

PLANNING COMMISSION MINUTES
October 13, 2011
7 p.m. Regular Meeting
Newberg Public Safety Building
401 E. Third Street

TO BE APPROVED AT THE NOVEMBER 10, 2011 PLANNING COMMISSION MEETING

I. ROLL CALL:

Present:	Philip Smith, Chair	Thomas Barnes, Vice Chair
	Art Smith	Gary Bliss
	Cathy Stuhr	Allyn Edwards
	Kale Rogers, Student PC	

Absent: Lon Wall (excused)

Staff Present: Mayor Bob Andrews
Barton Brierley, Building & Planning Director
Steve Olson, Associate Planner
Sonja Johnson, Environmental Specialist
Alan Lee, Environmental Services Specialist
DawnKaren Bevill, Minutes Recorder

II. OPEN MEETING:

Chair Smith opened the meeting at 7:00 p.m. and asked for roll call.

III. CONSENT CALENDAR:

Vice Chair Smith entertained a motion to accept the minutes of the September 8, 2011 meeting.

MOTION#1: Barnes/Bliss approve the minutes from the Planning Commission Meeting of September 8, 2011 as amended. (6 Yes/ 0 No/ 1 Absent [Wall]) Motion carried.
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IV. COMMUNICATIONS FROM THE FLOOR:

No items were brought forward.

V. WORKSHOP: Proposed Stormwater and Erosion Control codes to implement the Willamette River TMDL Plan.

Barton Brierley introduced Sonja Johnson, Environmental Specialist and Allen Lee, Environmental Services Supervisor. Ms. Johnson began the PowerPoint presentation by explaining Willamette River TMDL (Total Maximum Daily Load) Implementation Plan is an agreement between DEQ and the City requiring municipal code language that protects the Willamette River from illicit discharges and adverse effects from construction site stormwater and post-construction stormwater. The workshop will provide information on the TMDL program in general and what is specifically required by the City's TMDL

Implementation Plan. The goal of the TMDL implementation Plan is to improve water quality of streams within Newberg in order to protect the water quality of the Willamette River.

In 1972, Congress passed the Clean Water Act which regulates water pollution and within the Clean Water Act is Title III which is standards and enforcement. This is where it was determined as unlawful to discharge any pollutant into rivers and streams. That section of the Clean Water Act primarily has to do with point sources which are end-of-pipe discharges from wastewater treatment plants, industrial plants, and manufacturing plants. It was determined that there were still some rivers and streams that were not up to the water quality standards and were coming from non-point sources which are difficult to regulate. Section 303(d) of Title III says that each state shall establish the total maximum daily load (TMDL) at a level necessary to implement the water quality standards within the rivers and streams. The US EPA, under the authority of the Clean Water Act, stated that the states had to determine which rivers and streams were not meeting water quality standards with point-source regulations alone. In the year 2000, the EPA created an agreement with the Department of Environmental Quality (DEQ) to determine which Oregon rivers and streams were water quality impaired and fell under section 303(d). In 2006 the DEQ sent what they considered the parameters that the Willamette River Basin was not meeting regarding water quality: temperature, bacteria, mercury, DDT, dissolved oxygen, dieldrin, and turbidity. DEQ then sent out a letter to the City of Newberg and all the cities affected by the Willamette River Basin. Newberg is considered to be in the Chehalem Mountain Basin which begins at Rex Hill and ends at Dundee. In 2006, the City of Newberg was directed to begin an implementation plan and in 2008, DEQ approved the City of Newberg TMDL plan. The parameters that were needed to be controlled were temperature, mercury, and bacteria.

