AGENDA BILL
#08-08-25

For Council: August 11, 2008

Department: Planning
Dept. Head Initials: BCL
City Manager's Initial CJ

Subject: Public hearing to consider Community Development Code (CDC) amendments to create one chapter regulating the Willamette and Tualatin Rivers. (CDC-07-04)

Attachments:
Memo to City Manager
Staff Report
Proposed Ordinance
Appendices

Budget Impact:	**Expenditures**	**Amount**	**Appropriation**
None	**Required $ -0-**	**Budgeted $ -0-**	**Needed $ -0-**

Summary:
At the behest of City Council, the Planning Commission undertook to amend the Community Development Code (CDC) to create one chapter that integrates Willamette River Greenway (WRG) and Tualatin River Protection Chapters with the requirements of Title 13 of Metro's Urban Growth Management Functional Plan (CDC-07-04).

Integral to the process was the establishment of a committee of riverfront property owners. After three meetings, the committee presented their proposed language to the Planning Commission. It balanced Metro's standards, resource protection, and legal public access with the interests and property rights of riverfront homeowners. A central feature is the use of Metro's mapping system, which protects Habitat Conservation Areas (HCAs). This mapping system will be used to identify areas best suited for development and allow for the appropriate placement and setbacks of structures.

The Planning Commission held public hearings on July 2 and July 23, 2008. Public testimony was mixed. The Planning Commission voted to recommend the amendments at the July 23, 2008 hearing with minor changes.

Recommended Action:
Hold public hearing.
Planning Commission and staff recommends adoption of ordinance
Hold vote to adopt
If vote to approve is unanimous, hold second reading.

Council Action Taken
Approved:
Denied:
Continued:

p:/devrvw/CCagenda bills2008-CDC-07-04-WRG-Tualatin amendments

City of West Linn
PLANNING & BUILDING DEPT.
MEMORANDUM

TO: City of West Linn City Council

FROM: Peter Spir, Associate Planner; Bryan Brown, Planning Director _____

DATE: August 11, 2008

SUBJECT: Amendments to Community Development Code (CDC) to create one chapter that integrates Willamette River Greenway (WRG) and Tualatin River Protection Chapters with the requirements of Title 13 of Metro's Urban Growth Management Functional Plan. (CDC-07-04)

Purpose

The purpose is to bring the Willamette River Greenway and the Tualatin River Protection Area standards into agreement with Metro's Title 13. Originally it was believed that applying the recently adopted CDC's Water Resource Area (WRA) standards, which ostensibly meet Title 13, would be the appropriate course of action but as this report will reveal, there are reasons to back away from the WRA standards.

Background

Title 13 of Metro's Urban Growth Management Functional Plan established the regional bench mark for appropriate management, protection and use of streams, vegetative canopies, habitat areas, wetlands and rivers. Collectively, these resource areas are designated as Habitat Conservation Areas or HCAs. To satisfy Title 13 requirements cities and counties are required to adopt their own development code language that addresses Metro's requirements or they may choose to adopt Metro's Model Ordinance.

West Linn adopted their own code language in 2007 that applies Title 13 to the city's creeks, wetlands, streams and riparian areas. As an example, the old natural drainageway code, which required a 15 foot setback from top of bank for new homes jumped to a setback of 65 feet under the new code. Some members of City Council felt that the tougher WRA standards should also be applied to the most significant bodies of water adjacent to the city: the Willamette and Tualatin Rivers.

A countervailing interest was expressed by many riverfront homeowners who testified at Planning Commission hearings that the WRA standards are unduly restrictive, go beyond Metro requirements, and that the adoption process was essentially void of the kind of public input and participation that characterized earlier WRG code amendments.

The Planning Commission agreed and recommended against the adoption of WRA language. Subsequently, City Council tabled the code amendments to allow for the creation of a citizen's committee to rework the code. The committee, representing the Riverfront Homeowners Association as well as other qualified citizens, held three meetings in April 2008 to craft the new chapter.

Committee members were:

- Peter Jameson
- Greg Smith
- Brian Eastman
- David Froode
- Elizabeth Rocchia
- Andy Rocchia
- Bob Martin, Planning Commissioner
- Peter Spir, Associate Planner

Discussion

Once the citizen's committee was formed, the first step for staff was to find out exactly what Metro's Title 13 requirements are. Staff was surprised to learn from Gail Shaloum of Metro's "Nature In Neighborhoods" program that oversees Title 13 implementation that "***Title 13 does not specify setbacks*** *per se, but the habitat inventory mapping shows areas that are considered regionally significant habitat. The areas denoted as Riparian Class I and Riparian Class II are those considered Habitat Conservation Areas(HCAs)--those most valuable and needing protection. However, Title 13 does not actually say that you cannot develop in those areas at all. It does call for any development within a Habitat Conservation Area to follow a process of avoiding impacts to the riparian areas--minimizing any impacts that do occur--and mitigating for those impacts (see Section 4.B.2). It also states that Habitat Friendly Development Practices are a way to minimize impacts (Table 3.07-13c in Title 13).*

The Metro website contains an interactive mapping tool for viewing the habitat inventory on a particular parcel. You put in an address or intersection and the mapping for that parcel will show up on the screen. It can be accessed at http://www.metro-region.org/index.cfm/go/by.web/id=8385.

Does Metro's mapping really work? To answer that, staff used the Metro mapping website and looked at all the riverfront properties and the impact of the HCAs. It's a very simple and user friendly mapping process giving lot by lot delineations of areas appropriate for development and areas best left untouched.

Specifically, the Metro mapping delineates areas of "Allowable Development" or "Not Affected by Recommendation". These are the areas that new development is to be directed towards. Most of these developable areas are just behind top of bank. In areas

that lack a distinct top of bank the "Allowable Development" area starts about 75 feet above the OHWM. As an example, all but one of the existing homes on the river side of Nixon Avenue are in the "Allowable Development" area.

How will the language proposed by the citizen committee impact riverfront homeowners?

It offers a predictable and objective delineation of where to build. There are a few properties where the delineated protected HCA area appears to be incorrect. Public testimony at the Planning Commission hearing identified a number of such properties. The proposed language has provisions to correct these errors. Essentially, staff will conduct site visits at these properties and compile a list of properties that should have their HCA boundaries adjusted. Staff will then submit the corrections to Metro en masse so Metro can comprehensively correct their mapping, rather than doing it on an ad hoc basis.

An important benefit for homeowners is that instead of a 57.5-65 foot setback from top of bank per the existing WRA provisions, a 15 foot setback to structures is proposed. Certainly that is much less than the existing WRA standards but it exceeds and satisfies Metro requirements and significantly eclipses the old setbacks in the WRG chapter.

In the event that a riverfront home that is in an HCA is burned down or flooded, it may be rebuilt so long as the original footprint/foundation is used.

The proposed chapter offers assurance that property owners who have a vacant parcel and want to build on it but then find that the lot is completely in an HCA area and not listed for development can take advantage of the hardship provision that allows 5,000 square foot impermeable surface area or footprint. This should give the owner ample room for a house, garage and other impervious surfaces.

Summary Table

All development	Avoid sensitive HCA lands Develop land designated "*Not affected by recommendation*" or "*Allow development*"
When only High HCA lands available	5,000 square feet for building and impermeable surfaces permitted as far from resource as possible. Incentive: five foot front yard setback is available.

When only Low-Moderate HCA lands available	5,000 square feet for building and impermeable surfaces permitted as far from resource as possible. Incentive: five foot front yard setback is available.
Setbacks from top of bank	15 foot setback for house...excludes water permeable patio or decks which must be 5 feet from top of bank and within 30 inches of grade.
Rebuilding after fire/flood in HCA	Yes.
Commercial, Industrial and Multi-Family	Encourage provision of public access to and along riverfront by offering height incentives.
Single family residential	Respect private property rights.

Options

1) Adopt the recommended amendments as proposed by the Planning Commission.

2) Modify and adopt the recommended amendments. These modifications could range from modest text changes to a radical change of direction such as imposing WRA setbacks and standards on the Willamette and Tualatin Rivers.

3) Deny the recommended amendments.

Recommendation

This proposal seeks to strike a middle ground which balances private property rights with Metro requirements, resource protection and reasonable structural setbacks.

The Planning Commission recommends that City Council adopt the proposed changes as submitted and attached.

CODE AMENDMENT COMPLIANCE WITH CDC SECTION 98.040(A)(2)(b)

Legislative amendments required to address Section 98.040(A) (2) (b) of the Community Development Code. The required subheadings appear in bold type.

1. The facts found relevant to the proposal and found by the Director to be to be true:

West Linn City Council members, after adopting a new Water Resource Area (WRA) chapter for the city's natural drainageways with tough transition and setback standards, determined that similar transitions and setbacks should apply also to the Willamette and Tualatin River and associated shorelines.

A committee of riverfront homeowners and concerned citizens was appointed to craft the language with staff and Planning Commissioner Robert Martin over the course of three sessions. Staff determined that Metro's Habitat Conservation Area (HCA) mapping system would not only provide an easy way to identify appropriate development boundaries and protect those resources, but it would also help the city address Title 13: *Nature in Neighborhoods* of the Metro Urban Growth Functional Plan. Also important to riverfront property owners, is the fact that the HCA mapping allows for reduced setbacks compared to the WRA chapter standards.

Significant elements of the proposed chapter include:

- Metro's mapping system allows for protection of HCAs
- Effective setbacks for non-water related buildings (e.g. homes)
- Eliminates permits if additions and homes avoid HCAs
- Incentives to provide public access at multi family, industrial and commercial sites.
- Consolidation of the chapters provides consistency where none existed before.

2. The Statewide Planning Goals adopted under ORS Chapter 197 found to be applicable and the reasons why any other goal and rule is not applicable to the proposal:

The applicable Statewide Planning Goals are Goal 15: Willamette River Greenway and Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. The adoption of these code amendments in the form of a new CDC chapter is consistent with, and will satisfy, the requirements outlined under Goal 15 and 5.

Two sections of Willamette River Greenway Goal 15 stand out as particularly relevant to the proposed code changes:

j. Development away from river -- Developments shall be directed away from the river to the greatest possible degree; provided, however, lands committed to urban uses within the Greenway shall be permitted to continue as urban uses, including port, industrial, commercial and residential uses, uses pertaining to navigational requirements, water and land access
needs and related facilities; and,

k. Greenway setback – A setback line will be established to keep structures separated from the river in order to protect, maintain preserve and enhance the natural, scenic, historic and recreational qualities of the Willamette River Greenway, as identified in the Greenway Inventories. The setback line shall not apply to water-related or water-dependent uses.

Staff finds that the proposed setbacks and incentives will direct development away from the river per (j) and will provide an easily identifiable setback for non-water dependant structures per (k).

Other implementation measures apply including the provision or availability of public access. That is addressed by the incentive program for non-single family housing development that encourages dedication of public access to the river in return for increased height allowances. The implementation measure regarding the protection of the vegetative fringe will be addressed by the use of the HCA mapping and associated setbacks. There is also language that discourages the creation of new lawns of non-native plant material in the HCAs.

Goal 5's preamble declares that:

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

Certainly adopting Metro's HCA mapping system as a comprehensive means of protecting the Willamette and Tualatin Rivers and associated shorelines and vegetation addresses this. Staff found that the majority of Goal 5 measures related to the establishment of inventories of drainageways, wetlands and habitat areas which have already been completed.

The State Department of Land Conservation and Development (DLCD) administers the statewide land-use planning program and ensures that local government plans conform with the Statewide Planning Goals. DLCD staff reviewed this document in an earlier draft and determined once specific changes were made the new chapter would be satisfactory to DLCD. Those changes have been made. Metro planners also reviewed the language and were satisfied with the product.

3. Any federal or state statutes found applicable:

None

4. The Metropolitan Service District plans and rules found to be applicable:

Title 13 of Metro's Urban Growth Management Functional Plan, also known as their 'Nature in Neighborhoods' program, regulates riparian corridors in a manner that integrates floodplains and wildlife habitat. Metro identifies these resource areas as "Habitat Conservation Areas" (HCA's). Metro requires all local governments to adopt regulations that demonstrate compliance with their requirements for properties within the HCA under Title 13. The City already has acceptable protection programs in place that regulate these areas in accordance with the Metro requirements. Agreement with Title 13 is enhanced by the use of the HCA mapping and additional setbacks from HCA areas. More can be done including adoption of "best management practices" (BMPs) to reduce, among other things, hardscapes or impermeable surfaces. Staff proposes that rather than delaying the imposition of these amendments to accommodate the BMPs, those measures can be introduced at a later time.

5. Those portions of the Comprehensive Plan found to be applicable, and if any portion of the plan appears to be reasonably related to the proposals and not applied, the reasons why such portions are not applicable:

The proposal is consistent with, or furthers, several Policies and Action Measures in Goal 5 of the City's Comprehensive Plan. The applicable provisions are as follows:

Policy #5 Preserve important wildlife habitat by requiring clustered development or less dense zoning in areas with wetlands and riparian areas, natural drainageways, and significant trees and tree clusters.

Policy #10 Manage open space, habitat, and ecological/scientific areas as identified in the West Linn Goal 5 inventory and protection plan in order to preserve their unique qualities.

Collectively, these Policies provide guidance for the City to preserve and protect the City's natural resources. The City's CDC includes a variety of methods to implement these policies and which effectively serve to protect the City's identified habitat areas from conflicting uses. These various requirements should continue to be enforced by the City.

GOALS

1. *Protect and enhance the valuable natural resource provided by the Willamette River, its islands, shores, and natural habitat.*
2. *Continue to improve public access and recreation opportunities along the Willamette River Greenway.*
3. *Promote creation of a Willamette River Greenway trail paralleling the river through West Linn.*

POLICIES

4. *Require a conditional use permit for any intensification of uses, changes in use, or developments within the Willamette River Greenway boundary except as otherwise provided by the Willamette River Greenway Zone, subject to the following:*
   a. *Where feasible, provide the maximum landscaped area, open space, or vegetation between the activity and the river.*
   b. *Where feasible, provide access to and along the river by appropriate legal means.*
8. *Protect the natural vegetative fringe along the river.*
10. *Require non-water related or dependent structures to set back from the river in accordance with an established setback line in order to protect, maintain, and preserve the Willamette River Greenway.*

Staff finds that the HCA mapping enhances identification and protection of HCAs and associated natural resources and vegetation. Further, the height incentives associated with non-single family development should encourage the provision of public access to and along the shoreline. Non-water related development is setback 15 feet from the edge of the top of bank which is in most cases the edge of the HCA.

6. Those portions of the implementing ordinances relevant to the proposal; and if provisions are not considered, the reasons why such portions of the ordinances were not considered:

None.

7. An analysis relating the facts found to be true by the Director to the applicable criteria and a statement of the alternatives:

The consolidation of CDC chapters for the Willamette and Tualatin Rivers will provide consistent and improved protection of the resource areas. It will also provide predictable setbacks and incentives to maintain separation from the river and provide public access. It should be emphasized that nothing in this chapter requires property owners to provide for public access that doesn't already legally exist. The amendment fully conforms to the City's Comprehensive Plan, Statewide Planning Goals 15 and 5 and is in agreement with Metro's Title 13.

