

Memorandum

Date: September 10, 2008

To: West Linn City Council

From: Peter Spir, Associate Planner

Subject: Second hearing to consider changes proposed by City Council member(s) to amendments to Community Development Code (CDC). The amendments will 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.

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.

The Planning Commission recommended in favor of the proposed amendments. On August 11, 2008 City Council held a public hearing on this case, taking public testimony and then left the record open through August 18, 2008 for the submittal of written testimony. Staff received only one submittal and that was from Councilor Scott Burgess. Staff made changes in response to that submittal.

At a subsequent work session, City Council continued the hearing to September 22, 2008 to allow staff time to highlight in blue those changes to the text that came from the Riverfront Task Force and Planning Commission. Changes that came from Councilor Burgess would be highlighted in red. The remaining black text reflects the fact that these passages are unchanged from the current CDC language.

Discussion

Councilor Burgess' recommended changes were much appreciated and many have been incorporated into the proposed code. However, there were subject areas where staff felt obliged to defer to and retain the language recommended by the Planning Commission, Riverfront Task Force or from Metro's model ordinance. Thus, language relating to existing uses and especially private property rights was left "as is".

At the September 2, 2008 work session it is understood that City Councilors had a number of questions;

Q: Explain the 5000 square foot allowable footprint for impervious surfaces on constrained lots. Where did that figure come from?

A: Metro determined that their protective measures would render some lots unbuildable. In order to avoid a “taking” and the need for the city to compensate for the loss of development rights, the model ordinance from Metro recommended that all owners of constrained lots be guaranteed a minimum 5,000 square foot footprint for a house and garage etc. In the proposed language for West Linn, the 5,000 square feet would apply to all building footprints and non-permeable hardscapes such as driveways and patios.

Q: If only part of the lot is High HCA (highest level of constraint) would a property owner get the 5,000 square feet?

A: Property owners are guaranteed a minimum 5,000 square feet of impervious surface for development of a house, garage, driveways, patios, etc. However the property owner must first direct development towards the least constrained areas: “not affected by recommendation”, “allow development”. After that, the building must be directed towards the Low HCA then Moderate HCA areas. Only after those areas are exhausted and when the 5,000 square feet allowance has not been exhausted could the house extend into the High HCA area.

Q: Are we proposing tougher or easier setbacks and transitions than what currently exists in the CDC along the Willamette and Tualatin Rivers?

A: The proposed language has a setback of 15 feet from top of bank. The current WRG language only requires a 35 foot setback from ordinary high water mark (OHW). The OHW is typically well below the top of bank. For most properties along the Willamette River, the current 35 foot setback does not even reach the top of the bank. By proposing a 15 foot setback from top of bank, the proposed language exceeds the current language by significant measure, often by 50 feet or more.

Properties that lack a distinct top of bank must keep development 15 feet back from the edge of the “allowed development” area closest to the river.

On the Tualatin River the existing setback is different. It requires that all development must keep above the 100 year floodplain elevation. There are test cases along the Tualatin River where the existing setback is equal to the proposed language. However, in many more cases the proposed language far exceeds the existing setbacks.

Options

- 1) Adopt the recommended amendments as attached.
- 2) Make further modifications and adopt the recommended amendments.
- 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.

Staff recommends that City Council adopt the language as modified.

