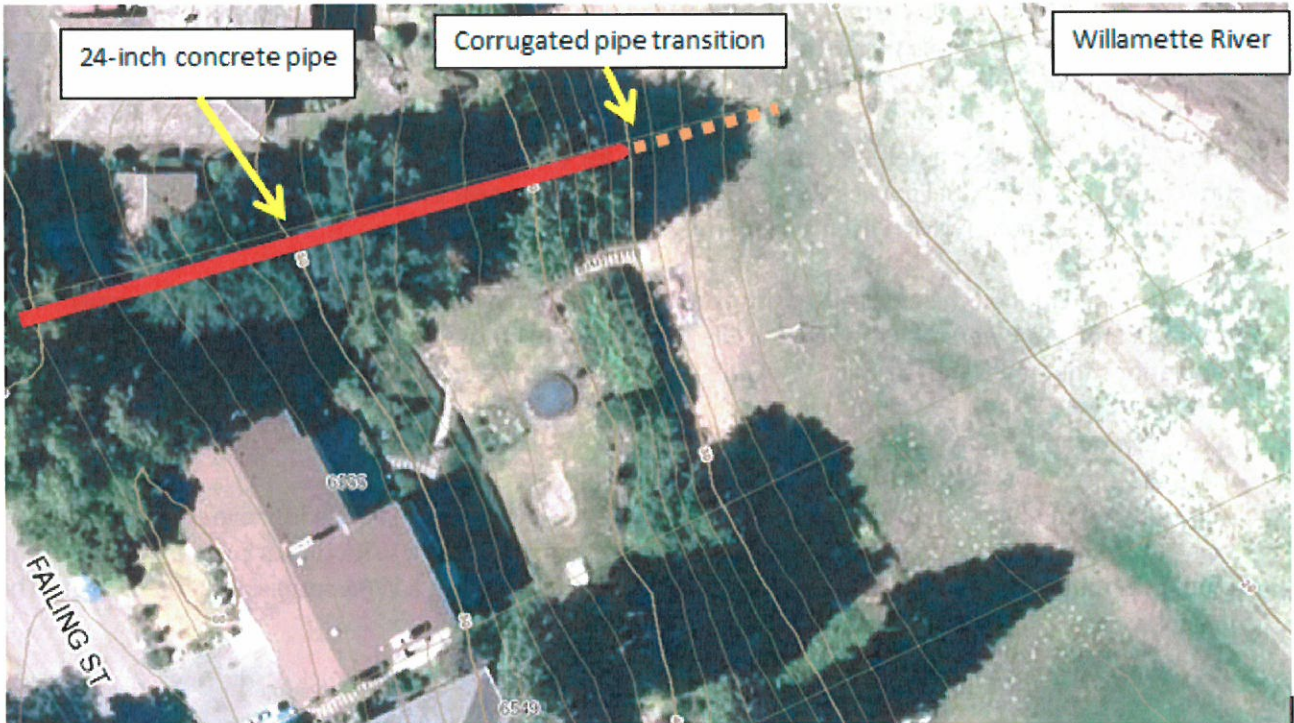
Alice Richmond

Alice Richmond stated that she did not receive a notice. Review of the notice list revealed that a notice was sent to her address on December 12, 2013. Mrs. Richmond has a WRA on her property in the form of an intermittent creek which, under the existing code, already has a WRA setback of 57.5-65 feet. The proposed language would have a 65 foot setback.

Audrey Lazar

Audrey Lazar of 6555 Failing Street spoke about her concerns regarding the buried storm water pipe along her north property line. Staff spoke with Public Works' storm water operations manager, Mike Cardwell, who explained that a 24-inch concrete pipe runs near the north property line then it transitions to a corrugated metal pipe near the base of the hill (see map). Mr. Cardwell stated that there is a problem when the incoming flow of water from the river at high tide exceeds or equals the pressure or velocity of storm water coming down the pipe. When that happens there is leaking/spraying at the junction point between the concrete pipe and the corrugated pipe which erodes holes in the beach/foreshore. Public Works would like to see the corrugated pipe removed and to have the storm water conveyed by open ditch across the foreshore area to the river. (Given the water volumes and the lack of an existing channel, removing the concrete section adjacent to Mrs. Lazar's house would be both impractical and potential dangerous in terms of flooding.)

Staff Note: This issue is a public works issue. It is not a WRA issue and should not be considered an issue to be resolved or addressed in this legislative process.



Bill Perkins

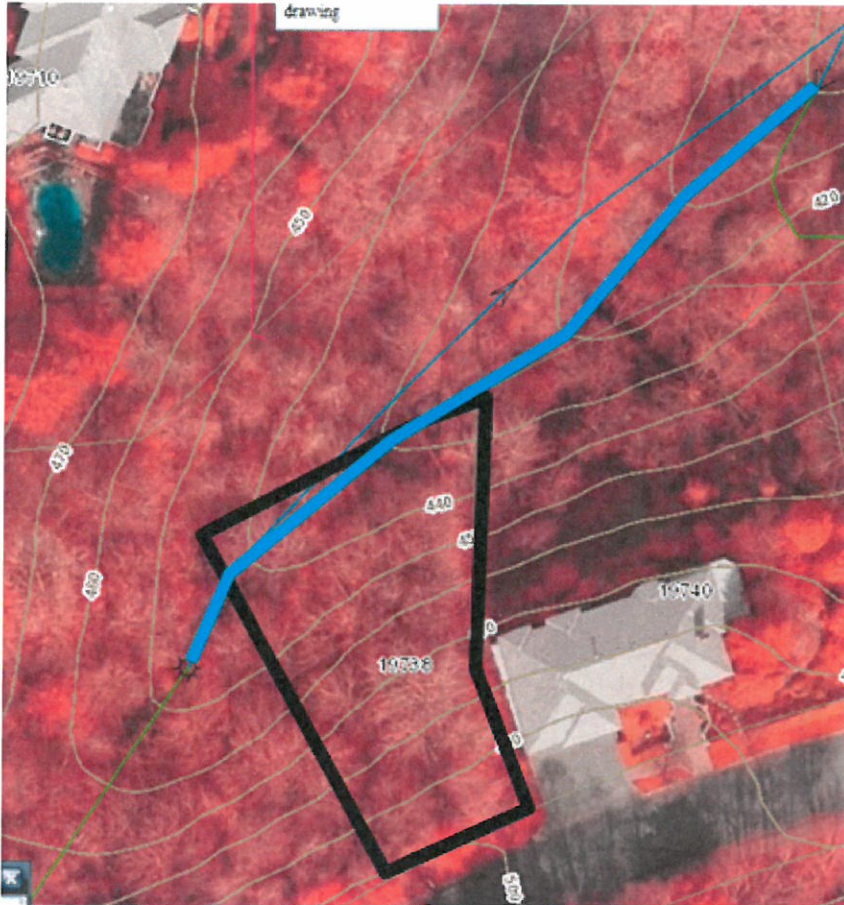
Bill Perkins of 19740 Wildwood Drive stated that, apart from the Measure 56 notice for this Planning Commission hearing, he had received no notices of previous meetings. None of the previous meetings and work sessions of the past three years required any notice; but, during that same period there were numerous articles about the upcoming WRA amendments in utility bill newsletters, on the City website and in the West Linn Tidings. An open house was advertised and held to discuss these amendments this past summer.

Mr. Perkins explained that he had gone through the land use process to build on his property and received approval but the approval had lapsed. He wondered if the proposed amendments would make a new application more difficult. Staff would contend that the proposed changes will be more accommodating to his plans and also better protect the resource by pushing the house closer to the street and away from the WRA.

Mr. Perkins' property can be described as a ravine that extends to the curbline of Wildwood Drive. The proposed language allows development of up to 5,000 square feet of permanently disturbed area (house footprint, sidewalk, driveways, non-native landscaping, etc.) This would require a WRA permit. The fee is \$2,600. Helping to minimize intrusion into the WRA, the hardship language allows:

1. *Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.*

Also helping with this project will be the exemption for temporarily disturbed areas, so once trenching and other related construction work is done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area.



Sam Sabo

Sam Sabo owner of lot 32 of Rogerfield 2 subdivision is concerned that this lot is unbuildable or severely limited in terms of available building footprint. In a January 16, 2014 e-mail to Mr. Sabo, staff explained that the plat for Rogerfield 2 was recorded in June 2002. The original subdivision application was submitted prior to that date.



ORS 92.040(2)(3) states that from the date that the subdivision application is made any subsequent code changes in the next 10 years shall not apply. Essentially you would be vested with the code language in place at the time of the original application (pre-2002). That 10 year period has lapsed so the current provisions apply.