The alternative of not adopting the code amendment would have three impacts. First, it would not be consistent with applicable Policies and Action Measures of the City's Comprehensive Plan, Statewide Planning Goal 15 and 5, or Metro's Title 13, as described above. Second, it would leave the city with two separate sets of setbacks for houses and non-water dependant structures along the Willamette and Tualatin Rivers. Setbacks on the Willamette are especially weak requiring only 35 feet from Ordinary High Water Mark (OHWM) which in many cases would allow homes to be built below the top of bank. And third, doing nothing and leaving the language "as is" would be attractive to a group of riverfront property owners who consider these amendments to be too invasive to their personal property rights.

ORDINANCE NO. ___
WEST LINN, OREGON

AN ORDINANCE COMPLYING WITH TITLE 13 OF METRO'S FUNCTIONAL PLAN AMENDING THE WILLAMETTE RIVER GREENWAY CHAPTER OF THE WEST LINN COMMUNITY DEVELOPMENT CODE BY INCORPORATING PROVISIONS OF THE TUALATIN RIVER PROTECTION CHAPTER

WHEREAS, the Community Development Code is an evolving document and that changes are necessary to respond to the needs of the community, to improve conformance with statewide and Metro planning goals; and,

WHEREAS, Title 13 of Metro's Urban Growth Management Functional Plan established the regional bench mark for appropriate management, protection and use of streams, vegetative canopies, habitat areas, wetlands and rivers; and,

WHEREAS, to satisfy Title 13 requirements cities are required to adopt their own development code language that addresses Metro's requirements; and,

WHEREAS, West Linn has a legitimate interest in protecting the Tualatin and Willamette Rivers and their riparian areas; and,

WHEREAS, the City provided legislative notice pursuant to CDC Chapter 98; and,

WHEREAS, the West Linn Planning Commission conducted a public hearings on July 2 and July 23, 2008; and,

WHEREAS, the City Council held a public hearing on August 11, 2008 and adopted the findings of fact and conclusions in the record justifying its decision,

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: The West Linn Community Development Code is hereby amended to read as follows in Attachment A.

PASSED AND APPROVED THIS 11th DAY OF AUGUST 2008.

_____
NORMAN B. KING, MAYOR

ATTEST:

_____
Witness

APPROVED AS TO FORM:

_____
City Attorney

Attachment A

Additions are underlined
and in bold type
e.g.: **wetland**

Deletions have been
struck through
e.g.: ~~wetland~~

28.000 WILLAMETTE AND TUALATIN RIVER PROTECTION

28.010 PURPOSE

The purposes of the Willamette and Tualatin River Protection District are the following:

A. Protect, conserve, enhance, and maintain the natural, scenic historical, economic, and recreational qualities of lands along the Willamette and Tualatin Rivers.

B. Implement the policies of the West Linn Comprehensive Plan and the State of Oregon's Willamette River Greenway program.

C. Establish standards and requirements for the existing and future use of lands within the Willamette and Tualatin River Protection Areas.

D. Provide for the review of any intensification of use, change of use, or development within the Willamette and Tualatin River Protection Areas.

E. Encourage local stewardship of the Willamette and Tualatin River Protection Areas.

F. Protect, preserve and enhance legal public use and access to and along the shoreline and river, while recognizing and preserving private property rights.

G. Create incentives to direct development to areas where it is most appropriate.

H. Protect and enhance riparian habitat for native flora, fish, and wildlife within the Willamette and Tualatin Rivers and along their banks.

28.020 DEFINITIONS

A. Anchor-secured docks. Docks that are held in place by cables that are then attached to the riverbed or shoreline by an anchoring system.

B. Authorized area. The area within the preference right area, as determined by DSL, where the applicant may place their water dependent structure (e.g. dock) is called the authorized area. (see preference rights definition and figures 28.1 and 28.2)

C. Boat House. Roofed structure to store and protect a boat. Boat houses may also include roofed open sided boat shelters.

D. Development. As used in this chapter includes any change of use or intensification of the use of land or water, to include construction of structures (such as houses, structures, docks and associated pilings or piers), significant grading, or removal or addition of vegetation and groundcover unless specifically exempted per CDC 28.040.

E. Dock. Dock/ Float means an individual secured and stationary or floating structure (other than a mooring buoy) used exclusively for mooring boats and for similar uses. Dock can also refer herein to water dependent uses generically unless otherwise indicated from the context.

F. DSL Department of State Lands.

G. Gangway/Ramp. A variable slope structure intended to provide pedestrian access from the shore to a dock.

H. Habitat Conservation Areas (HCAs). Metro classified sensitive riparian areas as Habitat Conservation Areas or HCAs because of a combination of factors including vegetation, wildlife and fisheries habitat potential, slopes, forested overstory, wetlands, streams etc. These areas have been mapped by Metro (see http://www.metro-region.org/index.cfm/go/by.web/id=8385.) and are to be avoided to the degree possible with development instead directed to the areas designated "Not Affected by Recommendation" or "Allow Development".
Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

I. Joint-use boat docks. These structures are designed for, and shall be used exclusively by, two or more riverfront property owners. Typically, two adjacent riverfront property owners share the joint dock. Owners of non-riverfront property may be co-applicants for a joint boat dock

J. Metro's Habitat Protection Map. An extensive review of the scientific literature, mapping and field work helped Metro identify the location of fish and wildlife habitat: one for waterside, or riparian, habitat and one for drier upland wildlife habitat. In 2001, Metro mapped the specific landscape features associated with these criteria, such as the location of trees, shrubs, wetlands, flood areas and steep slopes. Habitat areas were then ranked based on their relative health and importance for providing benefits to fish and wildlife. The resulting maps provide West Linn with the means to delineate areas that contain no constraints: "Not Affected by Recommendation" or "Allow Development" and where there are constraints (HCAs) ranging from

low, medium to high. The maps are available at Metro's website at y.web/id=8385.

Metro's Habitat Protection Map is incorporated by reference as part of this Chapter. Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are alread protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

K. Minor Modification. A change in the approved design that is equal to less than a ten percent increase in the length, width or height of the facilit A change of location by under 20 feet laterally for any part of the structur ramp, dock etc. also constitutes a minor modification.

L. Non-Conforming Docks. Docks that do not meet the criteria of Chapter 28

M. ODFW Oregon Department of Fish and Wildlife.

N. Ordinary high water (OHW) mark. The line on the bank or shore to which the water ordinarily rises in season. Also known as OHWM.

O. Ordinary low water (OLW) mark. The line on the bank or shore to which th water ordinarily recedes in season. Also known as OLWM.

P. Pilings. Plastic, wood, steel, or composite poles that are driven into, or otherwise attached to, the river bed to hold a dock in place or to support a pier.

Q. Pre-existing Docks. Docks that are in existence prior to the date of adoption of this code.

R. Preference Rights. The preference rights area represents the water surface that is allocated to each riverfront property owner by Department of State Lands (DSL). Starting with the center thread of the river, DSL extends lines at right angles from that thread towards the OHW mark of the respective properties along the shoreline. (Because the thread of the river twists and turns, the line extending to shore can vary also in its angle.) The area within the preference right area that the applicant may place their water dependant structure (e.g. dock) is called the authorized area.
(see authorized area definition and figures 28.1 and 28.2)

S. Private railed launch facilities. These are rail lines that usually extend from an on-shore boat storage facility above OHW, across the beach and into the water below OLW for the purpose of launching a boat.

T. Protection Area. Collective term to describe the Willamette River Greenway boundary and/or Tualatin River Protection Area boundary.

river frontage per the Parks Master Plan, a neighborhood plan or an adopted sub-area plan. The emphasis will be upon locating paths where there is a reasonable expectation that the path can be extended to adjacent properties to form a connective trail system in the future, and/or where the trail will provide opportunities for appreciation of and access to the river.

c. Any public or private water dependent use or facility shall be within established DSL authorized areas.

3. Significant fish and wildlife habitats shall be protected. Where habitat areas are challenged or ill defined, the city shall contact ODFW to determine their existence and value and delineate the habitat area.

4.a. Significant views of the Willamette River shall be protected as much as possible as seen from the following public viewpoints: Mary S. Young Park, Willamette Park, Cedar Oak Park, Burnside Park, Maddox Park, Cedar Island and the Oregon City Bridge. Where options exist in the placement of ramps and docks, the applicant shall select the least visually intrusive location as seen from a public viewpoint. However if no options exist, then the ramp, pilings and dock shall be allowed at the originally proposed location.

5. Natural areas of annual flooding, flood plains and wetlands shall be preserved in their natural state to the maximum possible extent.

6. Extraction of aggregate deposits or dredging shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and to promote necessary reclamation. (ORD. 1270)

B. The site development plan shall comply with each of the following applicable standards:

1. Site modifications:

a. Existing predominant topographical features of the bank line and escarpment shall be preserved and maintained except for disturbance necessary for the construction or establishment of a water related or water dependent use. Measures necessary to reduce potential bank and escarpment erosion, landslides, or flood hazard conditions

shall also be taken.

Any construction to stabilize or protect the bank with rip rap, gabions etc. shall only be allowed where there is clear evidence of erosion or similar hazard and shall be the minimum needed to stop that erosion or to avoid a specific and identifiable hazard. A geotechnical engineers stamped report shall accompany the application with evidence to support the proposal.

b. The applicant shall establish to the satisfaction of the approval authority that steps have been taken to minimize the impact of the proposal on the riparian environment (areas between the top of the bank and the low water mark of the river including lower terrace, beach and river edge)

2. Riparian vegetation: Vegetative ground cover and trees upon the site shall be preserved, conserved, and maintained according to the following provisions:

a. Riparian vegetation below OHW removed during development shall be replaced with indigenous vegetation, which shall be compatible with and enhance the riparian environment and approved by the approval authority as part of the application.

b. Vegetative improvements to areas within the greenway may be required if the site is found to be in an unhealthy or disturbed state by the City Arborist or his designated expert. "Unhealthy or disturbed" includes those sites that are heavily populated by exotic or non-indigenous species, areas overgrown with invasive plants, or areas that lack the proper balance of canopy trees, understory plants, and soil stabilizing groundcovers. "Vegetative improvements" consists of submitting a plan, which calls for removal of non-indigenous, exotic, or invasive species which will be replaced by plant species in a manner to be approved by the City Arborist and consistent with the purposes of Chapter 30. Once approved, the applicant is responsible for implementing the plan prior to final inspection. (ORD. 1382)

c. Tree cutting shall be prohibited below OHW area except that:

i) Diseased trees or trees in danger of falling may be removed with City Arborist's approval and

ii) Tree cutting may be permitted in conjunction with those uses listed in Section 28.030 with City Arborist approval; to the extent necessary to accommodate the listed uses.

d. Selective cutting in accordance with the Oregon Forest Practices Act, if applicable, shall be permitted with City Arborist approval within the area between the OHW and the greenway boundary provided the natural scenic qualities of the greenway are maintained.

3. Structures: All buildings and structures, including supporting members, and all exterior mechanical equipment should be screened, colored, or surfaced so as to blend with the riparian environment. Surfaces shall be non-polished/reflective or at least expected to lose their luster within a year. In addition to the specific standards and criteria applicable to water dependent uses (docks), all other provisions of Chapter 28 shall apply to water dependent uses, and any structure shall be no larger than necessary to accommodate the use.

4. Additional standards for water dependent structures (e.g. docks)

a. Once the preference rights area is established by DSL, the property owner identifies where the water dependent use will be located within the authorized portion of the preference rights area. The water dependent use should be centered or in the middle of the preference rights/authorized area or meet the side yard setbacks of the underlying zone.

Private and public non-commercial docks are permitted where dredging is required so long as all applicable Federal and State permits are obtained. Dredging is encouraged if deposits silt up under an existing dock. Dredging is seen as preferable to the construction of longer docks/ramps.

b. Both joint and single use docks shall not extend into the water any further than necessary to provide four feet between the ships keel or fixed propeller/rudder and the bottom of the water at any time during the waters lowest

~~point.~~

~~c. In no case except as provided in Section 28.110 shall the ramp and dock extend more than 100 feet from OLW towards the center of the river or slough. In the case of L shaped docks, the 100 feet shall be measured from the OLW to the furthest part of the dock closest to the center of the river.~~

~~d. Docks on sloughs and similar channels shall not extend more than 30% of the distance between two landmasses at OHW such as between the main land and an island or peninsula, measured in a lineal manner at right angle to the dominant shoreline. In no way shall a dock impede existing public usage or block navigation of a channel.~~

~~e. Boat storage associated with a rail launch facility shall be located above the OHW, either vertically raised above the ordinary high water line or set back behind the OHW. Such boat storage structure will be natural wood colors or similar earth tones. 1. Private railed launch facilities are permitted for individual boat owners. The onshore setback of the storage structure is equal distance on both sides as extended perpendicular to the thread of the stream, or 7.5 feet whichever is greater setback.~~

~~f. The width of each deck section shall be no more than 12 feet wide.~~

~~g. For both single user and joint user docks, pilings shall not exceed a maximum height of eight feet above the 100-year flood elevation.~~

~~h. A single user non-commercial dock shall not exceed 400 square feet in deck area. The boat slip is not included in the calculation of this square footage limitation.~~

~~i. . Private non-commercial boathouses are allowed but only if they are within 50 feet of OLW and/or in locations sufficiently screened from view so that they do not have a significant visual impact on views from adjacent and nearby homes. Building and roof colors shall be brown, gray, beige, natural or similar earth tones. Noncommercial boathouses shall not exceed 12 feet in height measured from the boathouse deck level to the roof peak. The size of~~

~~the boathouse shall be sized to accommodate one boat only and shall not exceed a footprint greater than 500 square feet. Boatlifts are permitted within the boathouse. The above provisions also apply to open-walled boat shelters with or without boatlifts.~~

~~5. Additional standards for joint docks~~

~~a. Joint use boat docks may be permitted by the reviewing authority where the applicants are riverfront property owners, ideally owners of adjacent lots of record.~~

~~b. Co-owners of the joint dock use shall be prohibited from having their own non-joint dock.~~

~~c. A joint use agreement shall be prepared which will be included in the application for review by the reviewing authority and subsequently recorded. A copy of the recorded document with County Recorder's stamp shall be submitted to the city.~~

~~d. A condition of approval for any joint use permit shall be that the dock must be used to serve the same lots of record for which the dock permit was issued. Joint use cannot be transferred to, or used by, any party other than the original applicants or the future owners of those properties.~~

~~f. Joint docks may go on the common property line between the two landowners who are sharing the dock. Unless agreed to by the adjoining owner, joint docks not being shared with the adjacent property owner must be at least 15 feet from the preference rights area side lines or centered in the middle of the preference rights area.~~

~~6. Signs and graphics: No sign or graphic display inconsistent with the purposes of the Greenway shall have a display surface oriented toward or visible from the Willamette River. A limited number of signs may be allowed to direct public access along legal routes in the WRG area.~~

~~7. Lighting: Lighting shall not be focused or oriented onto the surface of the river except as required by the Coast Guard. Lighting elsewhere in the WRG shall be the minimum necessary~~

and shall not create off site glare or be omni directional. Screens and covers will be required.

