

Kerr, Chris

From: Kerr, Chris
Sent: Friday, August 07, 2009 10:06 AM
To: Spir, Peter; Soppe, Tom
Subject: FW: 2 Memoranda distributed at 8/5/09 PC meeting regarding Chapter 28 of the CDC

From: GARY [mailto:hitesman@comcast.net]
Sent: Thursday, August 06, 2009 6:35 PM
To: Zak, Teresa; Kerr, Chris
Cc: City Council; Planning Commission; Galle, Patti; Carson, Jody; Kovash, John; Cummings, Teri; 'Hidden Springs Neighborhood Assoc.'
Subject: RE: 2 Memoranda distributed at 8/5/09 PC meeting regarding Chapter 28 of the CDC

Dear Ms. Teresa Zak, Thank you for disseminating the memos.

To the City Council and Acting Planning Director,

This discussion should be deferred until the newly appointed Planning Director can provide input and comment, after a longer period of public involvement has been documented. Any further allowances or exceptions that are currently listed should be suspended based on the need for further review.

Implicated by these memos, the Council Rules as presently approved, do not allow equal dissemination of information, true debate, or meaningful public access to the issues. Please revise the Rules to provide more transparency. Councilors should have the ability to maintain policy direction by having administrative oversight and input to responsibilities and work performance of staff. While you are at it, the Mayors' former responsibilities should be rescinded from the City Manager's and restored to the position of Mayor. Currently, there is a glass ceiling and brick walls separating us and neighborhoods and council and city manager.

The application of overarching principals and application of land use intent is missing from our policies and administrative actions. The credibility of staff work is, in my opinion, low. Policy and CDC language need to be established and written as a matter of quantifiable reason and object based findings; not opinion.

Please see attached armchair analysis.

Assuredly,

Gary Hitesman

From: Zak, Teresa [mailto:tzak@westlinnoregon.gov]
Sent: Thursday, August 06, 2009 10:32 AM
Subject: 2 Memoranda distributed at 8/5/09 PC meeting regarding Chapter 28 of the CDC

You will find the Planning Departments CDC-08-03 project page has been updated with [2 memos](#) that propose modifications to CDC Chapter 28 Willamette and Tualatin River Protection

9/21/2009

distributed at last evenings Planning Commission meeting. Thank you and enjoy your weekend.

The logo for the City of West Linn, featuring the words "CITY OF" in a small font above "West Linn" in a large, bold, sans-serif font. The "W" and "L" are significantly larger than the other letters.

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Thursday, August 06, 2009

Recommendation:

Please reconsider the language and memo findings as authored by the **Acting** Planning Director. The intent and direction indicated in the two memos do not go far enough in providing ample protections of riparian areas and sustainable, practical practices towards access trails.

My recommendation, if there is to be more time spent on this issue, is to understand the intent AND unintended consequences of the proposed language. Equally, some of the other language that already exists needs to be addressed.

Problem:

To truly understand the impact of the memo, the reader is somewhat obligated to read all of Chapter 28. A copy should be appended to the memos for easier cross referencing.

The revisions and exclusions underscore what is already a poorly written set of allowances. These memos describe a liberal nexus of paving abundantly wide trails into other uses and residential zones, with the intent of applying this rule to high density residential areas. Regardless of Purpose statements in Chapter 28, incentives as proposed would have almost guaranteed wider paths in PUD's and in all future developments near you.

The language cements earlier encroachments and allowances into HCA's and existing easements throughout the City by reasonable interpretation of intent and purpose.

The examples used to justify a wider width of path are not applicable to most of West Linn. One exception that is justifiable is the Willamette Industrial Area where the Lock Festival is sometimes held. Another exception would be Willamette Park. The examples shown in the memo to justify a 20 to 24 foot path occur in large urban centers at high activity areas and are not applicable to West Linn.

To be abundantly clear, 20 foot wide pathways are ridiculous, ill fitting, and unenforceable. And by ridiculous, I mean that in most West Linn contexts, including Chapter 28, stupid. This effort is a worthwhile retraction.

Action Goals:

1. This type of policy making needs to be stopped. The Administrative rules being crafted out of this process are misguided and present a danger to the public welfare and existing character of West Linn.
2. This language does not support a sustainable approach or provide average protection of riparian ecosystems. Professionals with experience in sustainable practices, municipal governance, land use law, and long range planning impacts should be advising our City's youthful and inexperienced staff.

3. To preserve the existing character and rural nature of West Linn, a pervious path no wider than eight (8) feet should become the standard, with overly abundant native plantings installed. This SHALL be the standard which most trails in West Linn will be established by. If not, why?
4. The exemptions under Chapter 28 need to be reevaluated to understand all implications and prevent further mismanagement of public and city owned lands. Trails need added protections against aggressive property rights advocates and backyard extending encroachments.
5. Although staff may have been attempting to control unmitigated damages that a 20 foot wide path would create, “wordsmithing” and use designation are insufficient rationale to protect and stop large scale paths from occurring everywhere. (See III below) The intent of the wider path reads stronger than the implied use designations. The code should be clear if the intent is to preserve the single home use designations along the river and elsewhere by specifically stating the allowable character of paths to R-3.5 to R-40 zones.
6. The revisions to the code, under the guise of improving access and describing path characteristics, appear to allow the grandfathering in of existing structures and other encroachments into existing public easements and HCA lands. In reviewing much of what the previous council has done, it appears that revisions from September 2008 to December 2008 enact an erosion of environmental protections and potential duplicitous sellout of publicly owned easements and existing pathways.
7. As such, I urge that 28.110 (E) be equally scrutinized. As it is, any excuse or claim of “hardship” could mean the loss of public access in that area. Worse, by precedent, lead to a wholesale land grab of other, similar easements and existing ROW’s.
8. Some language appears to violate not only intent, but also completely disregards protections toward public land and public access.
9. The Council Rules, as presently approved, do not allow equal dissemination of information, true debate, or meaningful public access to the issues. Please revise the Rules to provide more transparency. Councilors should have the ability to maintain policy direction by having administrative oversight and input to responsibilities and work performance of staff. This is possibly one reason why the CDC is inconsistent, unreliable, and elusive to resolve.