So what is next? Both the existing and proposed language guarantee a maximum 5,000 square feet of disturbed area for the construction of a house on the lot. The proposed language improves upon that by exempting temporarily disturbed areas, so once trenching and other related construction work is

done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area. Bottom line: although a \$2,600 WRA permit will be required, Mr. Sabo will be guaranteed the right to build on lot 32.

Laura Sabo

Laura Sabo of 3232 Sabo Lane stated that the proposed changes are significantly better than the existing language. Mrs. Sabo proposed a waiver of WRA standards for lots in existing PUDs. Staff finds that ORS 92.040(2) (3) makes an accommodation for lots within subdivisions and imposes a reasonable ten year limit before the grandfather status is lost. An indefinite waiver would not be appropriate.

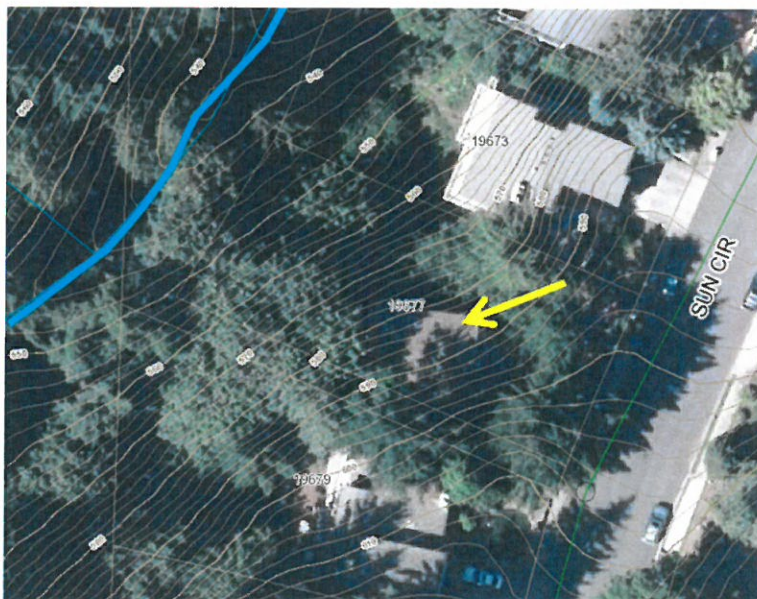
Mrs. Sabo also proposed that lots that had been graded during site development should be declared as “previously disturbed areas” (PDAs). The proposed language addresses PDAs:

PDAs that are not built upon as part of the development proposal will not count in the MDA (e.g. use of an existing access driveway). (Conversely, PDAs that are built upon as part of the development proposal will count in the MDA.)

Therefore, whether it is or is not a PDA will not influence the permitted size of the maximum disturbed area which is 5,000 square feet.

Steve Simmons

Steve Simmons of 19677 Sun Circle was concerned about rain drain runoff from his house into the creek downhill and whether that discharge method might require a WRA permit. Currently, rain water exits his home’s rain drains and flows surficially 95 feet through a healthy groundcover and understory of native fern, twigs, conifer needles and grasses before it reaches the creek. No WRA permit is, or will be, required.



Attachment B: Proposed changes to the amendments

(for February 5, 2014)

In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing. (Additions are identified by underlined and highlighted text while deletions are identified by strikethroughs.)

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition ~~(including decks and other cantilevered designs, etc.)~~ **to the principal structure** is not closer to the water resource than the existing principal structure
 - d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
 - e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
 - f. **Lateral additions to decks cannot come closer to the water resource than the existing deck.**
 - g. Vertical additions to existing principal structures that comply with the maximum height requirements of the underlying zone are exempt.
2. Repair, Replacement and Removal of Non-Conforming structures:
 - a. Interior remodeling of a non-conforming structure.
 - b. Repair, maintenance, rehabilitation and replacement of non-conforming

structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.

- c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
- d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.

D. New Construction Activities allowed in the WRA.

- 1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
- 2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or behind the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
- 3. Construction ~~or repair~~ of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be **built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.** ~~constructed behind the top of slope (ravine).~~
- 4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

(Staff note: This allows exemptions 2-4 to have consistent language.)

F. Development allowed under Section 32.110(A) may use the following provisions:

- 1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
- 2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:

- a. Elimination of landscaping for the parking lot interior.¹
- b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).¹
- c. Elimination of landscaping between parking lots and perimeter non-residential properties.¹
- d. Landscaping between parking lots and the adjacent right-of-way may be reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.
- e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
- f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
- g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.

(Staff note: The footnotes ⁽¹⁾ have been removed since they no longer reference anything.)

32.120 WRA MAP

A. The WRA Map, dated September 2013, is adopted as the official WRA map. It is intended to identify WRA water features (wetlands, streams, ephemeral streams and riparian corridors). It is not intended to delineate the exact WRA boundaries or water feature alignment. That task will be carried out by staff in the course of site visits where the provisions of table 32-2 shall apply.

B. Amendments to the WRA Map may be made in accordance with the provisions of CDC Chapters 98 and 99. Copies of all map amendments shall be dated with the effective date of the document adopting the map amendment and shall be maintained without change, together with the adopting documents, on file in the Planning Department.

C. The Planning Director shall maintain in his office, and available for public inspection, an up-to-date copy of the WRA Map.

32.010 PURPOSES.....

- E. Protect and improve the following functions and values of WRAs that enhance the value of fish and wildlife habitat:

1. Natural stream corridors that provide habitat and habitat connectivity for terrestrial wildlife,
2. Microclimate habitats that support species adapted to those conditions,
3. Shade to maintain healthy stream temperatures,
4. Vegetation to absorb and filter pollution and sediment that would otherwise contaminate the water body,
5. Sources of organic material that support the food chain,
6. Recruitment of large wood that enhances the habitat of fish bearing streams, and
7. Moderation of stream flow by storing and delaying storm water runoff, and ~~vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.~~
8. **Vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.**

(Staff note: Item 8 was originally part of above and made no sense.)

32.060

G. Daylighting Piped Streams

1. As part of any application, covered or piped stream sections shown on the WRA Map are encouraged to be “daylighted” or opened. Once it is daylighted, the WRA will be limited to 15 feet **on each side of the stream**. Within that WRA, water quality measures are required which may include a storm water treatment system (e.g. vegetated bioswales), continuous vegetative ground cover (e.g. native grasses) at least 15 feet in width that provides year round efficacy, or a combination thereof.

CDC Chapter 33, STORMWATER QUALITY AND DETENTION

33.040 APPROVAL CRITERIA

- D. **Storm water detention and treatment facilities. may be installed in Water Resource Areas (WRAs) per section 32.060(B) and consistent with Habitat Friendly provisions of 32.060(H).**
~~Stormwater detention and treatment facilities shall encroach no further than 25 feet into the outside boundary of a water quality resource area. The area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property.~~

32.040 EXEMPTIONS

The following activities are exempt from a WRA permit so long as the applicable conditions or standards of this section are met:

F. E. Emergency Activities. Actions authorized by the City Manager that must be taken immediately or within a period of time too short to fully comply with this Chapter, to:

1. Prevent immediate danger to life or property,
2. Prevent immediate threat of serious environmental degradation,
3. Restore existing utility service, or
4. Reopen a public thoroughfare to traffic.

However, after the emergency has passed any disturbed area shall be restored, pursuant to Section 32.100.

G. E. Exempt Areas

1. The Tualatin or Willamette rivers are regulated by Chapter 28 and are not subject to this chapter. However, wetlands and buffers, regardless of their proximity to these rivers, are subject to this chapter. In areas where there is overlap with Chapter 28, this chapter shall prevail.
2. Existing enclosed or piped sections of streams, including any development at right angles to the enclosed or piped sections.
3. Isolated areas. If a topographic feature or legally established road, other linear facility, or barrier physically separates and functionally isolates a portion of the WRA from the main portion of the WRA, including the associated water resource, the approval authority may exclude the isolated area from the WRA and the permitting procedure.

(Staff note: there was no 32.040 (E), it skipped from (D) to (F).)