8. Parking and unenclosed storage areas located within or adjacent to the WRG boundary shall be screened from the river in accordance with Chapter 46, Off Street Parking.

9. Greenway setback: All buildings shall be set back 35 feet from the OHW of the Willamette River, with the following exceptions: (ORD. 1211)

a. This setback distances shall not apply to water dependent uses, which require a riverbank location, or water related uses, which require direct access to the river.

b. Residential lots of record unable to meet this requirement, shall be subject to the provisions of the applicable base zone or the provision of Section 38.040, whichever yields the greatest possible rear yard setback from the river.

28.110. NON-CONFORMING STRUCTURES

Pre-existing non-conforming structures including docks, ramps, boathouses etc. as defined in this chapter may remain in place. Replacement in kind (e.g. replacement of decking and other materials) will be allowed provided the replacement meets the standards of this chapter. However, any non-conforming structure that is damaged and destroyed or otherwise to be replaced to the extent that the rebuilding or replacing (including replacement in kind) would exceed 50 percent of the current replacement cost of the entire structure, the owner shall be required to meet all the standards of this chapter. To continue the non-conforming status, of a non-conforming dock that is damaged work must be begun in one year and completed within 3 years.

28.120 VARIANCE PROVISIONS

In the event that the dimensional, setback or other provisions of this chapter cannot be met, the applicant may apply for a class II variance per CDC Chapter 75.

28.130 SITE PLAN

A. All site plans and maps shall include the name, address and telephone number of the applicant, a lineal scale of the plot plan, a north arrow and a vicinity map.

B. The applicant shall submit a site plan drawn to an appropriate scale (in

order of preference; 1"=10' to 1" = 30'), which contains the following information:

1. The subdivision name, block and lot number or the section, township, range and tax lot number.

2. The parcel boundaries, dimensions and gross area.

3. The applicant's property and the surrounding property to a distance sufficient to determine the relationship between the applicant's property and proposed development to the adjacent property and development.

4. The location, dimensions, and names of all existing and platted streets and other public ways and easements on adjacent property and on the site.

5. The location, dimensions and setback distances of all:

a. Existing structures, improvements, utility facilities and drainage ways on site and on adjoining properties;

b. Proposed structures or changes to existing structures, improvements, utility facilities and drainage ways on the site.

6. All developments shall define and map existing public access rights on, and adjacent to, the subject property.

28.140 GRADING PLAN

The grading plan shall be at the same scale as the Site Plan (Section 20.130) and shall show:

A. The location and extent to which grading will take place indicating general contour lines, slope ratios, and slope stabilization proposals.

B. The location of the proposed drainage ways.

28.150 ARCHITECTURAL DRAWINGS

Architectural drawings shall be submitted at 1:10 to 1:30 scale, as described in the site plan, showing:

A. Elevations of structure(s);

B. The exterior building materials: type, color, and texture.

C. For docks, all pilings and their heights shall be shown. The applicant shall indicate the depth from the end of the dock to the river bottom during typical summer months. The applicant shall also provide any available product literature and photographs from the manufacturer or installer.

D. For docks, the applicant shall provide a plan view of the structure in relation to the shoreline and river. The plans shall also indicate graphically the WRG boundary, the OLW and the OHW and the DSL's preference rights and authorized area.

28.160 LANDSCAPE PLAN

The landscape plan shall be prepared on the Site Plan (Section 20.100) and in addition shall show:

A. The location, size and type of existing trees and location and type vegetation to be removed and to be retained;

B. The location and design of landscaped areas;

C. The varieties and sizes of trees and materials to be planted;

D. The proposed irrigation system above top of bank (optional);

E. The location and height of fences and other buffering or screening materials; and

F. The location, materials, dimensions and design of terraces, decks, patios, shelters, footpaths, retaining walls and play areas.

(AMENDED PER ORD. 1474, 9/01; ORD. 1549 5/07)

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29.000 TUALATIN RIVER PROTECTION

29.010 PURPOSE

The purpose of this overlay zone is to maintain the integrity of the Tualatin River by establishing standards which will minimize erosion, promote bank stability, maintain and enhance water quality and fish and wildlife habitats, and preserve the scenic quality and recreation potential, assure that streams and drainways are protected for their drainage, and implement the Comprehensive Plan.

29.020 APPLICABILITY AND DEFINITIONS

A. This zone is an overlay zone.

B. All uses permitted under the provisions of the underlying base zone are allowed in the manner prescribed by the base zone subject to an approved Tualatin River Protection permit under the provisions of this chapter. (ORD. 1291)

C. Development, as used in this chapter, includes any change of use or intensification of the use of land or water, or any changes to the existing topography or vegetation except the activities listed in Section 30.030 are exempt from the requirements of this chapter.

D. This overlay zone applies to all development within 150 feet of the mean low water line of the Tualatin River.

29.030 EXEMPTIONS

The following development activities do not require approval under the provisions of this chapter.

A. Customary dredging and channel maintenance conducted under permit from the state of Oregon.

B. Seasonal increases in gravel operations under permit from the state of Oregon.

C. Scenic easements acquired under ORS 392.332 and their maintenance as authorized by that statute and ORS 390.368.

D. Addition or modification by public utilities for existing utility lines, wires, fixtures, equipment, circuits, appliances and conductors.

E. Flood emergency procedures and the maintenance and repair of existing flood control facilities.

F. Signs, markers, ads, etc., placed by a public agency to serve the public.

G. Residential accessory development (excluding structures) such as lawns, gardens, and play areas.

H. Storage of equipment or material associated with uses permitted, providing that the storage complies with applicable provisions of this chapter.

I. Minor repairs or alterations to an existing structure for which no building permit is required.

J. A change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated.

K. The completion of a structure for which a valid permit has been issued as of the effective date of this chapter.

L. Landscaping.

M. Construction of driveways, roads, trails and paths.

N. Maintenance and repair, usual and necessary for the continuance of an existing use.

O. Reasonable emergency procedures necessary for the safety or protection of property.

29.040 ADMINISTRATION AND APPROVAL PROCESS

A. An application for a Tualatin River Protection permit shall be processed pursuant to the provisions of CDC Chapter 99, Procedures for Decision-Making: Quasi-Judicial. (ORD. 1474)

29.050 TIME LIMIT ON APPROVAL

Approval of a Tualatin River Protection permit shall be void if:

(ORD. 1291)

A. The conditional use permit becomes void under Section 60.040; or,

B. The site plan on which the approval is based is modified. Any change in the plan or conditions of approval shall require a new application and

hearing pursuant to the provisions set forth in this chapter and Section 99.120(B).

29.060 APPROVAL STANDARDS

A permit shall be issued for a Tualatin River Protection upon written findings that:

A. The setback provisions of Section 29.070 are met;

B. The design standards of Section 29.080 are met; and,

C. A buffer or filter strip of existing vegetation will be preserved in accordance with the standards of Section 29.080(A); or the buffer will be adequate based on the standards in Section 29.080(B) or the existing vegetation will be replaced by comparable vegetation as provided by Section 29.080(C).

29.070 SETBACK REQUIREMENT AND EXCEPTIONS

A. All structures and non-water oriented accessory structures shall only be allowed at an elevation above the 100-year flood plain elevation of the Tualatin River as established by the Corps of Engineers.

B. The following exceptions shall apply.

1. Residential lots of record which have a lot depth which precludes compliance with the setback standards of this section, shall be exempt from the strict application of these standards. Such structures shall be set back the maximum practicable distance.

2. Water dependent commercial and industrial uses and such uses as private boat docks, marinas, or boat ramps shall be exempt from the setback requirements.

3. Additions to existing structures which are located closer than the setback requirements of this section shall be permitted.

4. Public uses, such as bridges for public roads, shall be allowed within the setbacks stated in this section provided that adverse impacts are mitigated.

~~29.080 VEGETATIVE PRESERVATION REQUIREMENTS AND EXCEPTIONS~~

~~A. A buffer or filter strip of existing vegetation shall be preserved along the Tualatin River for the area between the mean low water line and the mean high water line, and within the 100 year flood plain.~~

~~B. Areas that are to be protected shall be dedicated to the City by deeding the land title to the City or public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement or other means which shall serve to protect the resource to City standards. Protective easements are not preferred because resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Protected areas shall be clearly identified with City approved permanent markers at all boundary direction changes and at 30 to 50 foot intervals which clearly delineate the extend of the protected area. (ORD. 1442)~~

~~C. Exceptions to the width of the buffer or filter area may be granted as part of the approval process based on the following standards:~~

~~1. The character and size of the proposed development and its potential for adverse impacts on the river is minimal and, therefore, the buffer area may be reduced.~~

~~2. The topography of the area will act as a buffer.~~

~~3. The type and density of the existing vegetation is such that the width of the buffer may be reduced.~~

~~4. The type and stability of the soils will preclude erosion.~~

~~D. Vegetative improvements to areas within the Tualatin Protection Area may be required if the site is found to be in an unhealthy or disturbed state. "Unhealthy or disturbed" includes those sites that are heavily populated by exotic or non-indigenous species, areas overgrown with invasive plants, and soil stabilizing groundcovers. "Vegetative improvements" consist of submitting a plan which calls for removal of non-indigenous, exotic, or~~

invasive species which will be replaced by plant species in a manner to be approved by the City Parks Director and consistent with the purposes of Chapter 30. Once approved, the applicant is responsible for implementing the plan prior to final inspection. (ORD. 1382)

E. The existing vegetation may be removed provided it is replaced by comparable vegetation.

29.110 THE APPLICATION

A. An application for a Tualatin River Protection permit shall be initiated by the property owner or the owner's authorized agent. (ORD. 1291)

B. A pre-requisite to the filing of an application is a pre-application conference at which time the Director shall explain the requirements and provide the appropriate forms as provided in Section 99.030(B).

C. An application for a Tualatin River Protection permit shall include the application form and:

1. Narrative which addresses the standards of Section 29.060.
2. A site plan (30.130).
3. A grading plan (30.140).
4. Architectural drawings (30.150).
5. A landscape plan (30.160).

One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 X 17 inches or smaller or all drawings and plans must be submitted. Three copies of all other items must be submitted. When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Director.

D. The applicant shall pay the requisite fees.

(ORD. 1442)

~~29.120 ADDITIONAL INFORMATION REQUIRED AND WAIVER OF REQUIREMENTS~~

~~A. The Director may require additional information as part of the application subject to the provisions of Section 99.035(A).~~

~~B. The Director may waive any requirement for the application subject to the provisions of Section 99.035(B) and (C).~~

~~29.130 SITE PLAN~~

~~A. All plot plans and maps shall include the name, address and telephone number of the applicant, the scale of the plot plan, a north arrow, and a vicinity map.~~

~~B. The applicant shall submit a plot plan or an aerial photograph to an appropriate scale (in order of preference: 1" = 10' to 1" = 30') which contains the following information:~~

~~1. The subdivision name, block and lot number or the section, township, range and tax lot number.~~

~~2. The parcel boundaries, dimensions and gross area.~~

~~3. The location of the required vegetative buffer area (Section 30.090), building setback line (Section 30.070), and a line showing the boundary of this overlay zone (Section 30.020).~~

~~4. The location, dimensions and setback distances, within the boundary of this overlay zone of the following:~~

~~a. Existing structures, improvements, utility facilities, and drainageways on adjoining properties.~~

~~b. Existing structures, improvements, utility facilities, and drainageways to remain on the site.~~

~~c. Proposed structures or changes to existing structures, improvements, utility facilities, and drainageways on the site.~~

~~5. The proposed and existing location and dimensions within the boundary of this overlay zone applies to the following:~~

~~a. The entrances and exits to the site.~~

b. The parking and circulation areas.

c. Loading and service areas for waste disposal, loading, and delivery.

d. Pedestrian and bicycle circulation areas.

e. On site outdoor recreation spaces and common areas.

f. Above-ground utilities.

6. The type, location, size, height, typical design, material, color and method of illumination of outdoor lighting.

29.140 A GRADING PLAN

The grading plan shall be at the same scale as the site plan (Section 30.130) and show the following:

A. The location and extent to which grading will take place indicating general contour lines, slope ratios and slope stabilization proposals.

B. The location of the proposed drainageways.

29.150 ARCHITECTURAL SKETCHES

The architectural sketches to be submitted shall show the exterior building materials including type, color, and texture for development abutting the Tualatin River.

29.160 A LANDSCAPE PLAN

The landscape plan for properties abutting the Tualatin River shall be prepared on the site plan (Section 30.130) and show the following:

A. The location of existing trees and vegetation to be removed and to be retained.

B. The location and design of landscaped areas.

C. The varieties and sizes of trees and materials to be planted.

D. The location and height of fences and other buffering or screening materials.

(AMENDED PER ORD. 1474; 9/01)

Appendices

Public Exhibits
received at
Planning Commission

(67)

Rec'd 1-24-08

1/23/08

Comments On proposed Amendments To The Community Development Code

My name is Edward Bennett. I live at 5707 River Street. I have lived there for 34 years in a house that my wife and I designed and did much of the work in building.

Ours is a wonderful neighborhood and West Linn used to be a great place to live, but not anymore.

For the past 3 years, those of us with riverfront property have been under constant attack from our own city government. A flurry of proposed revisions to the City Code have been generated by the City Planning staff, all aimed at stripping away property rights and, ultimately, property values.

First came the proposal outlawing boat docks. After a year and half of negotiations, we thought we had reached a compromise. Now I find out that a $5,000 Fish and Wildlife Impact Study has been added to the permitting process making a boat dock too costly to be practical for the average homeowner.

While we were still busy struggling with the boat dock issue the Water Resource Area (WRA) standard appeared and was adopted before those affected knew what was happening. I have talked with a number of people whose homes have become non-conforming as a result of that standard and not one of them was aware of it. The WRA standard is so excessive and at the same time, so ambiguous, as to place almost unlimited power in the hands of those who would administer it.

The current proposal, like those before it, comes under the guise of providing environmental protection. This time it's the "riparian" vegetation above the OHWM on the Willamette. Such protection is already provided by CDC 28.100.A.5 and 28.100.B2. My observation is that the current landowners are in general doing a much better job of maintaining their river frontage than is the city. I have a city-owned island behind my house whose "riparian vegetation" consists primarily of blackberries, English Ivy and cottonwood trees.

The other stated concern was that houses along the Willamette must only be built above the OHWM. It does not say "how far" above it they must be. In fact, the bottom floor must also be at least a foot above the maximum elevation of the "Design Flood or the Flood of Record, whichever is higher" (See 27.060.D). This is roughly 20 feet higher than the OHWM. So, if neither of these supposed justifications has anything to do with the proposed revision, what does?