Discussion by Example:

Without spending countless hours to unravel this misbegotten process, below is just one issue that has relevance to the current discussion.

As I dug deeper into the record myself, I perceived a diminishment of HCA lands through a re-classification process, as copied here.

West Linn recently adopted Metro’s Habitat Conservation Area (HCA) standards to protect the Willamette and Tualatin Rivers plus adjacent habitat areas and steep slopes. The West Linn Planning Director is considering the reclassification of all or part of the properties listed below based on site visits to these properties by staff which determined that they did not qualify as Habitat Conservation Areas. Specifically, staff found that the riparian vegetation designations were based primarily on tree canopies which are already protected by the City and/or the slopes were not in excess of 25%. In another example, Metro maps showed a creek where none exists. The properties are:

7860 Robinview Drive
18490 Nixon Avenue
19250 Nixon Avenue
4993 Mapleton Drive
5725 River Street
5715 River Street 5707 River Street
2017 Maple Terrace
2019 Maple Terrace
5697 River Street
6585 Failing Street
6555 Failing Street
25345 Swiftshore Drive
951 Willamette Falls Drive
Tax lot 3801 Assessor's Map 31E-2BC
(property south of 1312 Evah Lane)

You have been notified because you own property within 100 feet of at least one of these properties. This is your opportunity to discuss the re-classifications per CDC Ch.28.070

By definition of what an HCA is, this memo and effort appear redundant. Why err on the side of redundancy when maybe the better thing to do was establish a higher standard that is appropriate to the character of West Linn?

How does staff know the creek wasn't buried? How do I know that staff used the correct coordinates or translated the Metro map correctly? Previous actions and decisions have been made while ignoring the evidence that riparian areas do exist. This is the same staff that supported development of a Portland Skinny House five feet away from Trillium Creek as an equitable solution. The City eventually was forced to pay the owner \$70,000 for the property that now sits fallow and unusable. The process used and decision factors were never let out of executive session.

The application of overarching principals and application of land use intent is missing from our policies and administrative actions. The credibility of staff work is, in my opinion, low. Policy and CDC language need to be established and written as a matter of public access, quantifiable reason, and object based findings; not opinion.

Questions:

How were previous HCA lands deemed unqualified? Who are the property owners that were granted this waiver? How does this relaxation apply to the overall city and other land owners? Given the relaxing of the HCA designation last year, why should or would any encroachment be grandfathered in, as it is now allowed? How does this action not undermine the entire intent of Chapter 28? Why stop with these properties?

Why are METRO guidelines brought in every time as rationale to water down existing protections that protect West Linn's character and environment?

Is it safe to assume that the above was intended to allow a release of public land into the control of individual landowners?

Questions and Requests regarding Chapter 28:

If the language in the memos is passed, should others go out and build a 20 foot deck out into all and every easement as an act of civil disobedience? Since precedent has already been set by countless property owners, and sanctioned through City Hall, this language appears to implicate the rights of those existing landowners who have questionably encroached onto exiting public ROW's and HCA's.

How is this NOT a reasonable conclusion to draw from what is inferred by these truly undeveloped and misguided memos? How does the City stop Chapter 28 from setting precedent throughout the rest of the City? Someone like Perkins/Coie should review and plug the gaps existing in poorly written code.

This discussion should be deferred until the newly appointed Planning Director can provide input and comment. Any further allowances or exceptions that are currently listed should be suspended based on the need for further review. Since the City has such a poor track record of administrating actions by previous "acting" directors, doesn't it make sense to wait until a Director that can be held accountable is hired?

Also:

- I. Please review and possibly update Chapter 2. Some acronyms and planning terminology are missing from the Definitions section. As written, the memos do not clearly communicate the issues, other than to suggest that Mr. Burgess may be driving these discussions in a negative and unhelpful direction.
- II. Nor should the excuse of "Mr. Burgess made me do it" suffice. The former City Manager knows fully what he is doing and represents his positions well. How long will this bias remain unchallenged by other representatives and administrated by beleaguered and cordoned-off staff? Friends don't let friends set policy and rules, do they?
- III. One memo implies that some sort of deception and trickery may have been used to limit the wayward digressions of a 'rogue' councilor? Is this any way to conduct business? Why not just come out and be clear? This demonstrates the current City Manager cannot protect his own interests, let alone ours. The Charter should be addressed to prevent "work arounds" from occurring as a matter of executing policy .
- IV. The Mayor should be commended for allowing this issue to be further evaluated. Without her insistence on fairness and transparency, this travesty would have gone unnoticed. This issue only scratches the surface of the current mismanagement.

Assuredly, Gary Hitesman