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)

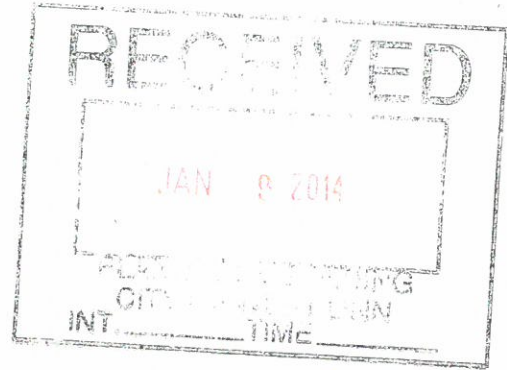
Alma Coston and others (dated January 15, 2014)

Claudia Davis (dated January 15, 2014)

Ole Olson (dated January 15, 2014)

Sam Sabo (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 15th, 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.

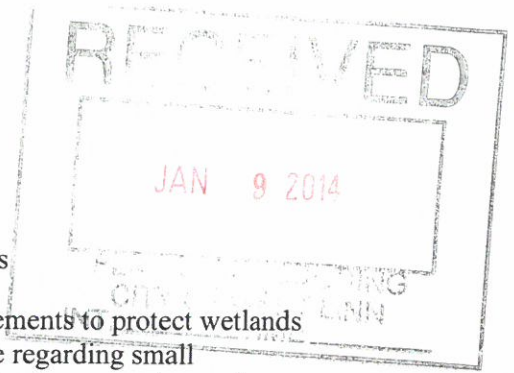
A more reasonable approach that meets the test of common sense and protects wetlands is that the proposed ordinance include a provision whereby a structure of 250ft.² or less, would be evaluated and approved /disapproved by the planning director or his/her assignee.

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

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

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)

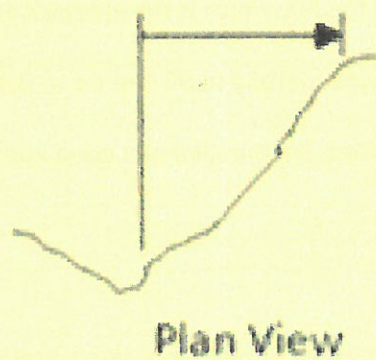
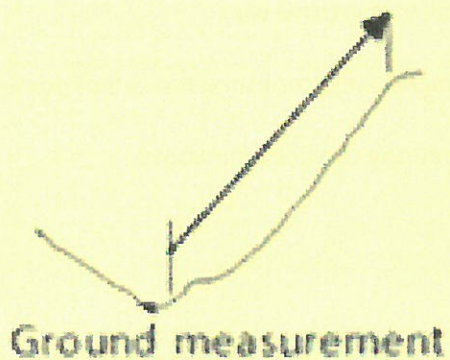
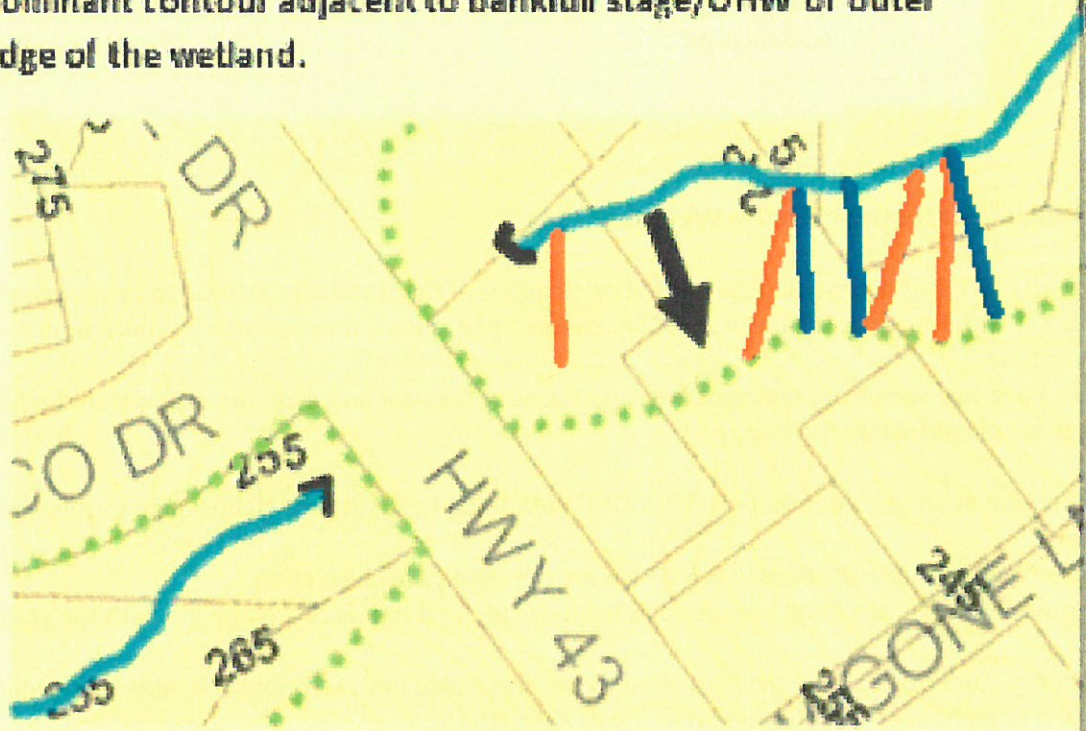
I have other obligations on the 15th, please for the sake of a good applications consider the above.

Thanks

Aaik

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.



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.

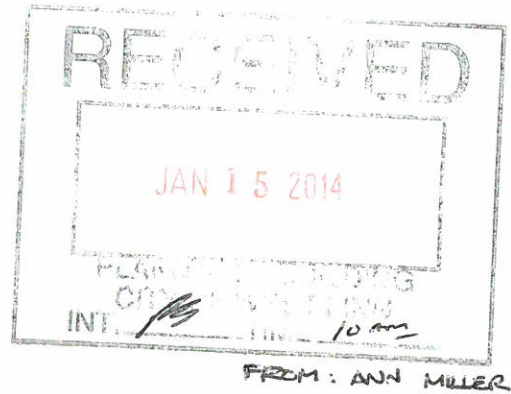
Ditto for "TDA"

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

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 with questions regarding this letter or the Foundation.

Sincerely,



Brenda Ray Scott, CFRE
Executive Director

cc: Dee Sellner
Diane Gibson
Joe West
John Junkin

Shroyer, Shauna

From: Alma Coston <billnalma@comcast.net>
Sent: Wednesday, January 15, 2014 4:44 PM
To: Shroyer, Shauna
Subject: draft--Personal Comments regarding Water Resource Area Hearing January 15

Personal Comments regarding Water Resource Area Hearing January 15, 2014:
To the West Linn Planning Commission

We have always been careful and protective of our property that was purchased partly because of its proximity to creeks, animals, and green area, and use as a little mini farm, but also because of its location close to commercial, schools, and services. We bought it before there were any codes to regulate any uses. Using carefully and lovingly is one thing, destroying is another, and we would never/have never felt we were party to or tolerant of any destruction.

As individuals whose property is 100% affected by the Water Resource boundaries, I oppose any language that gives reason for any individual/individuals to feel the right to walk on any part of our property for pleasure or business without my written permission.

I also do not want restrictions or regulations on care and maintenance that I feel may restrict or be excessively costly in time or money to the most common sense way for me to avoid damage by trees or by wild fire to our residence or vehicles.

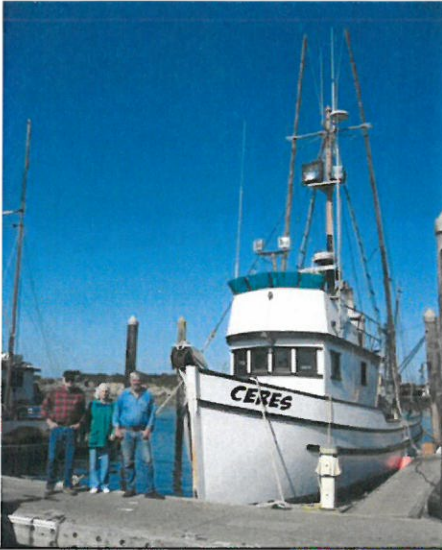
In the code as it was written, there are a great many regulations that limit the possible use and improvements or replacement that in and of themselves affect the value enough without any wording that additionally gives a feeling of rights to the use of my property by any others than my own people. Any such language is highly objected to.

Thank you,
Bill and Alma Coston,
5798 Hood Street, West Linn

Shroyer, Shauna

From: Alma Coston <billnalma@comcast.net>
Sent: Wednesday, January 15, 2014 4:42 PM
To: Shroyer, Shauna
Subject: Comments about the Water Resource Area (2)

Comments about the Water Resource Area language in Chapter 32 that affect development in Maddax Woods as part of the Water Resource Area for PC Hearing January 15, 2014:



Ceres is one of Virgil's earliest boats (early 1940s).