The Real Agenda

Per Mr. Spir's discussion statement for this proposal at the December 19,2007, meeting, the objective "is keeping non-water dependent structures such as new homes as far away from the river as possible." I do believe that this is the objective and the sole motivation

for the proposed standard. As the proposal would render virtually all existing riverfront homes as non-conforming, I believe the ultimate objective to be to eliminate all homes from riverfront property. What I don't understand is why anyone would support such a program given the long-term effects attendant with destroying some of the best neighborhoods in West Linn and bearing the costs of litigation which will inevitably ensue.

It's obvious to me that some individual or some group objects to others having homes along the river. Whether that objection is borne out of envy, greed or simply a lust for power, I don't know. I do know it is not based upon a concern for the environment. I walked down to Mattox Woods Park yesterday and observed how the riverbank next to the viewing platform where the city had planted "riparian vegetation" was eroding away. Elsewhere the blackberry vines and English Ivy seemed to be holding the bank in place quite well. Thankfully, the little stream (choked with blackberry vines) seemed to be doing well. Perhaps I should be happy that the city has not tried to "save" Goat Island. I might end up as it began, as "the Clackamas Rapids".

A STUDY - HOW MY PROPERTY AND ITS VALUE WOULD BE IMPACTED BY ADOPTION OF THE CURRENT PROPOSAL FOR REVISION TO THE CDC

BY: ED BENNETT, 5707 RIVER ST. 1/23/08

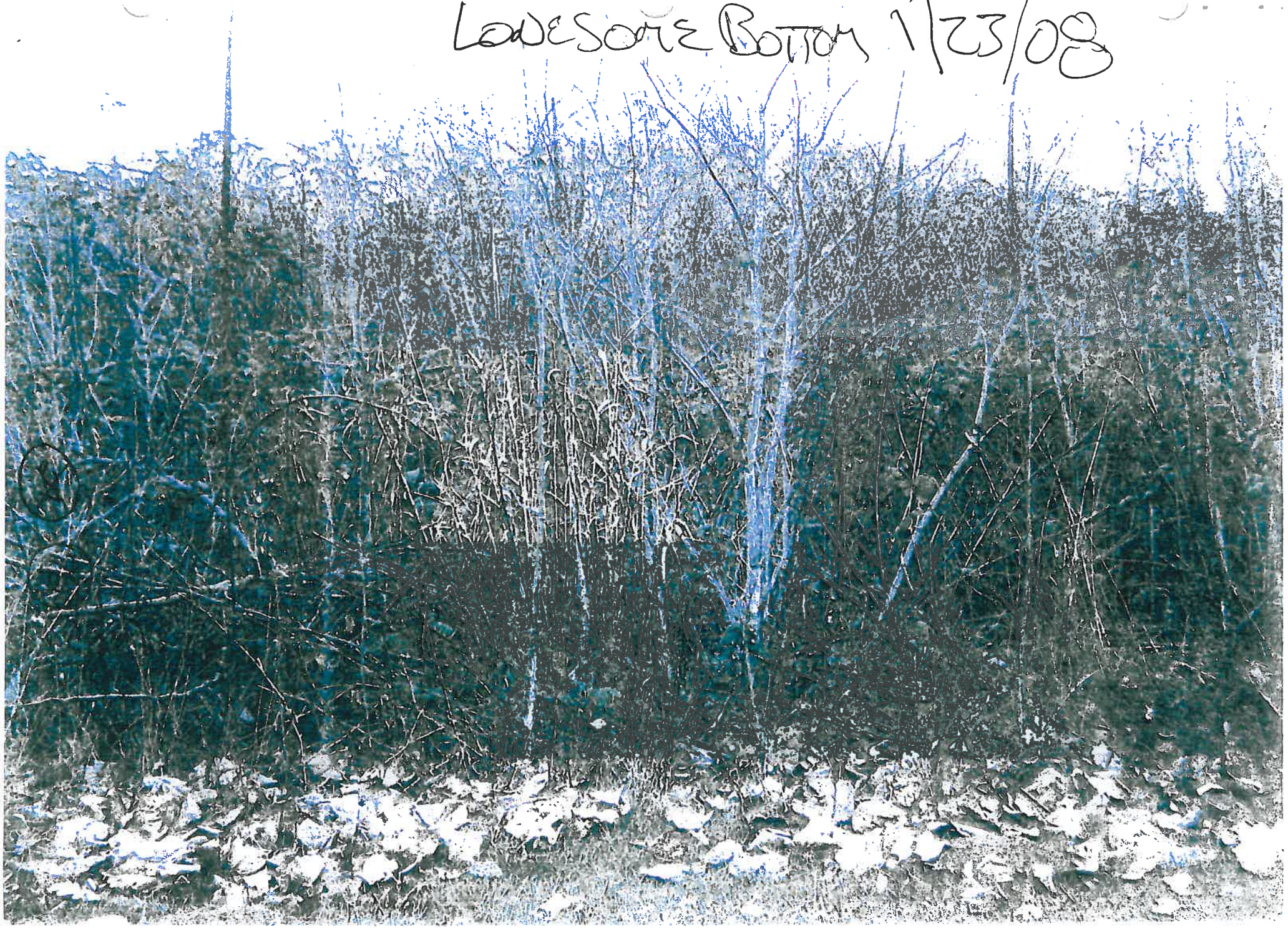
I tried to apply the proposed standard to my property to determine the exact impact on present and future uses. For the present, the primary change is that my house is no longer a "legally sited" structure. In addition, my ½-acre lot has been reduced to a 5,000-square-foot building site extending back only 60 feet from the street (not very big for a half million-dollar lot).

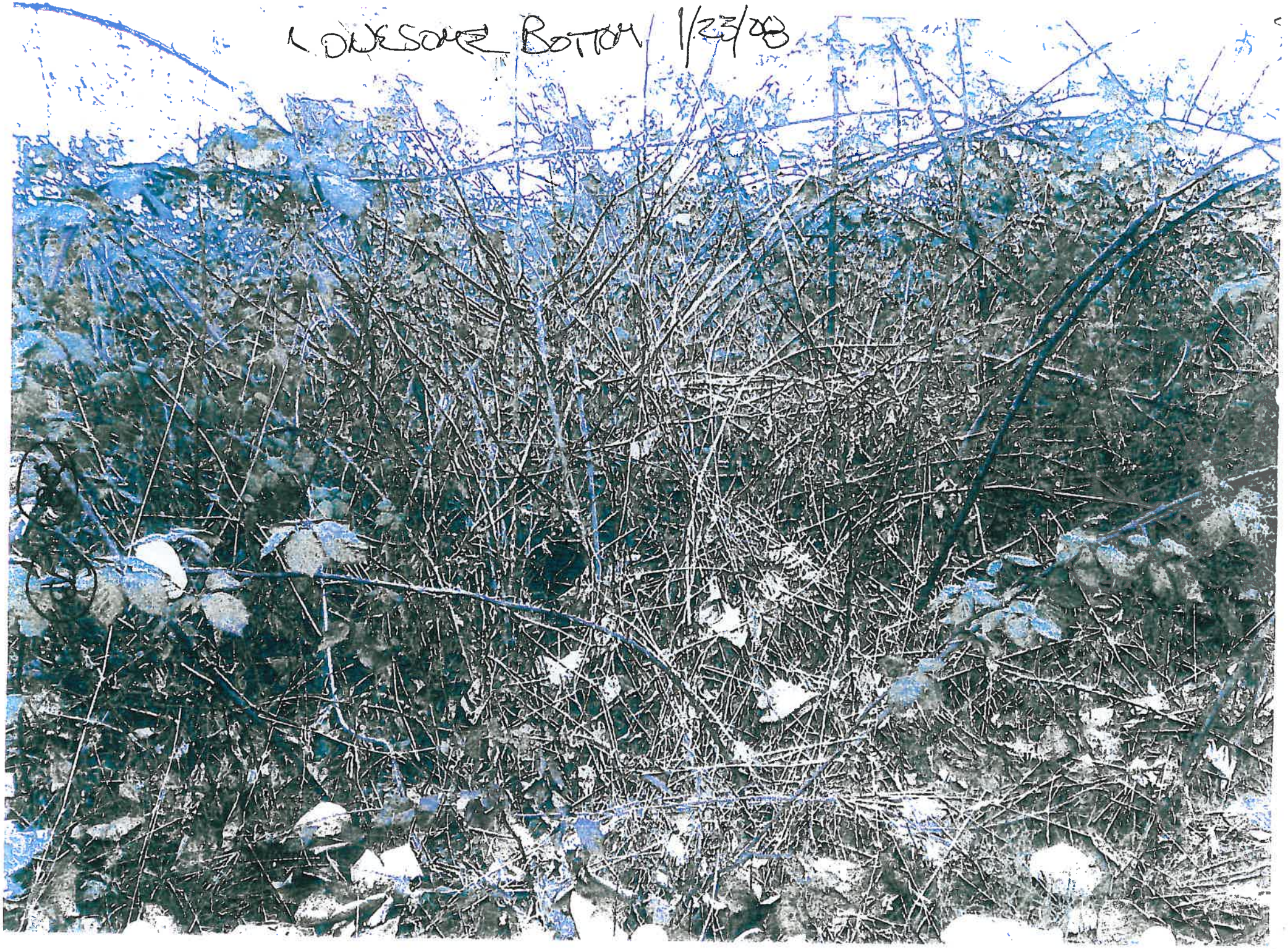
The future impact, though unclear, looks grim. If the house burns down or is damaged to 50 percent of its present value, 28.110.A says I could only rebuild in the 60-foot-deep strip along the street. With a 15-foot setback from the street, I'm left with 45 feet for the house (including decks). I trust that the planning commission would have sufficient common sense to never allow such an aberration to be built in a nice neighborhood. I'm left with an unbuildable lot and no place to live. (Actually, I would anticipate that the city would approach me at this point and offer to allow me to build a house as big as I wanted anywhere on the upper lot I wanted so long as I deeded the rest of the property to them free of charge.)

In contrast 28.110.A.1 says I can rebuild but not any closer to the river. (That's okay.) I can also make the house wider, but only by 10 feet. (That's not okay.) My house is close to the upstream property line but over 40 feet from the downstream property line. (Ironically, in order to save a tree.) The tree is now diseased and will eventually have to come down. By today's standards, my house is small and while I have no plans to expand, taking that option away from potential owners would drastically reduce the resale value of my property. Since 10 feet is a subjective number anyway, why not take it out and let side-lot setbacks do what they're supposed to do?