The TMDL includes six measures that every implementation plan is required to do: public education, public participation, illicit discharge detection and elimination, construction site runoff, post construction runoff, and pollution prevention practices. Staff developed a code with participants from the following departments: Public Works Engineering, Maintenance, Building and Planning. Mayor Bob Andrews convened the Stormwater Ad-Hoc Committee in May, 2011 to review and refine the code which was done through public meetings which met every two weeks in the Public Safety Building. The committee was made up of seven members from five out of six districts and represented parks, university, developers, engineers, and citizens. The committee looked at illicit discharge, construction site runoff, and post construction runoff. Within those, the code affects the review of construction plans and inspection of construction sites, as well as review of construction plans for stormwater management, stormwater facilities, and the inspection of those facilities. The TMDL parameters that the City of Newberg needed to control were stream temperature, mercury and bacteria.

Illicit discharge (IDDE) is a discharge to a stormwater system that is not composed entirely of stormwater. Some examples include connecting a wastewater pipe to the stormwater system, leaking wastewater pipes infiltrating to stormwater system, and dumping wastes into catch basins or stormwater manholes. The TMDL requires the regulation of specific discharges, regulate other non-stormwater discharges, and exempt fire fighting discharges and discharges that are already complying with NPDES point-source permits. A conditional exemption has been done for the following specific discharges: water line flushing, discharges from potable water sources, dechlorinated swimming pool discharges, and street wash water. The other stormwater discharges that are covered in the code are illegal connections, streambanks, illegal dumping, spill response, and non-permitted commercial or industrial discharges.

Construction site runoff is discharging from a construction site. Pollution sources include oil, grease, chemicals, construction debris, litter, sanitary waste, and sediment.

Exemptions within the code include agricultural activities not creating a visible and measurable discharge to stormwater system activities complying with DEQ 401 Water Quality Certification, DSL permits, or USACE, emergency actions, and activities disturbing less than 500 square feet that are not located in a floodplain or the Newberg Stream Corridor Sub-District or discharging stormwater offsite that exceeds water-quality standards.

The TMDL plan requires the review of construction site plans, erosion and sediment controls regardless of the size of the construction site, to prevent or control construction-related waste, inspect construction sites, and consider managing the DEQ's 1200-C permit program (although the City has decided not to manage that due to City workloads). The City will review construction site plans for projects disturbing between 500 square feet and 1 acre of land and DEQ will review projects disturbing > 1 acre. The City will inspect construction sites disturbing 500 square feet and 1 acre of land and DEQ will inspect projects disturbing > 1 acre. Other requirements include proper storage and disposal of construction waste.

Post-construction runoff is from impervious areas such as driveways, streets and sidewalks, rooftops, and parking lots. The methods used to control these are through stormwater facilities; where stormwater congregates.

The TMDL plan asks the City of Newberg to require practices or facilities that maximize water quality and to require adequate long-term operations and maintenance of stormwater facilities. The way in which to maximize water quality is to decrease volume by decreasing impervious area and encouraging infiltration, and to decrease velocity by decreasing volume. The requirements were tiered in accordance to net-impervious area. If a project is 500 – 2,877 square feet of net impervious area, a project summary will be required with a scaled drawing and general stormwater flow direction. If a project is 2,877 square feet or more of net impervious area and < 1 acre of disturbed area, a project summary, design flow calculations, and proposed stormwater facilities will be required. If greater than 1 acre or more of land is disturbed, a project summary, design flow calculations, and stormwater facilities will be required.

Long term operations and maintenance requirements for stormwater facilities are as follows: require maintenance agreement to inform citizens of stormwater facility locations, require maintenance agreement to teach citizens how to maintain stormwater facilities, and require annual reports so the City knows the facilities are properly functioning.

The end results of the code and implementation plan concerning illicit discharge include proper disposal of hazardous and toxic material, timely spill cleanup, and decreased sediment and bacteria in streams. In regard to erosion control there will be decreased erosion and sediment in streams. Stormwater management will decrease erosion and sediment in streams, stream temperatures, emergency staff time, and will improve proper functioning of stormwater facilities.

The code has been sent to DEQ. They came back with very few comments, which have been incorporated into the code.