I understand that the proposed language in Chapter 32 called the "Alternative Discretionary Review Process" could allow for reasonable development while respecting the resource".

We as Friends of Maddax Woods would support the new language in the WRA Chapter 32. This new "Alternative Discretionary Review Process" in the chapter could allow for the restoration of the Maddax Pole Boat Barn at Maddax Woods (which we have been working to do for the last 2 ½ years).

For almost 50 years of our West Linn History Virgil Maddax built boats on his property with a perfect drainage swale to the river to launch his boats in his 'mini industrial park'. His "resource" was the geography of his land and he used that "resource" to assist him to accomplish his early industry. The interpretation of that industry and "resource" at Maddax Woods is an important part of our West Linn Story as seen in the Willamette Falls Heritage Trail brochure (attached) highlighting economic and historic resources for our city.

In our somewhat crude way of Interpretive Presentation at the Park there are pictures of 5 of Virgil's 14 boats (to date) displayed in the Pole Barn's surviving exposed and visible foundation. The Maddax's, we older neighbors and Friends, will soon be gone – Without interpretation many important stories are lost. It takes great effort and so long to accomplish valuable interpretive sites as evidenced by the Locks efforts, the Mills, the McLean House and Maddax Woods. The excitement to do the pole barn in an 'old fashion barn raising' by all who heard about it should be taken advantage of! We are only waiting for approval that we feel this Chapter 32 language could provide.

We, as Friends of Maddax Woods, and many others hope that this proposed language will be ratified and make the Barn Restoration possible and could even expedite its reality.

List of some of the Names and contacts to be added in agreement to testimony:

Alma and Bill Coston, BOD, Friends of Maddax Woods,

billnalma@comcast.net

Sally McLarty, BOD, Friends of Maddax Woods, Pres, Bolton NA

Sandy, sandyblomster@me.com and Bill Streeter, BOD and neighbor of Friends of Maddax Woods

Claudia Davis, ced2011@comcast.net BOD, Friends of Maddax Woods

Mike and Peggy Watters PLAYMIKE@aol.com Friends of McLean and Maddax

Elizabeth Rocchia erocchia@comcast.net

Roger Shepherd Roger and Marla <qaarshep@easystreet.net> Friends of Maddax Woods

Jim Mattis mattisj@comcast.net Member Friends of Maddax and Member Willamette Falls Heritage Foundation

Jerry Herrmann, River Resource Museum, Oregon City, New History Minstrels (in Word and Song)



Mar Azul and Lorrayne are the last two steel boats built at Maddax Woods.

Susan Carley, rscarleys@comcast.net BOD Maddax Woods
Steve Ellwood ellwood4292@comcast.net Antique and Classic Boat Society, Vice. Pres
Elaine Mahoney emahoney240@comcast.net past Pres of Maddax Woods *emahoney240@msn.com*
James Weaver weavers5796@hotmail.com Pres. Friends of Maddax Woods
and many more!

Jan 15, 2014
PS

Claudia Davis
21000 Wisteria Road
West Linn, OR 97068

Dear Planning Commission,

I am a member of the Board of Directors of the Friends of Maddax Woods. I would like to submit the following comments to be entered into the record of the Planning Commission Hearing tonight, January 15, 2014.

I understand that the proposed change to the language in Chapter 32 called the "Alternative Discretionary Review Process" could allow for reasonable development while respecting the resource".

These comments are submitted in reference to the proposed change to the Water Resource Area language in Chapter 32 that are relevant to development in Maddax Woods which is part of the Water Resource Area.

We as Friends of Maddax Woods would support the new language in the WRA Chapter 32. This new "Alternative Discretionary Review Process" could allow for the restoration of the Maddax Pole Boat Barn. The Boat Barn foundation still exists and the Friends of Maddax Woods have been working to rebuild the structure for the last 2½ years. Because this structure was an integral part of Virgil and Dorothy Maddax's livelihood on the property for over 50 years we feel that it is a reasonable development while also respecting the resource.

Virgil Maddax built boats under the barn located in a natural swale close to the river so he could launch his boats into to the Willamette River from his 'mini industrial park'.

His "resource" was more than about "flora and fauna" and about the usability of that "resource (location)" to assist him to accomplish his early industry. The interpretation of that industry and "resource" at Maddax Woods is an important part of our West Linn Story as identified in the Willamette Falls Heritage Trail brochure, and is an economic and historic resource for our city.

The Friends of Maddax Woods have attempted to share an Interpretive Presentation at the Park where there are pictures of five of Virgil's 14 boats that he built there in his Boat Barn. The "story" is now told in temporary displays in the Barn's existing exposed and visible foundation. Without a more permanent presentation in a weather protected structure, the Maddax's story will soon be gone. Those of us older neighbors and Friends try to share the many important stories but our efforts are hindered because it takes so long and the efforts are too great to accomplish in a reasonable time the work to accomplish the project. Some examples of efforts in the past that have been lost are the West Linn Inn, the Locks and the Mills. It took many years to reclaim the McLean House for public use and Maddax Woods is now an example of the time it takes to accomplish a goal of preserving and sharing history for future generations.

We the Friends of Maddax Woods, and many others, hope that this proposed language change will make the Barn Restoration possible and could even expedite its reality. The excitement to rebuild the Boat Barn in an 'old fashion barn raising' was very exciting for all who heard about it! However, with the current language in Chapter 32 there doesn't seem to be any hope for this goal. Please consider this comment in the decision making process.

Sincerely, Claudia Davis

2/5/14 PC Meeting

*rec'd
Jan. 15 2014
JS*

City of West Linn
Planning Commission Public Hearing
CDC 10-3; Water Resource Areas

January 15, 2014

Per mailed notification regarding CDC Chapter 32:

Ole's Memo of 01/15/14

It was intended that this matter be discussed at a meeting in association with the Robinwood Neighborhood Association (RNA).

On January 14, 2014 the RNA officers said they had not been notified by the city as required by law.

I would like to reserve the right to address all issues after discussing this matter in a forum where all members of the RNA have a right to participate. I expect this to take at least 4 months.

Attached to this memo are the following:

1. Copy of the Planning Committee Notice for Public Hearing CDC-10-03 Water Resource Areas unsigned and undated.
2. Copy of Ole's City of West Linn Organization Chart
3. Copy of Ole's Lot Partition Subject Chart
4. Copy of Ole's Lot Partition Resources Protected Chart
5. Copy of Due Process Rights
6. Copy of OR Constitution Article I Bill of Rights Sec. 18,21,22
7. Copy of OR Constitution Article XI Sec. 2 and 4
8. Copy of Oregon 1893 Incorporation Act ORS 221.901 -.905
9. Copy of OR Constitution Article III Sec. 1 Separation of Powers
10. Copy of Oregon Revised Statutes ORS 92.040(2), ORS 92.285
11. Copy of Oregon Revised Statutes ORS 92.990(1), (2) Penalties
12. Copy of Oregon Revised Statutes ORS 164.005 to 164.085
13. Copy of Ole's abbreviated Oregon Public Records and Meetings Law
14. Copy of 2003 mailing list of effected properties. 3071 properties

Without an explanation of the charts Attachments 2, 3, 4 the meaning may be lost.

The Community Development Code Chapter 32 was not available at the Public Library for me to read.

No one at the RNA meeting of January 14, 2014 had a copy of CDC Chapter 32. No one had seen a copy of CDC Chapter 32 on line.

I have attended all known meetings on this issue from about 2000 to date and have a large file on this issue.

Ole Olsen

Ole Olsen 1/15/14

3993 Kenthorpe Way
West Linn OR 97068

**CITY OF WEST LINN
PLANNING COMMISSION PUBLIC HEARING
CDC-10-03: WATER RESOURCE AREAS**

This is to notify you that the City of West Linn has proposed a land use regulation that may affect the permissible uses of your property and other properties.

AN ORDINANCE RELATING TO WATER RESOURCE AREAS, REPEALING AND REPLACING COMMUNITY DEVELOPMENT CODE CHAPTER 32, AND AMENDING CHAPTERS 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 33, 46, 54, and 55.

The West Linn Planning Commission is scheduled to hold a public hearing on Wednesday January 15, 2014, at 7:00 p.m., in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider a proposal to repeal and replace chapter 32 and amend chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 33, 46, 54, and 55 of the Community Development Code (CDC). The proposed chapter 32 replacement applies to the City's water resource areas (WRAs), which include all wetlands, streams, creeks and adjacent riparian areas.