~~24~~ 70

Lonesome Bottom 1/23/09


LOWESOFT BOTTOM 1/23/08

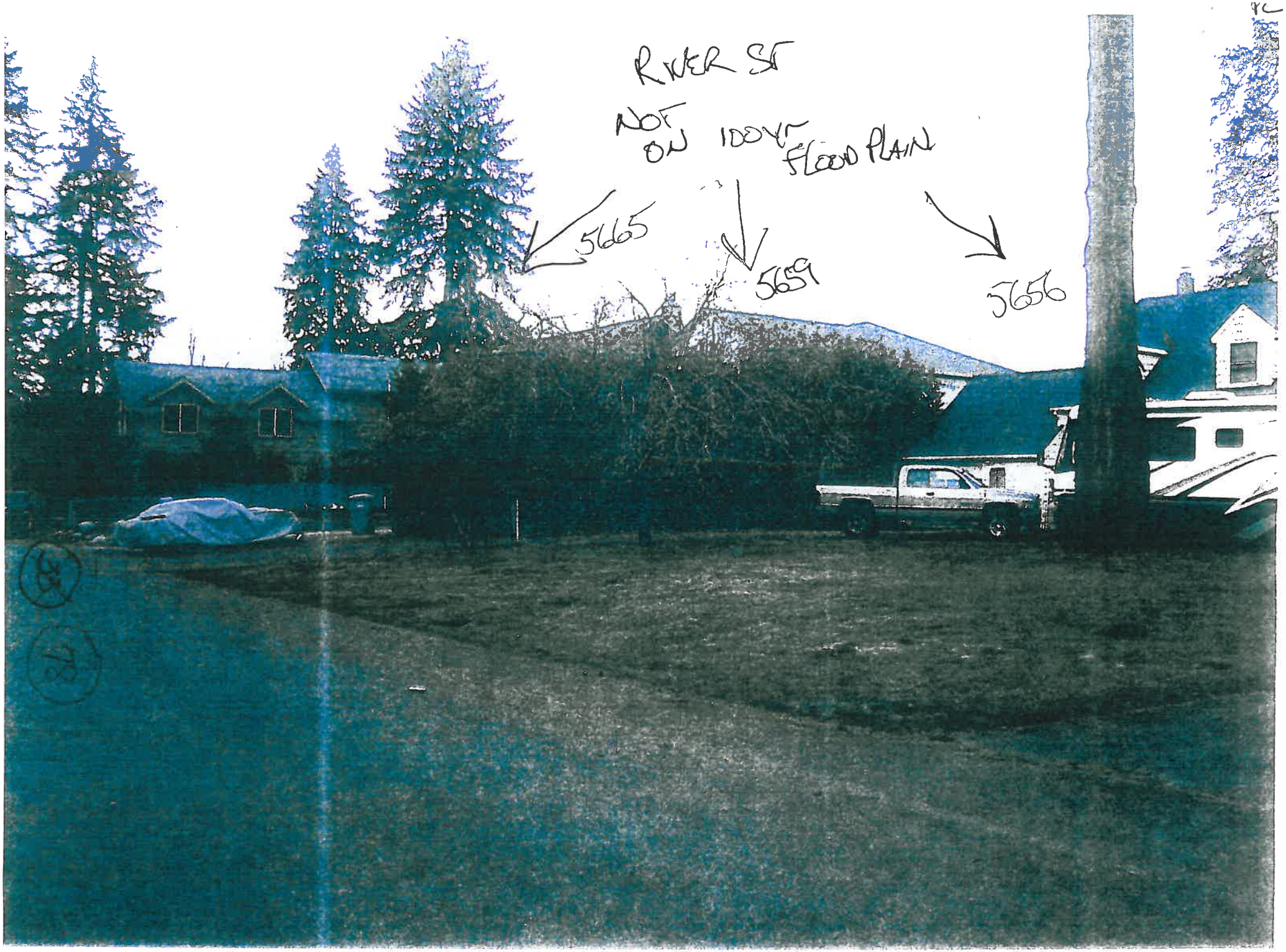

LOWER BOTTOM 1/23/08

LOVESOME
BOTTOM
1/28/08
14

100 Year Flood Plain
75

3636
Topeka, KS
SE 32nd Terr

RIVER
ST
ALL ON [redacted]
IN 100 yr FLOODPLAIN

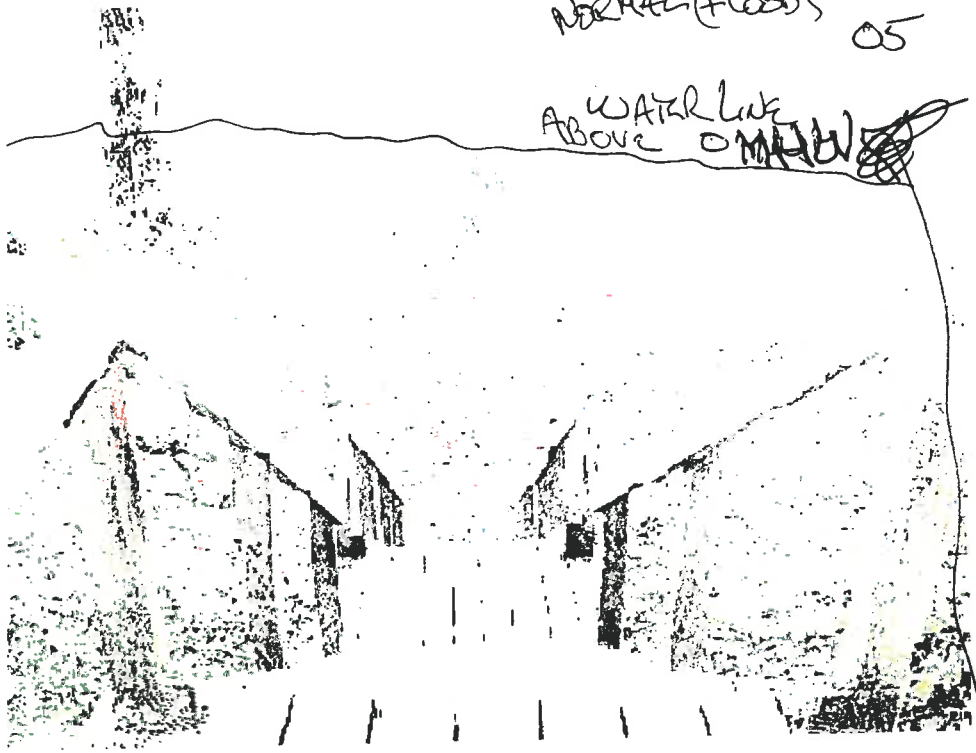

RIVER ST
NOT ON 100YR FLOOD PLAIN
5665
5659
5656

659 RIVERST (EXCEPT LAWN) & ALL
NOTE LANSCAPING
PROPERTY IN THIS CONDITION
SINCE 2001

NOT
IN 100YR
FLOODPLAIN

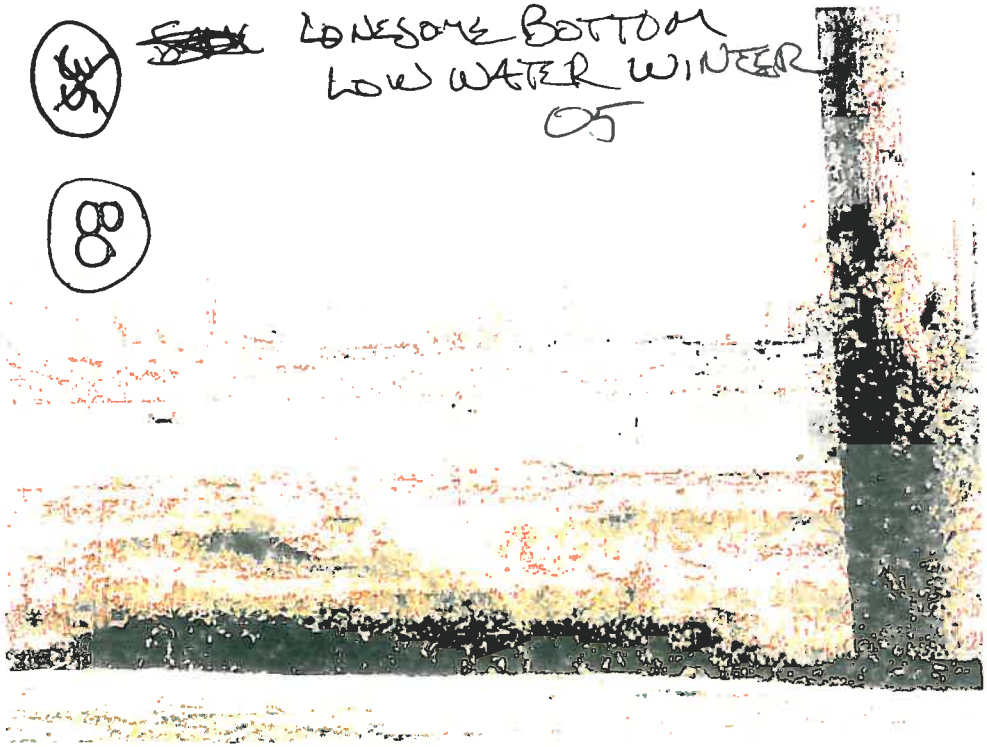
NORMAL (FLOOD) 05

WATER LINE ABOVE ~~MAIN~~ ROOF



~~FALL~~ LONESOME BOTTOM LOW WATER WINTER 05

8



NORMAL WINTER FLOOD NOT FLOODED CLACKAMETTE

RECEIVED
DEC 18 2007
PLANNING & BUILDING
CITY OF WEST LINN
INT ____ TIME ____

December 16, 2007

City of West Linn Planning Commission
22500 Salamo Road
West Linn, Oregon 97068

RE: Proposed CDC Amendments to Chapters 28: Willamette River Greenway

Members of the Planning Commission:

We are residents of West Linn residing on the Willamette River in the Failing Street area and have several concerns and questions concerning the proposed amendments to Chapter 28.

We do not have a dock on the river, but we do have a wooden stairway down the bank to the flood plain. It is not clear that stairs would be included as a water dependant use, such as a dock.

Would the adoption of these amendments automatically overlay Chapter 32: Water Resource Area Protection upon all riverfront property? We are not ready to support this amendment because of its lack of clarity as to how overlaying rules for streamside protection would affect our property. The Willamette River properties are protected by flood plain rules as well as the Willamette Greenway rules, which do not affect streamside properties.

We feel that protecting the Willamette River is very important but perhaps this is overkill.

Thank you for your attention.

Sincerely yours,

Frederick Schmidt

Una Schmidt

Frederick Schmidt
6545 Failing Street
West Linn OR 97068
503-655-5424

Una Schmidt

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November 19, 2007

West Linn Planning Department

West Linn City Hall

22500 Salamo Road

West Linn, Oregon 97068

Mr. Peter Spir, Associate Planner

RE: public notice of proposed West Linn Community Development Code Amendment

Dear Mr. Spir,

I have just received your notice of a public hearing on December 19th of our city's proposed land use regulation changes that might affect my properties at 951 and 953 Willamette Falls Drive in West Linn. I will not be able to attend this hearing, and **am hereby notifying you I wish to challenge any restrictions and regulations that could or would affect the properties values and/or an owners ability to improve as residential structures either now or in the future.**

Since I am surrounded by existing residences on both sides, I cannot see where these proposed regulations either could or should apply to my properties. This appears to be another burden to me as a property owner with new government regulations having little to do with improving environmental quality and herby request they be exempt from the proposed land use regulations.

I am requesting further clarification from you as to how your proposed regulations would detrimentally affect the future development ability and value of my properties, and how I should proceed with filing official objections. Thank you in advance for your prompt response to this matter.

Sincerely,

Carol DeJardin

PO Box 193

West Linn, Oregon 97068

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Rec'd Dec 21 '07

Dec.21, 2007

To The West Linn Planning Comission
City Hall, West Linn, Oregon

Greetings to the members & staff:

My wife, Elizabeth, and I were in attendance at the meeting of the Planning Commission on the evening of Dec. 19.

I wish to go on record with regard to Business Agenda Item #C, CDC Chapter 27-28-32 Amendments Willamette and Tualatin River.

I believe that the proposed amendments to the community development Code Chapter 28: Willamette River Greenway and Chapter 29:Tualatin River Protection require further exploration.

Notably on page 5: 29.070, and item "d": Additional floors or other vertical additions are permitted....

I find this explanation too vague. My first concern is that the homeowner or developer could use the footprint of the existent house to add, perhaps more than another storey to the existent structure....I know personally of one case in Vancouver, Washington, where the homeowner took and existent structure on the riverbank of the Columbia and converted it into a kind of lighthouse artist's studio..the owner did not consult her neighbors and the subsequent structure was an affront to her adjacent neighbors' sight lines to the river...

Another subject: This amendment appears to limit itself to the structure of a house. What about other structures on the river front? For example: a gazebo? A large shed, perhaps to store a boat? Or rather than a structure, a landscape architectural arrangement in the river front that is not in keeping with the surrounding rivertine "natural" landscape?

Also: On Page #2 of the amendment: The third paragraph: The second sentence: "In the Tualatin River Protection chapter all homes must be out of the 100 year flood plain, which translates into setbacks of between 150 and 500 feet from the riverbank..."

To this my wife and I say: "well and good..." the new wording for construction adjacent to West Linn riverbanks seems pertinent and responsible. However, Elizabeth and I wish to point out the discrepancy that currently exists between what the building code allows and what, specifically, The West Linn Parks Department does.

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Some notable examples:

Examine the structures built this past summer along the Tualatin river bank at Fields Bridge Park, namely the fishing/viewing platform and the two concrete and stone "way stations"

During the recent high water several situations occurred:

1. The wooden fishing platform: The water rose to the floor level of the platform and was very swift. The supporting posts must have caused an eddy because the adjacent bank eroded, and the mud slipped away and the stone cobbles loosened their moorings.

2. The "way station" (what is it anyway?) Next to the beach: Here the river arose to within 3 or 4 feet of this structure and washed away about a vertical foot of sandy bank. What will happen when the river really rises as it has done frequently? The placement and the purpose of this structure seem dubious.

3. The "way station" on the island. Again, the river rose to within a few feet of this concrete and stone ensemble but showed no evidence of causing erosion because there is a buffer of shrubs and grasses.

Elizabeth and I realize these structures are not the same as a dwelling but they still have been introduced well within the high water marks in an area historically known as a flood plain. How did this happen? Why were they allowed? Neither of us recall that the aforesaid constructions were depicted in the master plan for Fields Bridge Park.

And finally, and though it is yet to be constructed, there is depicted in the plan for Fields Bridge Park a building that is designed to be a combination public rest room/changing room. This same structure may or may not include space for some kind of food-vending service.

Thus this question: The entire baseball playing fields are in the zone of the historic flood plain. At times, during the past two months this year, the turf in the playing fields in numerous locations has been submerged in rain water ranging in depth from a half-inch to one-and-one-half inches. Should members of the commission visit the park any day soon, they cannot fail to see that the lawn is yellow and dying from a surfeit of moisture.

Yours sincerely,

Andy J Rocchia

Andy Rocchia
Phone: 503-657-5666

cc:files

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Distributed 6/18/08 PC Mtg

Frederick and Una Schmidt
6545 Failing Street
West Linn, Oregon 97068-2614
Phone 503-655-5424

June 18, 2008

West Linn Planning Commission
22500 Salamo Road
West Linn, Oregon 97068

RE: Proposed Amendments to Chapter 28, Willamette and Tualatin River Greenway

Dear Members of the Planning Commission,

Thank you for submitting the amendment of Chapter 28 to a task force consisting of members of the general public as well as riverfront owners.

We approve of the amendments as proposed by the staff working with the Task Force.

Our approval is based on the following:

1. The "grandfathering in" of existing structures
2. The use of HCA boundaries rather than arbitrary set backs, and their review by the Planning Director
3. The inclusion of city, commercial; and industrial properties subject to Chapter 28.
4. The exemption of landscaping with native or existing vegetative materials.

Thank you for your service to the community, and for working with and for both public and private interests.

Sincerely yours,

Fred Schmidt

Fred G. Schmidt

Una Schmidt

Una Schmidt

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JUN 17 2008
PLANNING & BUILDING
CITY OF WEST LINN
INT. TIME

Zak, Teresa

From: Jordan, Chris
Sent: Monday, February 25, 2008 7:58 AM
To: Zak, Teresa; Spir, Peter
Subject: FW: Willamette River Amendment

Please make sure this is in the final Council packet.

From: King, Norm
Sent: Monday, February 25, 2008 12:06 AM
To: Jordan, Chris; Brown, Bryan
Subject: FW: Willamette River Amendment

On Saturday I replied to Dave that the hearing on this agenda bill would be continued until the first meeting in March.

From: dave froode [mailto:dfroode@comcast.net]
Sent: Sat 2/23/2008 7:01 AM
To: King, Norm
Cc: gates1588@comcast.net; Bob Martin
Subject: Willamette River Amendment

Last month a group of citizens testified at the Planning Commission meeting regarding a CDC amendment for the Willamette River/Tualatin rivers greenways. This issue is on your agenda for 2-25-08. The Planning Commission voted unanaminously to not adopt the amendment and went on to recommend a task force prepare a better amendment. We ask the same of the City Council. Please do not adopt this amendment in its current form. It will not provide the desired results and it fails in many areas.

The Planning Department advises us " they are only trying to develope a code that is in compliance with Metro". I disagree. If they would simply adopt the State Goal 5, or Metro's Nature in the Neighborhood we waterfront owners would not take issue with it. Most of those measures are acceptbable. The problem we have is the City has gone beyond what the State, Metro and County suggest.

I have now had an opportunity to review the State's Goals 5 & 15, along with Metro's Nature in the Neighborhoods and the County's version of the same natural resource and water protection efforts. The main issues are:

1. The State suggests setbacks of 50-80 feet depending mainly on the waterflow vs the City recommendation of 100 feet not contingent on any scientific data.

2. The State indicats any pre existing structure damaged can be repaired as long as the footprint does not move closer to the protected area(s). The City recommends if the structure is damaged beyond 50% and it is non complying, it can not be re built on it's pre existing footprint.

3. Issues 1 & 2 recommended by the City Planning Dept. would reander many properties inside of the floodplain non buildable and diminish values in the event they were

damaged. Keep in mind not all of the existing structures are on the waterfront. Some are inside of the floodplain but on the west side of the street but would be impacted by this poorly prepared amendment.

The Council applauded the citizens of the Task Force that created a new dock/greenway code last year. If given the same charge a balanced group of citizens can bring the same energy to create a greenway amendment that will not only produce the desired results but protect the rights and interests of all.

Regards, Dave

Spir, Peter

From: alison benski [abenski@hotmail.com]
Sent: Monday, June 23, 2008 12:11 PM
To: Spir, Peter
Cc: Brown, Bryan
Subject: Planning Commission CDC 0704

I was at the 18 June Planning commission meeting, which was postponed until 2 July.
I feel that overall the CDC proposal is great, but do object to the mapping plan as it relates to my property. In the current mapping plan, my property is determined to be a moderate to high conservation area, while most of my neighbors are not. As my bank line is exactly the same as my neighbors who did not receive such a restrictive designation, I can see no reason for my property to be so labeled.
This designation would adversely affect the future use and value of my property; I would request that the moderate to high conservation boundary be changed to match the rest of River Street.
I also want to thank you for taking the time to talk with us after the meeting. I appreciate your interest and willingness to help with our concerns.
Please pass this on to the Planning Commission,
<!--[if !supportEmptyParas]-->
Sincerely,<!--[if !supportEmptyParas]-->
Alison Benski

Now you can invite friends from Facebook and other groups to join you on Windows Live™ Messenger. Add them now!

