

Over the past 10 years as both a private citizen and as a planning commissioner, I have come across several areas in our code that are problematic. Either through oversight or unintended consequences, these areas have left the city and its citizens vulnerable

Each of the following changes are minor in implementation, but far reaching in their impact. In this document, I would like to describe each of the changes, discuss why they are important and look at the pros and cons. Quick action on these can prevent significant problems.

I want to discuss three areas. Trail Design Review, Water Resource Areas, and PUD's

Trail Design Review

Attempts to build trails over the past 10 years have resulted in strong push back from the community. The first Master trails Plan hearing had 200 people testifying against vs. 1 in favor. NA meeting that discuss trails have had a similar turnout. While the idea of trails is usually supported, the people affected by the trail have strong concerns about security, loss of property values, maintenance, and loss of privacy.

Our current code allows the city to plan and construct trails through private property with only a Design Review by the Planning Director. The decision can be called up by the City Council, but current code would limit that review to "on the record" which could only address errors in the decision process.

A major trail could affect dozens of homes without requiring a public hearing. Requiring a Design Review II would place the hearing in front of the Planning Commission where at least citizens could plead their case in a public forum.

To accomplish this, modify 56.020.C.2 to

New trails, if over 200 feet long (see CDC 56.025) that do not cross private property

and add 56.020.D.6 as

New trails that cross private property.

Water Resource Area Exactions

Chapter 32 establishes protection around streams and riparian areas. The chapter addresses our requirement to respond to Metro's Title 13 this addresses State Goal 5. The purpose of the goal and title is to protect our stream and natural areas. Chapter 28 has a similar purpose but only applies to the Willamette and Tualatin rivers.

WRA code balances property rights against the rights of the city to protect resources that belong to everyone. The "police power of the state" allows the city to set speed limits, create building codes and in general, impose restrictions to protect the public. In this case, the quality of the water flowing through private property is being protected by establishing setbacks to buffer riparian areas.

Our code does an excellent job of describing these setbacks, as well as providing a method for more sophisticated decisions based on the work of riparian experts.

Chapter 32, however goes further than it should, when it implies that the land protected by the setbacks should be placed in a conservation easement or deeded to the city. The stream is already protected, there is no justification for further confiscation.

Section 32.060.C of the code states that the city will request dedication of WRA's when it would serve a public purpose. It further implies that property might be condemned if it is not dedicated. This section is included solely to intimidate the applicant into giving away title to the land in order to get the permit. The city's right to condemn for public purpose exists independent of this code. There is no need to mention it here.

If people can be intimidated into offering the land, the city does not have to show nexus and proportionality as they would with an exaction.

Section 32.060.C should be removed in its entirety.

Water Resource Area Compliance with Metro

One purpose of Chapter 32 is to provide compliance with State Goal 5. Goal 5 is designed to protect natural resources, scenic and historic areas, and open spaces. Because we are part of Metro, we also must comply with Metro's requirements in this area. They are called Metro Title 13 — Nature in Neighborhoods. The state has detailed requirements for how cities conduct the creation of their plans for compliance. These are spelled out in Oregon Administrative Rules. We are concerned with OAR 660 Division 23.

A great deal of thought went into this process. When a city wants to pass code that protects the environment they are required to inventory all the potential land that will be protected and then do an Economic, Social, Environmental and Energy (ESEE) study. This study informs the next step which is a decision to Allow, Limit, or Prohibit (ALP) uses.

The ALP decision then becomes the basis for writing the code.

West Linn did not do an ESEE or ALP. Fortunately, the OAR provides a "safe harbor" clause OAR-023-090(8).

While we are technically in compliance, the extensive work done by Metro on their ESEE and ALP is worth a second look. Metro even created a model ordinance that cities in Metro could use that would put them into compliance. The essential difference between chapter 32 and the Metro model ordinance comes down to one element of the ALP.

Metro modifies its limit decision slightly to the extent that it affects owners of existing, developed residential properties. The modification allows such owners to undertake in the future any activity that they can currently undertake without having to obtain a land use approval or a building, grading, or tree removal permit from their city or county. The environmental consequences of imposing new limits on such activities would be to prevent certain activities that might harm the ecological functions being provided by such

areas. However, the most harm done to habitat is due to significant property development, and the properties affected by this decision are already developed with residences. Thus, the environmental benefit of imposing new limits on such activities is relatively small. On the other hand, imposing any new limits on activities that homeowners can undertake today without having to seek permission could result in thousands of homeowners being confused regarding the new rules, resenting the new limits on their liberty to use their properties, and would thereby undermine Metro's efforts to encourage behavior that would benefit habitat areas in ways that regulations cannot. The Council therefore finds that imposing new limits on activities that homeowners can undertake today without having to obtain a permit would have significant detrimental social consequences that are not outweighed by the beneficial environmental consequences of imposing such new limits.

Metro created a model ordinance for cities within Metro. The ALP was expressed in the model ordinance as:

Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.

This was included in our code when it passed the planning commission in 2013, but deleted by staff at the city council hearing. The city council did not request its deletion.

If we agree with the Metro ALP rationale, we should add the above language under Exemptions as 32.040.G

PUDs

Planned Urban developments (PUD) provide an alternative that can allow a developer to use more creativity in designing a large development. Often, the creation of common amenities can create the same quality of life that we attempt to protect in our density requirements. In exchange for relaxed setbacks a higher density, the developer may create a park or open space that can be used by all citizens.

Unfortunately, the code can be used as a loophole to circumvent the CDC on smaller lots. By declaring a small parcel a PUD, the developer may qualify for higher density without providing a truly useable open space. The result of this is that the city gets infill development that does not fit the neighborhood and inherits the liability to maintain a useless parcel of isolated land.

One solution to this is to establish a minimum size for a PUD. many cities set the minimum at 3 acres.

To accomplish this, add 24.100.B.5. *The minimum overall size of a PUD must be 3 acres.*

For those who would like to read more about what I have discussed, I suggest the following links:

For OAR rules

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_023.html

For the Metro Model Ordinance

http://www.oregonmetro.gov/sites/default/files/title_13_model_ordinance.pdf

For the entire ESEE and ALP that Metro developed

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/page/7321/metro_council_-_metro_legislation_-_orditthe_urban_growth_management_functional_plan_relatig_to_nature_in_neighborhoods.pdf