You have been notified of this proposal because County records indicate that you own property that is adjacent to a WRA. The City has determined that the adoption of the replacement chapter and amendments may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property. This notice satisfies Measure 56 requirements. Answers to questions you may have about the Measure 56 notice are provided on the City's web site at <http://westlinnoregon.gov/Measure56>.

The hearing will be conducted in accordance with the rules of CDC Section 98.120. Anyone wishing to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the Planning Commission will receive a staff presentation, and invite both oral and written testimony. The Planning Commission may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed amendments as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

The proposed land use regulations are available for inspection at City Hall, 22500 Salamo Road, West Linn, OR 97068. A copy is available for purchase at a minimal charge. At least 10 days prior to the hearing, a copy of the proposed amendments and associated staff report will be available for inspection and also on the City's web site at <http://westlinnoregon.gov/planning/discussion-draft-chapter-32-wra-amendments>. In addition, the project file CDC-10-03, Water Resource Area Amendments, containing the proposed chapter replacement and amendments and related information is available for review at the Planning Department.

Following the hearing, the Planning Commission will make a recommendation to the City Council. The Council will make a final decision regarding the proposed chapter replacement and amendments following its own public hearing. For further information, please contact Peter Spir, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 723-2539, or via e-mail at pspir@westlinnoregon.gov

Shauna Shroyer
Planning Administrative Assistant

LEGISLATIVE - CITY COUNCIL
12/12/12 WL3-00 ORG. CHART
CITY OF WEST LINN
Oregon Incorporated City Government
Adopt Budget, Codes & Rules, Enhance Livability
Part VI Person
Outline of Jurisdiction
Part I Area WL (Not US, St-State, CI Co -County)
Part II Branch: 30 Legis, 40 Admin, 50 Judicial
Part III Department, Type of Law, Code & Advise
Part IV Subject & Conditions
Part V Procedure for Departments
Part VI People (District, Public, Business, Person)

EXECUTIVE & ADMINISTRATIVE DEPT
12/12/12 WL4-00 ORG. CHART
CITY OF WEST LINN
Due Process of Law, Separation of Powers, Checks & Balances
Expedite & Enforce Laws, Keep Records, Finance, Provide Protection; Services
Part VI Person, Qualify Part IV Subject, V Process
Duty Location
WL4-01 Mayor John Kovash General WLMC CH1 Duties ORS 221.917
WL4-01 Mayor (Executive) Live WL Y N Government WLMC CH2 WLCH S.22 ORS 221.130+ ORS 221.901-928

STEPS TO FOLLOW
WL3-00 JURISDICTION
PART I - AREA JURISDICTION
D - CITY (NOT US, ST, CO)
PART II - BRANCH 5 JUDICIAL (NOT 3 LEG.; 4 ADMIN)
PART III - TYPE OF LAW
MAJOR SECTION NAME
PART IV - SUBJECTS- MAIN
MINOR SECTION/SUBSECTION
PART V - PROCEDURES
SECTION # AND NAME
S 20 INVESTIGATION
S 30 ALLEGATION/CHARGE
S 40 ANSWER/RESPONSE
S 50 PRE-HEARING/TRIAL
S 60 DURING HEARING/TRIAL
S 70 AFTER HEARING/TRIAL
S 80 REMEDY/ENFORCE
FA CASE APPEAL
INSTRUCTIONS
W = WORKBOOK
F = FILE, S = SECTION
= CLOSED GATE
= OPEN GATE
WL = WEST LINN
MC = MUNICIPAL CODE
CDC = COMMUNITY DEV. CODE
ORS = OR REVISED STATUTES
OAR = OR ADMIN RULES

JUDICIAL - MUNICIPAL & CIRCUIT COURT
12/12/12 WL5-00 ORG. CHART
CITY OF WEST LINN
Power to Decide a Case, Obligation to be Fair and Just
CITY MUNICIPAL COURT or COUNTY CIRCUIT COURT
CLACKAMAS COUNTY CIRCUIT COURT
ORS-70 VIOLATIONS (NEW 2000)
QUASI - CRIMINAL (NON JAIL)
WILDLIFE, FISHING, BOATING
TRAFFIC, CITY NUISANCE, OTHER
NO RULES ? ORS 153.033
POLICE, SHERIFF, DOJ, OTHER
STATE v. DEFENDANT
FORM ORS 1.525, 133.007-015
ORS 153.061
ORS 153
TRIAL BY JUDGE
PREPONDERANCE OF EVIDENCE
ORS 153.090, .012, .018
CLASS A VIOLATION \$720
CLASS B VIOLATION \$360
CLASS C VIOLATION \$180
CLASS D VIOLATION \$90
UNCLASSIFIED - USE B
ORS 30.315, LIEN ORS 221.351
CIRCUIT CT ORS 151.057, 221.359
VIOLATIONS AGAINST STATE
WILDLIFE ORS 496.002
COMMERCIAL FISH ORS 506.001
TRAFFIC ORS 802-826
VEHICLES & TRAFFIC WLMC CH3
BOATING ORS 830
WEST LINN MUNICIPAL COURT
VIOLATIONS AGAINST WEST LINN WL5-70