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Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
800 NE Oregon Street M/S 18, Suite 1145
Portland, Oregon 97232-2162
Phone: (503) 731-4065
Fax: (503) 731-4068
Web Address: http://www.lcd.state.or.us

June 2, 2008

Peter Spir
Associate Planner
West Linn Planning and Building Department
22500 Salamo Rd, Box 1000
West Linn, OR 97068

RECEIVED
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PLANNING & BUILDING
CITY OF WEST LINN
INT. _____ TIME _____

Dear Peter:

The Department of Land Conservation and Development has received notice of a post acknowledgement plan amendment (DLCD File No. 001-08, CDC-07-04). The proposal is to amend Chapter 28 of the city's development code to combine protection of the Willamette River Greenway and Tualatin River into one chapter that meets Title 13 of Metro's Regional Functional Plan. In my review of draft code, I considered compliance with both Oregon Land Use Goal 5 - Open Space, Scenic, and Historic Areas, and Natural Resources, and with Goal 15 - Willamette River Greenway.

For jurisdictions within the boundaries of Metro, the regional standards set forth in Metro's Title 13 have been established to meet State Goal 5 requirements for riparian areas, wetlands, and wildlife habitat. Metro has the primary role of reviewing the proposed code amendments for compliance with Title 13. The requirements for State Land Use Goal 15 are contained in the goal itself, the State Greenway Pan, and local plan elements and code provisions adopted to implement the Goal. In reading through the material submitted with your plan amendment notice, it is not clear to me if state and local provisions for Goal 15 were fully considered in drafting the amendments to Chapter 28 of your development code.

In discussions we have had over the phone, you have explained that the proposed code revisions represent improvements to West Linn's ability to manage and preserve vegetation and wildlife habitat along the Willamette River. The Department does not in

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any way want to detract from this effort. However, it is necessary for the proposed code language to also be consistent with Goal 15.

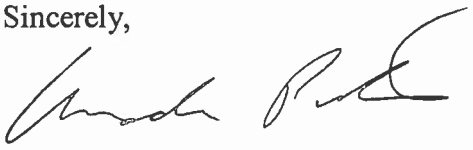
Attached are my comments on your draft code language. I have made notes directly in the text suggesting where closer attention to Goal 15 provisions may be warranted. As discussed on the phone, it would also be helpful to better understand the status of the

current West Linn Goal 15 Comprehensive Plan element with respect to the State Willamette Greenway Plan, as maintained by Oregon Parks and Recreation Department.

If you have any questions please contact me by phone (971-673-0961) or e-mail (Amanda.punton@state.or.us). We request that this letter be entered into the record of the proceedings.

Thank you for your efforts to preserve streams wetlands and upland wildlife habitat in your City.

Sincerely,



Amanda Punton
Natural Resources Specialist

cc: Jennifer Donnelly (DLCD)
Meg Fernekees (DLCD)
Mara Ulloa (DLCD)
Tim O'Brien (Metro)
Kathy Schutt (OPRD)

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Dunn Carney Allen Higgins & Tongue LLP
ATTORNEYS AT LAW

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PAGE..... OF.....

April 10, 2008

TY K. WYMAN

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VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 7007 0220 0001 3203 3703

West Linn City Council
22500 Salamo Rd.
West Linn, OR 97068

Re: Willamette Greenway Code Amendments
Council Agenda Bill 08-02-22
City File No. CDC 07-04
Our File No. USB4-62

Dear Councilors:

This firm represents U.S. Bank, as trustee of the Schreiber Trust. The Trust holdings include the real property at 6533 Failing St.

We have reviewed the Planning Commission's recommendation. We understand that the Council is likely to recommit this matter to the public process, merging it with a forthcoming program to implement Metro greenway policies. We support such a move and ask you to notify this office of that process and opportunities to participate therein. For the moment, we offer these thoughts.

The Trust recognizes that the Willamette River has significant public value. As a commercial, recreational, and natural resource, there is good reason that the State holds the river in the public trust. However, that value does not, alone, justify regulating use and development of adjacent private property to the extent suggested by staff.

Any idea of a continuous public path along the river at this location is of particular concern. The Dolan case illustrates that placement of public paths across private property is fraught with legal peril.

Consider further that the Dolans sought to develop their property and sought to do so for commercial use. Commercial uses, by their nature, rely on public access. As such, owners of such property securitize them accordingly.

This is a built-out single-family neighborhood. It exists largely for the opposite purpose, to afford individuals and families some privacy. These residents invested in their properties with a reasonable expectation of such privacy, an expectation that the City should protect rather than undermine.

Member MERITAS LAW FIRMS WORLDWIDE

INDEPENDENT MEMBER OF MERITAS
WITH AFFILIATED OFFICES IN MORE THAN 250 CITIES AND 60 FOREIGN COUNTRIES

The contemplated enhanced setbacks and increased restrictions on redevelopment therein are also of concern. Anytime setbacks are enhanced, existing development is thrown in non-conformity. Such development necessarily becomes derelict, living on borrowed time until it is destroyed or abandoned.

The Planning Commission recommended tabling this proposal, in part, because regulations that protect the public value of the river already exist. It is unclear to us how these existing regulations are lacking. As such, we wonder if this proposal is a planning solution in search of a problem.

Thank you for the opportunity to comment. We look forward to further discussing this issue with you.

Very truly yours,

Ty K. Wyman

TKW:lbs
Attachment

cc: U.S. Bank, Trust Department

Spir, Peter

From: Gail Shaloum [Shaloumg@metro.dst.or.us]
Sent: Friday, April 25, 2008 10:57 AM
To: Spir, Peter
Cc: Miranda Bateschell; Tim O'Brien
Subject: Info on Habitat Friendly Practices for West Linn

Peter,
It was a pleasure to meet you and your co-workers yesterday. I was impressed by West Linn's many codes that appear to be quite protective of riparian areas and wetlands, and by the fact that the city has had a Wildlife Habitat Assessment done. During the meeting, we mentioned that another requirement for Title 13 is eliminating barriers to Habitat Friendly Development Practices (also known as LID or Low Impact Development). These practices are a combination of site planning practices, stormwater management techniques, and other methods to minimize the impact of building on natural resources. Many of the practices are geared toward minimizing the effective impervious surface area created in a new development.

The idea is to eliminate any barriers that exist to builders/developers to implement these practices, and if possible to encourage the use of the practices with incentives. Here is some information that I think you'll find useful in making sure that no barriers exist to implementing Habitat Friendly Development Practices in West Linn:

- Table 3 from Title 13 that gives a list of example practices.
- Practices list from Title 13 with a short description of each practice.
- Link to our website on Green From the Ground Up seminars http://www.metro-region.org/index.cfm/go/by.web/id=25190. From here you can download presentations on some of the practices. If you have time, it might be useful to take a look through the basic overview, the second to last file- Gail Shaloum, Metro: Overview of regulations, urban hydrology and nature-friendly development practices.
- The same website contains our four fact sheets on Habitat Friendly Development Practices—look for Green from the Ground Up factsheet: Nature-friendly design, Low impact site design, Tree planting and retaining vegetation, and Bioretention.
- You might also check out the process that jurisdictions in the Tualatin Basin Natural Resources Coordinating Committee used in auditing and revising their codes. In particular, Issue paper #1 and Issue paper #2 can be downloaded from http://www.co.washington.or.us/deptmts/lut/planning/tualatin_basin.htm.

This might be more information than you need! Please let me know if you have any questions. I am also putting the Metro habitat maps in the mail to you today, so hopefully you'll have them by early next week.

Gail Shaloum
Nature In Neighborhoods
Metro
600 NE Grand Avenue
Portland, OR 97232-2736
phone (503) 797-1588
fax (503) 797-1849
shaloumg@metro.dst.or.us

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Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
800 NE Oregon Street M/S 18, Suite 1145
Portland, Oregon 97232-2162
Phone: (503) 731-4065
Fax: (503) 731-4068
Web Address: http://www.lcd.state.or.us

June 2, 2008

Peter Spir
Associate Planner
West Linn Planning and Building Department
22500 Salamo Rd, Box 1000
West Linn, OR 97068

Dear Peter:

The Department of Land Conservation and Development has received notice of a post acknowledgement plan amendment (DLCD File No. 001-08, CDC-07-04). The proposal is to amend Chapter 28 of the city's development code to combine protection of the Willamette River Greenway and Tualatin River into one chapter that meets Title 13 of Metro's Regional Functional Plan. In my review of draft code, I considered compliance with both Oregon Land Use Goal 5 - Open Space, Scenic, and Historic Areas, and Natural Resources, and with Goal 15 - Willamette River Greenway.

For jurisdictions within the boundaries of Metro, the regional standards set forth in Metro's Title 13 have been established to meet State Goal 5 requirements for riparian areas, wetlands, and wildlife habitat. Metro has the primary role of reviewing the proposed code amendments for compliance with Title 13. The requirements for State Land Use Goal 15 are contained in the goal itself, the State Greenway Pan, and local plan elements and code provisions adopted to implement the Goal. In reading through the material submitted with your plan amendment notice, it is not clear to me if state and local provisions for Goal 15 were fully considered in drafting the amendments to Chapter 28 of your development code.

In discussions we have had over the phone, you have explained that the proposed code revisions represent improvements to West Linn's ability to manage and preserve vegetation and wildlife habitat along the Willamette River. The Department does not in

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any way want to detract from this effort. However, it is necessary for the proposed code language to also be consistent with Goal 15.

Attached are my comments on your draft code language. I have made notes directly in the text suggesting where closer attention to Goal 15 provisions may be warranted. As discussed on the phone, it would also be helpful to better understand the status of the

current West Linn Goal 15 Comprehensive Plan element with respect to the State Willamette Greenway Plan, as maintained by Oregon Parks and Recreation Department.

If you have any questions please contact me by phone (971-673-0961) or e-mail (Amanda.punton@state.or.us). We request that this letter be entered into the record of the proceedings.

Thank you for your efforts to preserve streams wetlands and upland wildlife habitat in your City.

Sincerely,

Amanda Punton
Natural Resources Specialist

cc: Jennifer Donnelly (DLCD)
Meg Fernekees (DLCD)
Mara Ulloa (DLCD)
Tim O'Brien (Metro)
Kathy Schutt (OPRD)

Spir, Peter

From: Tom Stiglich [tom.stiglich@qlogic.com]

Sent: Monday, July 21, 2008 7:52 AM

To: babbitt@asioregon.com; jkovash@comcast.net; mandrwebber@comcast.net; shawnandreas@hotmail.com; Bob & Mary Martin; dean@comarcoindustrial.com; valerie27@comcast.net; Spir, Peter

Cc: Tom Stiglich

Subject: CH 28 CODE CHANGES

Hi All

Even though the planning commission had decided to not take any more public comment, written included I am writing you and asking
you to consider the change in the attached file and to re-open the meetings on this subject to public comment.

Thanks
Tom Stiglich
6591 Failing St
West Linn, OR. 97068
(503) 742-8983

PLEASE NOTE THAT MR. STIGLICH'S LETTER WAS RECEIVED AFTER THE PUBLIC HEARING CLOSED AND WAS NOT ACCEPTED INTO THE PLANNING COMMISSION RECORD.

CITY COUNCIL CAN, IF THEY SO CHOOSE, ACCEPT IT AS PART OF COUNCIL'S RECORD.

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CH 28 Purposed Code Changes Fixes

Black text shows the purposed code.
Red text shows the suggested fixes to the purposed code changes.
Blue text gives reasons to change to the suggested fixes version.

28.10 **PURPOSE**

A. Protect, conserve, enhance, and maintain the natural, scenic historical, economic, and recreational qualities of lands along the Willamette and Tualatin Rivers.

A. Protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along the Willamette and Tualatin Rivers.

Missing a comma between scenic and historical

28.10 **PURPOSE**

F. Protect, preserve and enhance legal public use and access to and along the shoreline and river, while recognizing and preserving private property rights.

F. Protect, preserve and enhance legal public access to the rivers, while recognizing and preserving private property rights.

The words "along the shoreline" were added, but there is no public right to walk along the shoreline. The shoreline is private property and walking on is trespassing.

Oregon Revised Statues

274.015 Determination of ordinary high and low water. For purposes of this chapter, when the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by the use of the annual mean high or mean low water for the preceding year. [1967 c.421 §99]

274.005 Definitions. As used in this chapter, unless the context requires otherwise:
(4) "Line of ordinary low water" means the line on the bank or shore to which the low water ordinarily recedes annually in season.

The 1874 Legislature "granted to the riparian owners the land to the low water mark of the Willamette" River.

28.20 **DEFINITIONS**

C. Boat House. Roofed structure to store and protect a boat. Boat houses may also include roofed open sided boat shelters.

C. Boat House. A roofed, four sided structure used to store and protect a boat.

This just clarifies that a boat house has sides. A separate definition should be added for boat shelters.

D. Boat shelters. A roofed structure with open sides used to store and protect a boat.

28.20 **DEFINITIONS**

H. Habitat Conservation Areas (HCAs). Metro classified sensitive riparian areas as Habitat Conservation Areas or HCAs because of a combination of factors including vegetation, wildlife and fisheries habitat potential, slopes, forested overstory, wetlands, streams etc. These areas have been mapped by Metro (see http://www.metro-region.org/index.cfm/go/by.web/id=8385.) and are to be avoided to the degree possible with development instead directed to the areas designated "Not Affected by Recommendation" or "Allow Development". Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

J. Metro's Habitat Protection Map. An extensive review of the scientific literature, mapping and field work helped Metro identify the location of fish and wildlife habitat: one for waterside, or riparian, habitat and one for drier upland wildlife habitat. In 2001, Metro mapped the specific landscape features associated with these criteria, such as the location of trees, shrubs, wetlands, flood areas and steep slopes. Habitat areas were then ranked based on their relative health and importance for providing benefits to fish and wildlife. The resulting maps provide West Linn with the means to delineate areas that contain no constraints: "Not Affected by Recommendation" or "Allow Development" and where there are constraints (HCAs) ranging from low, medium to high. The maps are available at Metro's website at http://www.metro-region.org/index.cfm/go/by.web/id=8385.

Metro's Habitat Protection Map is incorporated by reference as part of this Chapter. Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

both H and J above should be removed from the code, the city has to relay on it's own Willamette River Green Way map. The city spent thousand of dollars to develop the original Willamette River Green Way map and it was based on site visits by a qualified biologist, who took the time to visit every home along the Willamette. The Willamette River Green Way map is approved by the Oregon Department of State Lands, it is the map used to delineate the Willamette River Green Way boundaries in the city of West Linn.

Metros Habitat Protection map was developed by looking at aerial photos, while it could be used as input to modify the existing Willamette River Green Way map, the weight it carries is minimal, give that it is based on aerial photos and not site visits by a qualified biologist. Also there is a process prescribed by law for changing the Willamette River Green Way boundaries and there is a requirement that changes be based on hard evidence.

As the Planning Commission memo dated May 30, 2008 page 2 in the 2nd to last paragraph states the metro's habitat inventory map is based mostly on aerial photographs.

28.20 **DEFINITIONS**

Q. Pre-existing Docks. Docks that are in existence prior to the date of adoption of this code.

Q. Pre-existing Docks. Docks that were approved prior to the date of adoption of this code.

As far as these code changes are concerned, if the dock was approved prior to these changes then these change do not apply.

28.20 **DEFINITIONS**

W. Top of Bank definition?

A separate definition should be added for Top of Bank. Currently planning staff is looking at top of bank as being above ordinary high water, which is incorrect. Metro's own web site states Top of Bank is between OLW and OHW. Given that ordinary high water is the maximum height the water normaly reaches, any time the water goes above that it is a flood condition, and erosion it may cause to the upland is flood damage and not related to the banks of the river.

28.20 **DEFINITIONS**

X. Scenic easement definition?

A separate definition should be added for Scenic Easement, because there isn't one currently.

28.030 **APPLICABILITY**

A. The Willamette and Tualatin River Protection Area is an overlay zone. The zone boundaries are identified on the city's zoning map, and include

1. All land within the City of West Linn's Willamette River Greenway Area.

2. All land within 200 feet of the mean low water line of the Tualatin River, and all land within the 100-year floodplain of the Tualatin River.

3. In addition to the Willamette Greenway and Tualatin River Protection Area boundaries, this chapter also relies on Metro's Habitat Protection Map to delineate where development should or should not occur. Specifically, the intent is to keep out of, or minimize disturbance of, the Habitat Conservation Areas (HCA's). Therefore, if all, or any part, of a lot is in the Willamette Greenway and Tualatin River Protection Area boundaries, and there are HCA's on the lot a Willamette and Tualatin River Protection Area permit shall be required unless the development proposal is exempt per CDC 28.040.

In the 1st sentence the code talks about the "The Willamette and Tualatin River Protection Area" then talks about the zone boundaries being identified on the zoning map, but no such map was ever presented or made available to the public. And no public comment was allowed on this or any of the other changes the Planning Commission or staff made, after the 1st and only Planning Commission meeting on the code changes. Also at that meeting the Planning Commission decided to prevent any more public comment in any form written or oral.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

D. Replacement-in-kind or minor modification by public utilities for pump stations, public bathrooms, utilities, existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors and similar facilities.

This exemption should be removed from the code, because it prevents any improvement to public utilities. If for example we still had an open sewer pit, it would still be allowed under this code provision. All public utilities are just that PUBLIC and public comments and input on any changes they make should required and welcomed by any PUBLIC utility. Exemption K already allows for routine repair and maintenance.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

F. Signs, markers, announcements, etc. placed by a public agency to serve the public.

This exemption should be removed from the code, because the City is and should be under the control of the public not the other way around. The public's comments on were and what types of signs, markers, and announcements the City may place should be based on the public's input. If it is such a good idea that the City be allows to place signs with out any public review then why does the city development code require the public to get approval for signs?

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

M. Minor modifications, reviewable by the Planning Director.

This exemption should be removed from the code, because exemption G covers residential houses for maintenance and repair, while exemption K covers public utilities for maintenance and repair.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

P. Wetland, riparian, and upland enhancement or restoration projects done with approval of city staff and regulatory agency personnel (e.g. ODFW, DSL).

P. Wetland, riparian, and upland enhancement or restoration projects done with approval of DSL and or ODFW.

The city has zero expertise on any of these subject wetlands, riparian areas or uplands. The Community Development Codes have nothing to do with what kinds of plants a home owner puts in their yard. This exemption clarifies that a home owner can do what ever the state allows under it's environmental laws.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

S. In cases where the required development standards of this chapter are applied and met with no encroachment into HCAs, and also meets (T) and (U) below, where applicable, then no permit under the provisions of this chapter will be required. For example, if the proposed development or action will be located in the "Not Affected by Recommendation" or "Allow Development" area and keeps out of the Habitat Conservation Areas a Willamette or Tualatin River Protection Area permit shall not be required. Floodplain Management Area or other permits may still be required.

T. The construction, remodeling, additions of home and accessory structures that take place completely within the "Not Affected by Recommendation" or "Allow Development" of Metro's Habitat Conservation Maps shall be exempt from a Willamette or Tualatin River Protection Area permit. Where the "Not Affected by Recommendation" or "Allow Development" area goes to the edge of a clearly defined top of bank, the applicant's home and accessory structures shall be set back at least 15 feet from top of bank. At grade patios and deck areas within 30 inches of natural grade may extend to within five feet from top of bank. No overhang or cantilevering of structures permitted over HCA or over setback area. If these terms are met then no permit will be required under this chapter

U. Maintenance, alteration, expansion, repair and replacement of existing structures are exempt, provided that;

(1) the rebuilding of existing residential and non-residential structures within the same foundation lines as the original structure(s) including, but not limited to, those damaged or destroyed by fire or other natural hazards; or,

(2) an alteration, expansion, repair and replacement of a house or structure per the standards of 28.110(E)(2);

(3) the alteration, expansion, repair and replacement of a house or structure in the vertical sense where the applicant is adding additional floors or expanding above the footprint of the existing structure regardless of whether the structure's footprint is in an HCA or not

A. The construction, replacement, additions, alterations, remodels, repairs or maintenance of homes and accessory structures that takes place completely outside Habitat Conservation Areas.

B. Replacement, additions, alterations, remodels, repairs or maintenance of pre existing homes and accessory structures that takes place within the pre existing footprint. Whether the structure's footprint is in a Habitat Conservation Area or not.

C. The addition, alteration, remodeling, repair or maintenance of pre existing non-conforming homes and accessory structures, if the addition, alteration or remodel is in same footprint or does not extend the footprint towards the river. CDC Chapter 66: Non Conforming Structures-shall not apply.

The above code should be used to replace exemption S, T and U, because it says the same thing in fewer words, except for the top of bank extra setback which should be eliminated. Top of back is related to river caused erosion, and can not be above ordinary high water, because the water normally get higher then "ordinary high water".

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

W. Low impact public or private outdoor recreation facilities including, but not limited to, multi-use water permeable paths and trails to a maximum width of four feet, picnic areas, interpretive displays, benches. Gazebos or similar structures must be out of the HCA areas to be exempt. No more than 500 square feet of new lot coverage allowed under this provision.

W. Single family homes are allowed low impact outdoor recreation facilities including, but not limited to, paths less than four feet wide, picnic areas, tables, benches, barbecues, etc. Gazebos or similar structures must be out of the HCA areas to be exempt. No more than 500 square feet of new lot coverage allowed under this provision.

Anything the city or public entities want to do should be up for public review. Public review will help prevent things likes the water pipe cutting threw the Wilderness Park a few years ago. Public comments should be welcomed on any city or public activity.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

X. Interior remodeling.

X. Interior remodeling of homes or accessory structures.

Just to be specific.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

Y. Installation of new and/or replacement water permeable driveways, paths and patios and two track driveways outside of HCAs. Surface area cannot exceed amount allowed by lot coverage standards of underlying zone.

Exemption Y should be removed, water permeable surfaces have very little effect close to the river. If the rain runs off a roof and is controlled by proper engineering, you should be able to put in hard or impermeable surfaces just like any other property in the city.

28.040 **EXEMPTIONS/USES PERMITTED OUTRIGHT**

AA. Lands that are designated as an HCA only due to a forested canopy shall be exempted since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Development of lands that are designated as HCA due to other variables such as wetlands, flood areas and steep slopes shall still be regulated by the provisions of this chapter and not exempted.

Exemption AA should be removed the cities Willamette River Green Way map covers this. The city has to relay on it's own Willamette River Green Way map. The city spent thousand of dollars to develop the original Willamette River Green Way map and it was based on site visits by a qualified biologist, who took the time to visit every home along the Willamette. The Willamette River Green Way map is approved by the Oregon Department of State Lands, it is the map used to delineate the Willamette River Green Way boundaries in the city of West Linn.

28.050 **PROHIBITED USES**

1. Residential floating structures, also known as floating homes or houseboats.

1. Residential floating structures, also known as floating homes.

This is community development code not boat regulation code. The city has no say about what type of boats are in the river and houseboats are boats regulated the Oregon State Marine board.

28.050 **PROHIBITED USES**

3. More than one dock with or without a boathouse per river front lot of record, except city owned tax lots 100, 200, 300, 400, and 500 of Assessor's Map 21 East 24.

3. More than one dock or boathouse per single family home. Joint use docks between adjacent single family homes are exempt from this probation.

It only makes sense that a joint use dock might have a boathouse for each boat and a marina might have more than one dock.

28.050 **PROHIBITED USES**

4. The location of any dock under any water condition that prevents what would otherwise be historic, safe, uninterrupted water passage.

This prohibition should be removed the city has no expertise or jurisdiction over river travel, this is regulated by the United State Coast Guard and the Army Core of Engineers under the jurisdiction of the United State Government. Both the Willamette and the Tualatin Rivers are navigable and free passage is guaranteed and controlled by the United States, not the state, county or city.

28.050 **PROHIBITED USES**

5. Any new lawn area or garden area consisting primarily of non-native vegetation within HCA lands. A lawn area in the "Allowed Development" area is permitted.

6. Planting of any species identified as nuisance of prohibited plants on the Metro Native Plant List.

7. Uncontained storage of hazardous materials as defined by the Oregon Department of Environmental Quality and dumping of any materials of any kind.

8. Excessive trimming or removal of existing native vegetation within the HCA unless it is to reestablish native vegetation in place of non-native or invasive vegetation.

These prohibitions should be removed, because this is community development code not, environmental regulation. If you want to do some thing in this direction, do it with incentives not prohibitions. Incentives like offering property tax deduction to the homeowner for not having a garden in the Willamette River Green Way etc.

28.070 **PLANNING DIRECTOR VERIFICATION OF METRO HABITAT PROTECTION MAP BOUNDARIES**

A. 1. Metro's Habitat Protection map is the basis for identifying lands "Not Affected by Recommendations" or "Allow Development" areas and the HCA areas. A copy of the map is on file at the city and is adopted by reference as the mapping tool to be used with this chapter.

It is inevitable, given the large area that Metro's Habitat Protection map covers, that there may be some errors. In cases where, for example, three properties share the same contours and the same natural features

but the map shows the middle lot with an HCA designation on it, it is reasonable to question the accuracy of that HCA classification. Using tree canopy as the sole basis for HCA designation will also allow a change in designation since trees are already protected in the Municipal Code and CDC Chapters 55 and 85.

2. The Planning Director shall verify the appropriate HCA or non-HCA classification by site visits or consultations with Metro or by other means. In cases where the determination is that the map is incorrect, the Planning Director will make a written finding of this as well as the site conditions that led to that conclusion.

3. Class C public notice, per CDC Chapter 99, shall be required prior to issuance of the reclassification decision if it involves re-classification of the HCA boundary to allow the construction of, or addition to, a house.

4. This determination and findings shall become part of the City record and part of the record for any associated land use application. The Planning Director shall also include in the record the revised map boundary. The Planning Director's determination and map revisions shall also be sent to Metro so that their map may be corrected as necessary.

5. The Planning Director determination is appealable to City Council per CDC Chapter 99.

This code should be removed, because the Metro map system is so flawed that you have to have a process to cover the problems with it. The Metro map system is based almost entirely on aerial photos. The original Willamette River Green Way Map was developed by a qualified Biologist and took several months and hundreds of thousand of dollars to develop, it was subsequently review and approved by the Oregon Department of State Lands. The city also has maps that delineates significant Wet Lands and Riparian Areas, also developed by qualified Biologist in fact by specialist in the field of Wet Lands and Riparian Areas. These areas are covered by the current Willamette River Green Way, which was and is meant to protect areas. With the above code we will be relying on the knowledge and expertise of the cities planning directory to make decisions about thing he completely unqualified to make.

28.110 **APPROVAL CRITERIA**

No application for development on property within the Protection Area shall be approved unless the decision making authority finds that the following standards have been met or can be met by conditions of approval.

No application for development on property within the Willamette River Green Way shall be approved unless the decision making authority finds that the following standards have been met or can be met by conditions of approval.

This code is about the Willamette River Green Way and or the Tualtin River area, the protection areas are what is being protected with in the green way. If the development is out side of the green way this code does not apply.

28.110 **APPROVAL CRITERIA**

The development shall comply with the following criteria as applicable:

A. Development: All Sites

1. Sites shall first be reviewed using Metro's Habitat Protection Map to determine if the site is buildable or what portion of the site is buildable. HCAs shall be verified by the Planning Director per section 28.070 and site visit. Also, "tree canopy only" HCAs shall not constitute a development limitation and may be exempted per section 28.070A)(1). The Municipal Code protection for trees and CDC Chapter 55 and 85 tree protection shall still apply.

1. Sites shall first be review using the Cities Willamette River Green Way Map.

This code just shows the problems with Metro's Habitat Protection Map and it's many in-accuracy's. Section 1 brings up the problem of having the city planning director making decisions about biological issues that he has no expertise in. The whole point of the Willamette River Green Way Map, is to clearly identify the boundaries of the green way, so that a lay person can look at the map, and identify were the boundaries are in relation to their home or projects. This is a good time to review current Willamette River Green Way Map to put sum quantifiable values on it, like the 22.5 feet above Ordinary Mean Sea Lever. This need to be done for the whole river and plot maps should be give to each and every home owner for them to review. We are talking about code that could easily cause the loss of hundreds of thousands of dollars to the home owners.

2. Development in the "Not affected by recommendation" or "Allow Development" areas as designated in the Metro Map for HCAs shall be the preferred choice.

2. Development out side of the Willamette River Green Way is preferred.

This code should be changed, and the current Willamette River Green Way Map should be updated to quantify the edges of the boundaries. The map should also be updated to show ordinary low water, top of bank and ordinary high water. Ordinary low and ordinary high water are defined by law and the height above mean sea level can be obtained from the Oregon Department of State lands. Top of bank is below ordinary high water and can be found only by site visits. A detailed lot by lot drawings with the green way boundaries clearly defined and quantified (ie height above mean sea level) should be given to each and ever land owner along the river. If the boudoirs are going to be adjusted from the current green way boundaries, the city needs to show the scientific evidence that requires the change to the green way boundary. Development outside the Willamette River Green Way is exempt form this code.

3. If the subject property contains no lands designated "Not affected by recommendation" or "Allow Development" and development within HCA land is the only option it shall be directed towards the low HCA areas first then medium HCA areas and then to High HCA as the last choice. The goal is to, at best, avoid or, at least, minimize disturbance of the HCAs. (Water dependant uses are exempt from this provision.)

3. If the subject property contains no land out side the Willamette River Green Way, it shall be shown the proper engineering techniques to midagate the effect of the development. (examples drain fields, permeable surfaces, planting native trees close to the rivers edge, fish habitat in the river etc).