ENTER CITY NAME		APPLICANT NAME		APP #	LOT PARTITION		mm/dd/yy	Cy LW10.01 SUBJECT		LW	
STREET		STREET		LOT TENT/FINAL; PARTITION (Civil)		by	BY	LAND WORKBOOK		-10	
CITY ST ZIP		CITY ST ZIP		STATUTE		01/13/14		OLE OLSEN		INDEX	
DEPARTMENT OR CONTACT		TAX LOT		CODE		APPLY	mm/dd/yy	PRE - PRO	mm/dd/yy	INDEX	
ADMIN	mm/dd/yy	DISCLOSE	mm/dd/yy	NAT. RES.	mm/dd/yy	FINAL PLAT	mm/dd/yy	TENT APPR	mm/dd/yy	FINAL APPR	mm/dd/yy
WORKBK	PROCESS	LAND WORKBOOK NAME			DATE	FORM #	APPLICANT DECLARATION - COMPLETE				
LW 10.00	APPLICATION	LOT TENT/FINAL; PARTITION (Civil)			mm/dd/yy						
LW ##.00	APPLICATION	OTHER WORKBOOK NAME									
LW ##.00	APPLICATION	OTHER WORKBOOK NAME									
Sec 30.0	PRE-PROCESS	LOT TENT/FINAL; PARTITION (Civil)			mm/dd/yy						
S 31.0	STAFF REVIEW	D4-43	P8 STAFF								
S 32.0	FEES/BASIC \$.1 LOTS \$.2 ENGINEERING	.3 ROADS \$.4 STORM \$.5 EROSION \$					
S 33.0	NOTICE/Conference										
S 34.0	CONFERENCE	NOTES									
S 35.0	STAFF REPORT	D4-43	P7 STAFF								
S 36.0	APPLY COMPLETE	NOTES									
S 37.0	120 DAY RULE TO	NOTES									
D4-00	ADMIN. DEPT.	FINANCE, SAFETY, SERVICES, FACILITIES			mm/dd/yy	D = CITY		D4-10	FINANCE		
D4-20	PUBLIC SAFETY	.1 POLICE	.4 FIRE	D4-30	PUBLIC SERVICES	D4-31	MANAGER	D4-32	ENGINEERING	.10	LAND TRANSPORT
	.11 ROADS	.12 DRIVEWAYS	.13 WALKWAYS	.14 TRANSIT	.15 ST TREES	.18 ROAD GIS	.20 NAVIGATION	.30	AVIATION		
.40	ENERGY/FUELS	.41 ELECTRIC	.42 WATER	.43 WIND	.44 SOLAR	.45 NUCLEAR	.46 NAT. GAS	.47 OIL	.48 WOOD		
.50	WATER/SURFACE	.51 DRAINAGE	.52 FLOOD	.53 FLOOD PL	.54 STORM	.55 STORM GIS	.56 EROSION	.57 DEQ NPDES		.58 OPEN	
D4-33	PUB WK	.60 WATER	.61 SUPPLY	.62 TREAT	.63 STORE	.64 DISTRIBUTE	.65 WATER GIS	.70	SEWER	.71 TREAT	.74 SEWER GIS
D4-34	PARKS & REC.	.1 PARKS/REC	.2 OPEN SPACE	.3 TRAILS	.4 ACQUIRE	.5 DEVELOP	.6 MAINTAIN	.7 GAMES	.8 PARKS GIS		
D4-35	PUBLIC FACILITIES	.1 EDUCATION	.2 SCHOOLS	.3 LIBRARY	.4 CITY HALL	.5 POLICE	.6 FIRE	.7 SENIOR CTR	.8 HISTORIC		
D4-36	HUMAN RESOURCE	.1 PERSONNEL	.2 COURT ADMIN	.3 RISK MGMT.	.4 OPEN	.5 OPEN	.6 OPEN	.7 INFO	.8 NEIGHBOR		
D4-40	PROPERTY SERVICE	.42 PLAN/ZONE	.44 HEAR OFF	D4-46	LAND DIVISION	.1 SURVEYOR	D4-47	BUILDING	.1 PLAN	.2 INSPECT	
D4-48	PRIVATE SERVICES	.1 REFUSE	.2 ELECTRIC	.3 GAS	.4 PHONE/TV	.5 HEALTH	.6 AMBULANCE	.7 HOSPITAL	.8 ELDERLY		
Sec 50.0	DISCLOSURE TO	OWNER - REAL PROPERTY, LAND, BUILDINGS			mm/dd/yy	P 03	OWNER	T0 = TITLE INITIAL - 0			
S 51.0	FORM ORS 105.464										
S 52.0	BASIC INFO	.1 TAX LOT	.2 ZONING		.6 LOCATE GIS		.7 PHOTO GIS	.8 OTHER GIS			
S 53.0	DEED & DIMENSIONS	.1 DEDICATION	.2 DECLARATION	.3 RIGHT OF WAYS (UTILITIES)		.4 EASEMENT	A. PRIVATE	B. PUBLIC	C. CONSERVE		
S 54.0	AGREEMENTS	.1 DEVELOPER	.2 CCRs	A. CONDITIONS	B. COVENANTS	C. RESTRICTION	.3 ACCESS BY PERMISSION		.4 OPEN		
S 55.0	STRUCTURES	.1 EXISTING	.2 NEW	.3 SETBACK	A. FRONT	B. REAR	C. SIDE				
S 56.0	INSPECTION	.1 ENGINEER	.2 ARCHITECT	.3 BUILDING	.4 ELECTRICAL	.5 ROOF	.6 PEST	.7 SEWER	.8 ADVICE		
S 57.0	FINANCES	.1 LIENS	.2 TAXES	.3 MORTGAGE	.4 LOAN						
NR 0.0	NAT RESOURCES	INVENTORY (Civil), RES. PROTECT (US, ST Admin)			mm/dd/yy	P 03	OWNER				
NR 1.0	LAND	.1 SOIL GIS									
NR 2.0	MINERALS	.1 METAL	.2 NON-METAL	.3 GEMS	.4 SEMI-GEMS	.5 AGGREGATE	.6 FUELS	.7 STRATEGIC			
NR 3.0	PLANTS, LAND	.1 WOOD TREE	.2 FRUIT TREES	.3 FLOWERS	.4 GRASS/SHRU	.5 FERN/SEED	.6 MOSS/MOLD	.7 ALGAE/FUNG	.8 BACTERIA		
NR 4.0	ANIMALS, LAND	.1 MAN, PRIMAT	.2 DOMESTIC	.3 WILD	.4 REPTILE	.5 RODENTS	.6 WORMS	.7 BUGS	.8 INSECTS		
NR 5.0	WATER	.1 RIVERS	.2 STREAMS	.3 RIPARIAN	.4 WETLAND	.5 LAKES	.6 PONDS	.7 WELLS	.8 WATER GIS		
NR 6.0	FISH, MARINE	.1 FISH	.2 MAMMAL	.3 CRUSTACEAN	.4 MOLLUSKS	.5 AMPHIBIANS	.6 WORMS	.7 SPONGE/CORAL		.8 PROTO ZOA	
NR 7.0	AIR	.1 WIND	.2 LIGHT	.3 NOISE	.4 GLARE	.5 SMOKE	.6 CHEMICAL				
NR 8.0	BIRDS, FEATHER	.1 LAND	.2 FOREST	.3 BUSH	.4 WATER	.5 GAME	.6 SEA	.7 PREY	.8 OTHER		
NRP 9.0	RES. PROTECTED	.1 LAND/PARKS	.2 WATER	.3 OCEAN	.4 UNIQUE	.5 DISASTERS	.6 HAZARD	.7 HEALTH	.8 OTHER		
Sec 60.0T	TENT PLAT DWG	LOT TENTATIVE; PARTITION (Civil)			mm/dd/yy	P 14	SURVEYOR				
Sec 60.0F	FINAL PLAT DWG	LOT FINAL; PARTITION (Civil)			mm/dd/yy	S61.0	GIS ELEV & CONTOURS		S 62.0	SIGNATURE BLOCK	
S 63.0	LEGEND	.1 SCALE	.2 SIZE	.3 NORTH							
S 64.0	DIMENSIONS (S 53)	.1 MONUMENT	.2 BOUNDARY	.3 LENGTH							
S 65.0	EASEMENTS (S 53)	.3 RIGHT OF WAYS (UTILITIES)		.4 EASEMENT	A. PRIVATE	B. PUBLIC	C. CONSERVE				
S 66.0	STRUCTURES (S 55)	.1 EXISTING	.2 NEW	.3 SETBACK	A. FRONT	B. REAR	C. SIDE				
S 67.0	OPEN										
S 68.0	NAT RESOURCES	R 1 LAND	R2 MINERALS	R3 PLANTS	R 4 ANIMALS	R 5 WATER	R 6 FISH	R 7 AIR	R 8 BIRDS		
S 69.0	RES. PROTECTED	.1 LAND/PARKS	.2 WATER	.3 OCEAN	.4 UNIQUE	.5 DISASTERS	.6 HAZARD	.7 HEALTH	.8 OPEN		
Sec 70.0	PLAT PROCESS	LOT TENT/FINAL; PARTITION (Civil)			mm/dd/yy						
S 71.0	OWNERS, AGENTS CERTIFICATES	P 03 OWNER	P 11 ENGINEER	P 14 SURVEYOR	P 15 Architect	P 19 TITLE Co	P 21 Developer	P 23 Contractor			
S 72.0	STAFF REVIEW	GENERAL DATA	S30, D4.00, S50, NR0.0, S60	.4 REVIEW		D4-45	P6-8 STAFF REVIEW				
S 73.0	PUBLIC COMMENTS	.1 NAMES	.2 NOTICE	.3 COMMENTS	.4 REPORT	D4-45	P5 STAFF		mm/dd/yy		
S 74.0	HEARING	.1 PETITION	.2 NOTICE	.3 HEARING	.4 REPORT	D4-44	P4 HEARINGS OFFICER				
S 75.0	OPEN										
Sec 76.0	TENT APPROVE	LOT TENT/FINAL; PARTITION (Civil)			mm/dd/yy	D4-43	P3 RESPONSIBLE OFFICIAL		mm/dd/yy		
S 77.0	APPEAL	NOTES									
S 78.0	FILE #	NOTES									
Sec 80.0	FINAL PROPOSE	LOT TENT/FINAL; PARTITION (Civil)			mm/dd/yy	S 81.0	PLAT CERTIFICATES		S 82.0	PLAT SIGNATURES	
P 00	OWNER/AGENT SIGNATURES	mm/dd/yy	D4-00	CITY SIGNATURES		mm/dd/yy	C4-00	COUNTY SIGNATURES		mm/dd/yy	
P 03	OWNER	mm/dd/yy	D4-12	P2 FINANCE		mm/dd/yy	C4-12	P2 TREASURER		mm/dd/yy	
P 03	OWNER	mm/dd/yy	D4-20	P1 POLICE	mm/dd/yy	P4 FIRE	C4-13	P3 ASSESSOR		mm/dd/yy	
P 11	ENGINEER	mm/dd/yy	D4-32	P11 ENGINEER		mm/dd/yy	C4-32	P11 ENGINEER		mm/dd/yy	
P 14	SURVEYOR	mm/dd/yy	D4-46	P14 SURVEYOR		mm/dd/yy	C4-46	P14 SURVEYOR		mm/dd/yy	
P 15	ARCHITECT	mm/dd/yy	D4-41	P1 PLAN DIR.		mm/dd/yy	B4-00	ST AGENCY	A4-00	US AGENCY	
Sec 83.0	PLAT & DEED APPROVE/FILE	mm/dd/yy	VARIES BY ORDINANCE			mm/dd/yy	C4-11	P14 RECORDER		mm/dd/yy	
S 84.0	WARRANTY DEED	mm/dd/yy	S 85.0	CoC FILE #		mm/dd/yy	S 86.0	PLAT TO SURVEYOR			
FILE FA	APPEAL - COURT	LOT TENT/FINAL; PARTITION (Civil)			2/5/14	PC Meeting					

ENTER CITY NAME		APPLICANT NAME		APP #	LOT PARTITION	mm/dd/yy	Cy NRP 9.0 PROTECTED		
STREET		CITY	ST	ZIP	TAX LOT	©	by	BY	LAND WORKBOOK
ENG., PLAN & ZONE		CITY NAME	STREET		CITY	ST	ZIP	PHONE	CONTACT
ENGINEERING, PLAN & ZONE				NATURAL RESOURCE PROTECTED INTRO				INDEX	
NR 9.1		LAND/PARKS							
	R9.11	FOREST SERVICE							
	R9.12	BLM							
	R9.13	RESERVES							
	R9.14	PRESERVES							
	R9.15	SCENIC							
	R9.16								
	R9.17								
	R9.18	LAND/PARKS GIS MAP							
NR 9.2		WATER AREAS							
	R 9.21	RIVERS							
	R 9.22	FLOODPLAIN							
	R 9.23	WETLAND							
	R 9.24	LAKES							
	R 9.25								
	R 9.26								
	R 9.27								
	R 9.28	WATER AREAS GIS MAP							
NR 9.3		OCEAN AREA							
	R 9.31	ESTUARY							
	R 9.32	SHORE							
	R 9.33	BEACHES							
	R 9.34	DUNES							
	R 9.35								
	R 9.36								
	R 9.37								
	R 9.38	OCEAN AREA GIS MAP							
NR 9.4		UNIQUE							
	R 9.41	HISTORICAL							
	R 9.42	GEOLOGICAL							
	R 9.43	CULTURAL							
	R 9.44	ARCHEOLOGICAL							
	R 9.45	ARCHITECTURAL							
	R 9.46	AESTHETICAL							
	R 9.47								
	R 9.48	UNIQUE GIS MAP							
NR 9.5		DISASTERS							
	R 9.51	FLOOD							
	R 9.52	VOLCANO							
	R 9.53	EARTHQUAKE							
	R 9.54	FIRE							
	R 9.55	HURRICANE							
	R 9.56	EROSION							
	R 9.57	LANDSLIDE							
	R 9.58	DISASTERS GIS MAP							
NR 9.6		HAZARDS							
	R 9.61	FLOODPLAIN							
	R 9.62	CHEMICAL							
	R 9.63	SEDIMENT							
	R 9.64	TURBIDITY							
	R 9.65								
	R 9.66								
	R 9.67								
	R 9.68	HAZARDS GIS MAP							
NR 9.7		HEALTH							
	R 9.71	SMOG							
	R 9.72								
	R 9.73								
	R 9.74								
	R 9.75								
	R 9.76								
	R 9.77								
	R 9.78	HEALTH GIS MAP							
NR 9.8		OPEN							
	R 9.81								
	R 9.82								
	R 9.83								
	R 9.84								
	R 9.85								
	R 9.86								
	R 9.87								
	R 9.88	OPEN GIS MAP							

Due process clause. Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. See **Due process of law.**

Due process of law. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoy v. Neff*, 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. The concept as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. Fundamental requisite is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Aside from all else, "due process" means fundamental fairness.

The essential elements of due process of law are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of general law. Daniel Webster defined this phrase to mean a law which hears before it condemns, which proceeds on inquiry and renders judgment only after trial. This constitutional guaranty demands only that law shall not be unreasonable, arbitrary, or capricious, and that means selected shall have a real and substantial relation to object.

See also **Procedural due process**; **Substantive due process.**

Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice.

Procedural due process. Those safeguards to one's liberty and property mandated by the 14th Amend., U.S.Const., such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the 6th Amendment and made applicable to the states' procedure by the 14th Amendment.

Procedural law. That which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on procedural aspects of civil or criminal action; e.g. Rules of Civil, Criminal, and Appellate Procedure, as adopted by the Federal and most state courts. As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws". See also **Procedure.**

Procedure. The mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery, as distinguished from its product. That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions; e.g. Rules of Circuit or Criminal Procedure. The judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them.

The law of procedure is what is commonly termed by jurists "adjective law" (q.v.).

See also **Procedural law**; **Rules of court.**

Substantial evidence. Such evidence that a reasonable mind might accept as adequate to support a conclusion. It is that quality of evidence necessary for a court to affirm a decision of an administrative board. Under the "substantial evidence rule," reviewing courts will defer to an agency determination so long as, upon an examination of the whole record, there is substantial evidence upon which the agency could reasonably base its decision.

Under the substantial evidence rule, as applied in administrative proceedings, all evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion." In other words, the competency of evidence for purposes of administrative agency adjudicatory proceedings is made to rest upon the logical persuasiveness of such evidence to the reasonable mind in using it to support a conclusion.

Substantive due process. Such may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property; the essence of substantive due process is protection from arbitrary and unreasonable action.

CONSTITUTION OF OREGON 2009 EDITION

ARTICLE I BILL OF RIGHTS

Section 18. Private property or services taken for public use. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. 17, 1919, and adopted by the people May 21, 1920; Amendment proposed by S.J.R. 8, 1923, and adopted by the people Nov. 4, 1924]

Section 21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors. No *ex-post facto law*, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested. —

Section 22. Suspension of operation of laws. The operation of the laws shall never be suspended, except by the Authority of the Legislative Assembly.

ARTICLE XI

CORPORATIONS AND INTERNAL IMPROVEMENTS

Section 2. Formation of corporations; municipal charters; intoxicating liquor regulation. Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. [Constitution of 1859; Amendment proposed by initiative petition filed Dec.13, 1905, and adopted by the people June 4, 1906; Amendment proposed by initiative petition filed June 23, 1910, and adopted by the people Nov. 8, 1910]

Section 4. Compensation for property taken by corporation. No person's property shall be taken by any corporation under authority of law, without compensation being first made, or secured in such manner as may be prescribed by law.

221.901 Cities organized under 1893 Act; officers; "city" defined for ORS 221.901 to 221.928. (1) The officers of every municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be a mayor, six aldermen, a recorder, who shall be ex officio clerk of the common council, a marshal, a treasurer and such subordinate officers as are provided in ORS 221.902.

(2) Unless the context indicates otherwise, "city" as used in ORS 221.901 to 221.928 includes any area or territory incorporated under sections 1 to 6, pages 119 to 123, Oregon Laws 1893.

221.902 City officers; elective; appointive; terms. (1) The mayor, aldermen, recorder, treasurer, and marshal of a municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be elected to two-year terms by the electors of the city. Each term of office commences on the first Monday in January next following the general election and expires on the day immediately preceding the first Monday in January next following the subsequent general election.

(2) The council may appoint an attorney, a superintendent of streets, a civil engineer, a municipal judge and police and other subordinate officers, and fix their compensation. These officers shall hold office during the pleasure of the council. [Amended by 1981 c.173 §8; 1983 c.350 §29; 1999 c.788 §53]

221.903 Bond and oath of officers. The recorder, treasurer and marshal mentioned in ORS 221.902 shall, before entering upon the duties of their respective offices, each execute a bond to the city in such penal sum as the council by ordinance may determine upon, conditioned for the faithful performance of duties, including in the same bond the duties of all offices of which the recorder, treasurer or marshal is ex officio incumbent under ORS 221.901 to 221.928. The bond shall be approved by the council before the officer enters upon the discharge of duties. The bonds so approved shall be filed with the recorder, except the bond of the recorder, which shall be filed with the mayor. All the provisions of any law of this state relating to official bonds of officers shall apply to such bonds, except as otherwise provided in ORS 221.901 to 221.928. Every officer of the city, before entering upon the duties of office, shall take and file with the recorder an oath to honestly and faithfully discharge the duties of office, and that the officer will support the laws and Constitution of this state and of the United States to the best of the ability of the officer.

221.904 Vacancies. (1) The council shall fill any vacancy occurring in any of the offices provided for in ORS 221.902 by appointment.

(2) If the office is elective, the appointee shall hold office until the first Monday in January after the general election next following the appointment. At the general election next following the appointment, a person shall be elected to serve any remaining portion of the term. A person elected under this subsection shall take office on the first Monday in January after the election.