These code changes should be made because there are lots of ways to mitigate the effects of a development. These mitigations techniques should be quantified like ten trees for the whole house to be in the green way or five trees for every 10 foot of green way.

This is as far as I got as of 7/21/08 but I think it shows the current purposed code needs work.

Thanks
Tom Stiglich
6591 Failing St.
West Linn, OR. 97068
(503) 742-8983

B. Single-family or attached residential.

1. Development of single-family homes or attached housing shall be permitted on the following Metro Habitat Protection Map land classifications and in the following order of preference with "a" being the most appropriate and "d" being the least appropriate:

   a. "Not affected by recommendation" or "Allow Development"
   b. Low HCA
   c. Moderate HCA
   d. High HCA

   (i) Land classifications b, c and d shall be avoided if at least a 5,000 square foot area of buildable land ("a") exists for home construction, and associated impermeable surfaces (driveways, patios etc.).

   (ii) If 5,000 square feet of buildable land ("a") is not available for home construction, and associated impermeable surfaces (driveways, patios etc.) then combinations of land classifications (a, b and c) totaling a maximum of 5,000 square feet shall be used to avoid intrusion into high HCA lands.

   (iii) Development may occur on legal lots and non-conforming lots of record located completely within the HCA areas or that have the majority of the lot in the HCA to the extent that the applicant has less than 5,000 square feet of non-HCA land.

Development shall disturb the minimum necessary area to allow the proposed use or activity, shall direct development to any available non-HCA lands and in any situation shall create no more than 5,000 square feet of impervious surface. (Driveways, paths,

patios etc that are constructed of approved water permeable materials will not count in calculating the 5,000 square foot lot coverage.)

When only HCA land is available then the structure shall be placed as far away from the water resource area or river as possible. To facilitate this, the front setback of the structure or that side which is furthest away from the water resource or river may be reduced to a five foot setback from the front property line without a variance. Any attached garage must provide a 20 foot by 20 foot parking pad or driveway so as to provide off street parking exclusive of the garage. The setbacks of 28.110(C) shall still apply.

(iv) Driveways, paths, patios etc that are constructed of approved water permeable materials will be exempt from the lot coverage calculations of i-iv above and the underlying zone. All other lot coverage and floor area ratio standards shall apply.

July 1, 2008

Mr. Bryan Brown
Planning and Building
22500 Salamo Road
West Linn, OR 97068

Subject: Metro Council Habitat Maps – Areas Needing Correction

Mr. Brown,

I have recently become aware of a series of metro maps that are incorrect and have written this letter to address the incorrect mapping information based on comments made to me by Mr. Tim O'Brien (503.797.1840) at Oregon Metro.

I had Tim review several images in the attached document and expressed my concern about habitat protection designations related to my property. He indicated that the City of West Linn Planning Director would correct the information, submit the change, and it would be updated in the next document revision. He indicated you are the person I need to communicate with to correct these mapping errors as shown on the following pages.

If you would like to schedule a walk on my property to observe the issues I am listing please let me know of a convenient time and I will meet you at the property.

Based on comments at the Planning meeting on July 2nd at 7pm, it is my understanding that this is a simple matter to correct and could be done in less than 10 days

Thank you for your assistance.

Sincerely

W.A. Buan

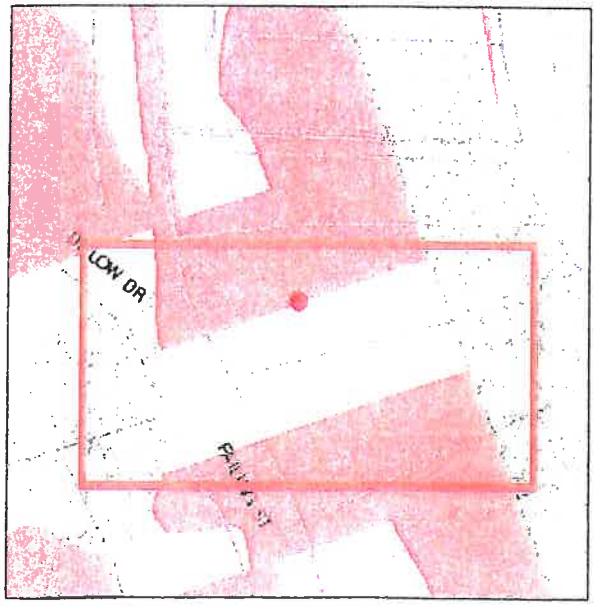
W.A. Buan
6585 Failing Street
West Linn, 97068
503.650.1950 (home)
360.514.5213 (work)

Item 1

This is the first map I disagree with, and expect to be corrected. The area is shown within the red rectangle below. From a simple 24-inch storm drain easement (NOT a stream) someone has erroneously concluded that a swath approximately 60 feet wide should be designated as a "moderate habitat conservation area", thus restricting building and development at both 6555 and 6585 Failing street. I don't know if this was done because of the tree canopy, but the fact is, the information is incorrect

This entire zone should revert back to an "allow development" zone status. This present designation restricts development, reduces the value of the property, and the adjacent property by limiting, or putting in place restrictions that should not be there. This change should be implement because there is NO stream, and in fact there is a building in this area that has been there since before I purchased the property in 1983.

Council's recommendation on habitat protection



See larger pan and zoom map

Allow development

Low habitat conservation area

Moderate habitat conservation area

High habitat conservation area

Parks and open spaces

Streams and rivers

Not affected by recommendation

Item 2

The second map is directly related to item 1 above and also needs to be corrected. There is NOTHING in the attached diagram that would call for this area to be designated Class 2 riparian. Note the definition of riparian as defined in the dictionary

Riparian: relating to or living or located on the bank of a natural watercourse or sometimes of a lake or tidewater.

Since there is NO stream or natural watercourse, there is no riparian, hence this map needs to be shown in the same manner as the adjacent properties i.e. an "Impact area" (Whatever that means), or Class 3 riparian on the lower levels

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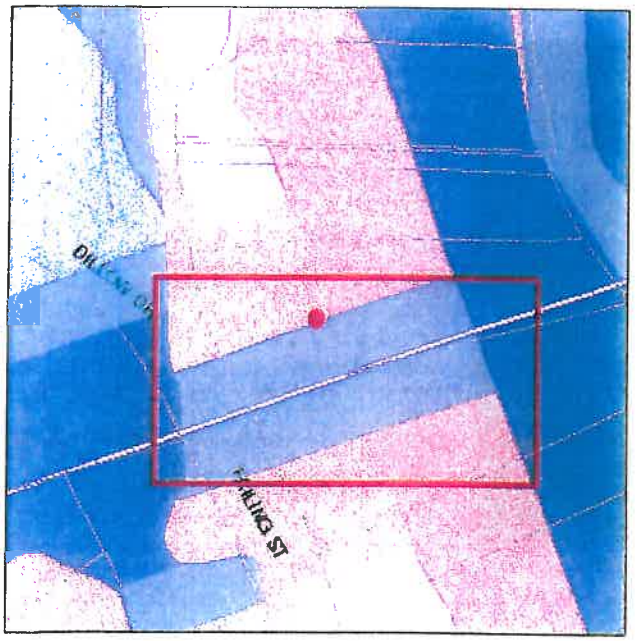
Inventory of regionally significant habitat



Class 1 riparian, highest-value
Class 2 riparian, medium-value
Class 3 riparian, lower-value
Class A wildlife, highest-value
Class B wildlife, medium-value
Class C wildlife, lower-value
Impact areas
Parks and open spaces
Streams and rivers
Not included in inventory

See larger pan and zoom map

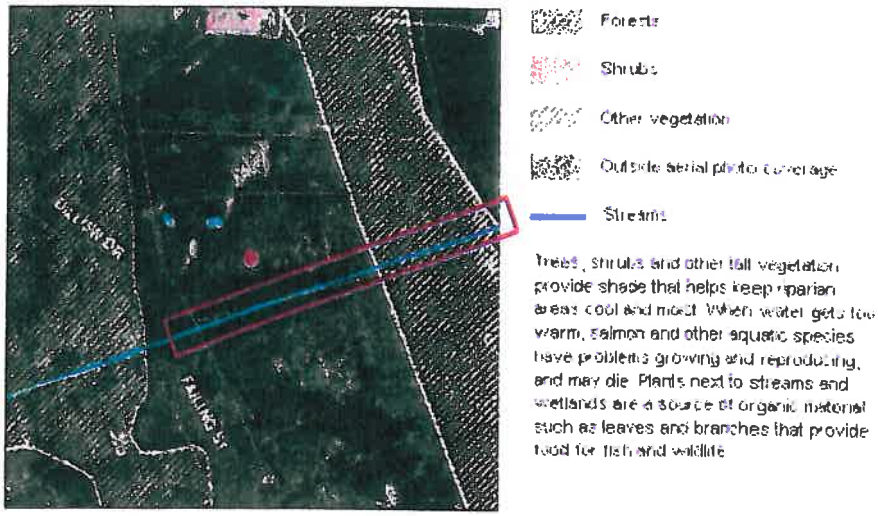
Item 3

This map indicates that there is a stream here. A storm drain is NOT a stream. This map is incorrect for that reason alone. The only way one would know there is anything here is by going to the river and observing the outlet of a storm drain. Based on that observation one would surmise that it came from somewhere. While I will admit a storm drain can direct water flow, this does not make the water flow a stream.

If need be we can go back to the dictionary for a definition

Stream – a body of running water flowing on the earth. (note the on the earth portion of the definition)

Forest canopy and vegetation



See larger pan and zoom map

Additional Items

There are other references to "the stream" in these maps. They all need to be corrected to indicate there is no stream. This would include the Streams, wetlands, and open water map, the flood area map, and the steep slopes map.

The full, unedited text of data related to 6585 Failing Street was obtained from Oregon metro (www.metro-region.org/index.cfm/go/by.web/id=8385) and is on the following pages.

6585 FAILING ST, WEST LINN

[NEW SEARCH]

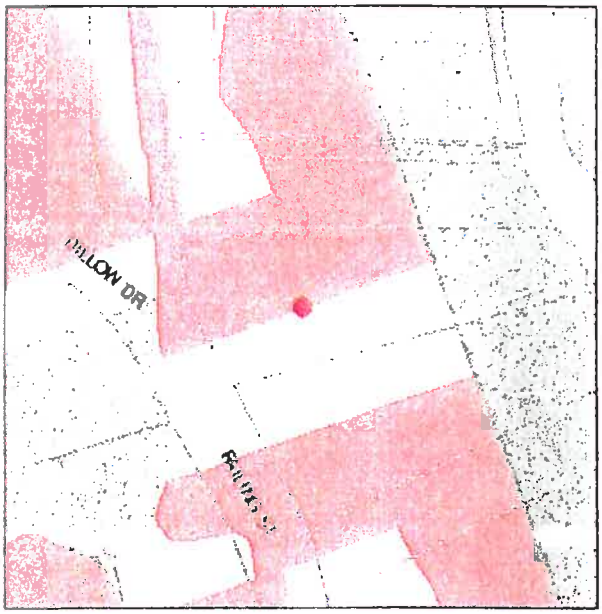
In December 2004 the Metro Council approved a habitat protection concept that integrates urban development priorities and habitat values (first map). This decision was based on the results of economic, social, environmental and energy impacts analysis.

In August 2002, the council approved the habitat inventory with habitat quality rankings (second map).

Metro's flood, slope, vegetation and forest data, gathered through 2004, were used to develop the habitat inventory and determine habitat values. Metro staff mapped specific landscape features, such as the location of trees, shrubs, wetlands, flood areas and steep slopes, and then applied scientific criteria to identify and rank habitat areas. The data are presented below on aerial photos, taken in 2003, to illustrate the correlation between the data and landscape features.

Streamside habitat areas, floodplains and wetlands are the most valuable, vulnerable and, in some cases, well-protected habitats in Metro's inventory. To protect water quality and ecological benefits, the council recommends the mandatory use of habitat-friendly development practices in these areas.

Council's recommendation on habitat protection



Allow development

Low habitat conservation area

Moderate habitat conservation area

High habitat conservation area

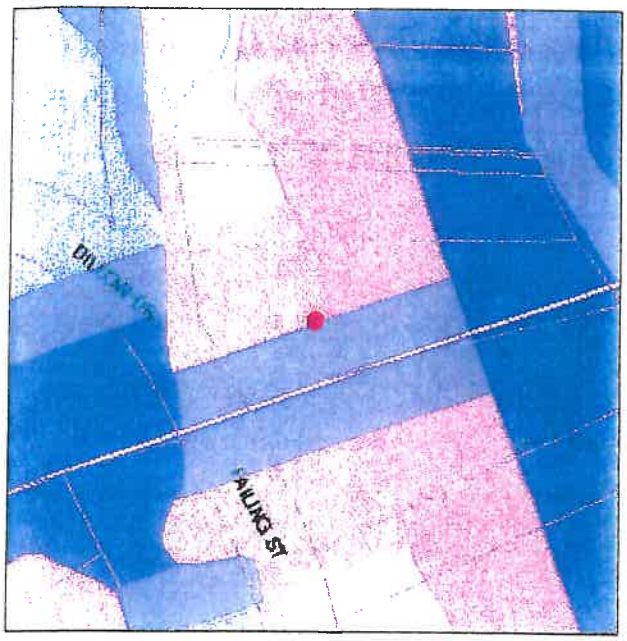
Parks and open spaces

Streams and rivers

Not affected by recommendation

See larger pan and zoom map

Inventory of regionally significant habitat



Class 1 riparian, highest-value

Class 2 riparian, medium-value

Class 3 riparian, lower-value

Class A wildlife, highest-value

Class B wildlife, medium-value

Class C wildlife, lower-value

Impact areas

Parks and open spaces

Streams and rivers

Not included in inventory

See larger pan and zoom map

Forest canopy and vegetation

Forests

Shrubs

Other vegetation

Outside aerial photo coverage

Streams

Trees, shrubs and other tall vegetation provide shade that helps keep riparian areas cool and moist. When water gets too warm, salmon and other aquatic species have problems growing and reproducing, and may die. Plants next to streams and wetlands are a source of organic material such as leaves and branches that provide food for fish and wildlife.

See larger pan and zoom map

Streams, wetlands and open water

See larger pan and zoom map

Streams

Wetlands

Open water and rivers

Outside aerial photo coverage

Streams, open water and wetlands provide some of the most valuable habitat for fish and wildlife. Adjacent trees and other vegetation provide cover and nesting or roosting sites as well as migrating pathways for hundreds of species. Adjacent vegetation helps maintain streams and wetlands.

Flood areas

See larger pan and zoom map

1996 flood inundation and 100-year floodplain

Outside aerial photo coverage

Streams

Floodplains store water and help keep streams flowing during dry periods. Healthy vegetation in floodplains and along streams acts like a sponge to help soak up water and slow its flow during storms.

Steep slopes

See larger pan and zoom map

Steep slopes

Outside aerial photo coverage

Streams

Vegetation on slopes anchors soil and helps keep sediments and pollution out of the water. Erosion of stream banks and hill slopes can be detrimental to aquatic life as well as to people and their property.