(3) If a council member is absent for three consecutive meetings without permission of the council, the council shall declare the office vacant and fill the office by appointment. [Amended by 1983 c.350 §30]

221.905 Compensation of city officers. The mayor and aldermen mentioned in ORS 221.902 shall receive no compensation whatever for their services as such officers. The recorder, treasurer, marshal, police and other subordinate officers shall severally receive at stated times compensation to be fixed by ordinance by the council, which compensation shall not be increased nor diminished after their election, or during their several terms of office. Nothing contained in this section shall be construed to prevent the council from fixing several amounts of compensation, in the first instance, during the term of office of any such officer after the election of the officer. The compensation of all other officers shall be fixed from time to time by ordinance, duly passed by the council.

ARTICLE III

DISTRIBUTION OF POWERS

- Sec. 1. Separation of powers
2. Budgetary control over executive and administrative officers and agencies
 3. Joint legislative committee to allocate emergency fund appropriations and to authorize expenditures beyond budgetary limits
 4. Senate, confirmation of executive appointments

Section 1. Separation of powers. The powers of the Government shall be divided into three separate [sic] departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided. —

PROPERTY RIGHTS AND TRANSACTIONS SUBDIVISIONS AND PARTITIONS

92.040 Application for approval of subdivision or partition; tentative plan; applicability of local government laws. (1)

(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

MISCELLANEOUS PROVISIONS

92.285 Retroactive ordinances prohibited. No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110. [1973 c.696 §21]

PENALTIES

92.990 Penalties. (1) Violation of any provision of ORS 92.010 to 92.090, 92.100 and 92.120 to 92.170 or of any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less than \$50 nor more than \$500 or imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

(2) Any person who violates any of the provisions of ORS 92.325 (1), 92.345 to 92.365, 92.405 (1), (2) and (3), 92.425, 92.433, 92.460 to 92.475 and any alternative requirements of the Real Estate Commissioner prescribed pursuant to ORS 92.425 (3), not waived by the commissioner pursuant to ORS 92.395, or who provides false information or omits to state material facts pursuant to ORS 92.337, shall be punished by a fine not exceeding \$10,000, or by imprisonment in the custody of the Department of Corrections for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) (1973 Replacement Part) enacted as 1973 c.421 §10; subsection (3) (1973 Replacement Part) enacted as 1973 c.421 §49; subsections (2), (3) (1973 Replacement Part) repealed by 1974 c.1 §23; subsection (2) (1974 Replacement Part) enacted as 1974 c.1 §22; 1975 c.643 §21; 1977 c.809 §14; 1987 c.320 §14]

DEFINITIONS

164.005 Definitions. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means to:

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) Withhold property of another or cause property of another to be withheld from that person permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to that person; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

(5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract. [1971 c.743 §121]

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in sections 121 and 131, chapter 743, Oregon Laws 1971, compiled as 164.005 and 164.115. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

164.010 [Amended by 1959 c.236 §1; repealed by 1971 c.743 §432]

THEFT AND RELATED OFFENSES

164.015 "Theft" described. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits theft by extortion as provided in ORS 164.075;

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123; 2007 c.71 §47]

164.020 [Amended by 1959 c.236 §2; repealed by 1971 c.743 §432]

164.025 Consolidation of theft offenses; pleading and proof. (1) Except for the crime of theft by extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion. [1971 c.743 §122]

164.030 [Amended by 1955 c.37 §1; 1959 c.236 §3; repealed by 1971 c.743 §432]

164.035 Defenses to theft. (1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that the sole purpose of the defendant was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant re-

ceived, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as husband and wife and were living in separate abodes at the time of the alleged theft. [1971 c.743 §132; 2001 c.104 §53]

164.040 [Amended by 1959 c.236 §4; repealed by 1971 c.743 §432]

164.043 Theft in the third degree. (1)

A person commits the crime of theft in the third degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or an aggregate transaction is less than \$100.

(2) Theft in the third degree is a Class C misdemeanor. [1987 c.907 §2; 2009 c.11 §11; 2009 c.16 §1]

164.045 Theft in the second degree. (1)

A person commits the crime of theft in the second degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is \$100 or more and less than \$1,000.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124; 1987 c.907 §3; 1993 c.680 §19; 2009 c.11 §12; 2009 c.16 §2]

164.050 [Repealed by 1965 c.253 §153]

164.055 Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is \$1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) "Firearm" has the meaning given that term in ORS 166.210.

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32; 1987 c.907 §4; 1991 c.837 §9; 1993 c.252 §5; 1993 c.680 §20; 2005 c.706 §10; 2009 c.16 §3; 2009 c.610 §6]

164.057 Aggravated theft in the first degree. (1) A person commits the crime of aggravated theft in the first degree, if:

(a) The person violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for personal rather than commercial transportation; and

(b) The value of the property in a single or aggregate transaction is \$10,000 or more.

(2) Aggravated theft in the first degree is a Class B felony. [1987 c.907 §5]

164.060 [Repealed by 1965 c.253 §153]

164.061 Sentence for aggravated theft in the first degree when victim 65 years of age or older. When a person is convicted of aggravated theft in the first degree under ORS 164.057, the court shall sentence the person to a term of incarceration ranging from 16 months to 45 months, depending on the person's criminal history, if:

(1) The victim of the theft was 65 years of age or older at the time of the commission of the offense; and

(2) The value of the property stolen from the victim described in subsection (1) of this section, in a single or aggregate transaction, is \$10,000 or more. [2008 c.14 §4]

Note: 164.061 was enacted into law but was not added to or made a part of ORS chapter 164 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

164.063 Disproportionate impact. (1) As used in this section, "disproportionate impact" means that, in a case of theft in the first degree under ORS 164.055 or aggravated theft in the first degree under ORS 164.057:

(a) The offender caused damage to property during the commission of the theft and the cost to restore the damaged property to the condition the property was in immediately before the theft is more than three times the value of the property that was the subject of the theft; or

(b) The theft of the property creates a hazard to public health or safety or the environment.

(2) The Oregon Criminal Justice Commission shall adopt rules that establish disproportionate impact as an aggravating factor that a court may consider as a substantial and compelling reason to impose an upward departure from a presumptive sentence under the rules of the commission. [2009 c.811 §7]

Note: 164.063 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.065 Theft of lost, mislaid property. A person who comes into control of property of another that the person knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, the person fails to take reasonable measures to restore the property to the owner. [1971 c.743 §126]

164.070 [Amended by 1965 c.253 §131; repealed by 1971 c.743 §432]

164.075 Theft by extortion. (1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

- (a) Cause physical injury to some person;
- (b) Cause damage to property;
- (c) Engage in other conduct constituting a crime;
- (d) Accuse some person of a crime or cause criminal charges to be instituted against the person;
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
- (f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such conduct is not considered extortion when the prop-

erty is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48]

164.080 [Repealed by 1971 c.743 §432]

164.085 Theft by deception. (1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind that the actor does not believe to be true;

(b) Fails to correct a false impression that the person previously created or confirmed;

(c) Prevents another from acquiring information pertinent to the disposition of the property involved;

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance that the person does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055, or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

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Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both." *James Madison (1822).*

Hardy Meyers, Attorney General
October 1, 2011

Copies of Attorney General's Manual may be purchased from:
Department of Justice, 100 Justice Building
1162 Court Street, NE, Salem, Oregon 97301-4096
(503) 378-2992, x 325

*rec'd
1-25-14*

Samuel Sabo
18171 Waldow Rd
West Linn, OR 97045
1/15/2014

Reference: CDC-10-03: Water resource Areas

To: Planning Commission

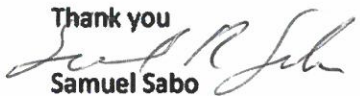
Dear Sir/Madam

First I want to thank you for allowing me to comment on the property Lot #32. My understanding by letter from the Planning Department several years ago was that I had 10 years before the Goal 5 would take effect my property. I was told it would be when the Final Plat (dated about May, 2004) was made for the PUD of Rogerfield Development. When My Son Damon tried to apply for a building permit about 2 years ago he was informed Goal 5 was in effect 10 years from the time the PUD for Rogerfield was submitted.

I own lot # 32 and previously owned Lot # 34. Our sons were not ready to build out there lots sooner in the time frame from when the PUD was recorded. My Son Damon Sabo was finally able to build his home on lot # 34 after going thru the Planning Department for approval which was very difficult, confusing, aggravating for all of us.

If I am still not able to build out Lot # 32 with a suitable lot size with the new amendments, I would like to go through the Planning Department to hear my options. No other lots in Rogerfield except Now Lot #32 is being affected and are all developed. Lot #32 is also encroached upon but a water right away.

Thank you


Samuel Sabo