Comments & Questions:

Commissioner Edwards asked if any consideration was given regarding culverts or ditches with standing water under driveways and such. Sonja Johnson replied in the future people will be required to maintain facilities and will need to keep it clear. Commissioner Edwards asked if that should be included in the code. Ms. Johnson stated she will ask staff.

Commissioner Stuhr asked if the regulation will not apply to existing culverts or only to new or re-developed. Ms. Johnson replied if it is an existing culvert then no, but if a new culvert is put in it would need to be regulated.

Commissioner Edwards asked if there was any consideration regarding the traffic on construction sites and the mud on the streets. Ms. Johnson replied the code requires construction entrances be rocked or paved. Large sites have a requirement for wheel washes. One erosion control requirement is to clean up the dirt on the roadways at the end of the work day.

Commissioner Bliss asked if she is referring to private drainage facilities in regard to culverts. Ms. Johnson replied yes, private facilities would have an agreement. If a developer created a private facility then that would fall under the maintenance agreement. Commissioner Bliss asked how does staff plan on decreasing volume. Ms. Johnson replied by encouraging infiltration facilities.

Commissioner Stuhr referred to page 18 under Section 13.25.02 and asked if a permit is not required how the City will be aware of violations. Ms. Johnson stated that section will help the City to educate first and if they do not listen, this section will allow the Code Enforcement Officer to take enforcement action if needed. Agricultural activities are exempt from erosion controls unless the City determines there are water quality damages and impacts downstream. Commissioner Stuhr referred to page 23, Section 13.30.04 and asked about washing items other than a car. Ms. Johnson stated the TMDL specifically states car washing but the City can add more specifics. Commissioner Stuhr referred to street wash water which she believes should be more specifically defined. Also, charity carwashes were not covered in the proposed code as an exemption.

Commissioner Stuhr referred to pg 10, the first paragraph regarding construction site runoff and asked staff to review whether the word "all" is correct. Ms. Johnson believes the code says, "regardless of size." Commissioner Stuhr asked for the language to be changed to the same. On page 11 under Post-Construction Runoff, she believes it needs to be emphasized that this is new and re-development.

Commissioner Bliss referred to page 20, Section 13.25.04 and stated parameters need to be defined regarding how far downstream. He also asked for clarification regarding Section 13.25.05 (B5). Barton Brierley explained the stream corridors are defined areas at the top of the streambanks that have specific limits on development. The stream corridors are intended to be kept natural and are actually mapped. Commissioner Bliss then referred to page 23, Section 13.30.06 (A) and stated that seems rather onerous. Ms. Johnson replied that language is also within the wastewater code. Commissioner Bliss stated this needs to be looked at in context. Ms. Johnson understands the concern but if there is something occurring that is in violation of water quality standards and it is allowed to continue, DEQ will not understand.

Commissioner Bliss asked what is the recourse on page 24, Section 13.30.06 (C). Ms. Johnson explained if you put in a pipe or connect the pipe from the sewer system which is not in the plans and affects the stormwater system; it will need to be corrected.

Commissioner Stuhr believes Section 13.30.07; Illegal Dumping has conflicts and needs to be rewritten in order for it to be enforceable. Chair Smith stated there are a number of ways to be in conflict.

Commissioner Edwards stated there are always exceptions. Commissioner Art Smith stated this section is far too long and inclusive. Chair Smith suggested Section 13.30.07 (A) could be re-written and shortened to speak to items that contribute to stormwater pollution. Commissioner Stuhr is concerned with language in regard to vegetation, which is difficult for someone to understand who does not know what excessive vegetation means or how to control it. Perhaps it will be good to express it to the public

in a way they can understand through education. She then referred to page 25 section 13.30.14 (A) and stated the language needs to be more specific regarding “discharge access to any facility or person...”

Commissioner Bliss referred to page 27, Sections 13.35.02 (B), 13.35.04 and 13.35.04 through (4B) and stated it is in conflict, especially 13.35.02 (B) which states projects on single lots that are zoned as single family residential are exempt and 13.35.04 (A3). Ms. Johnson explained the 2,877 square feet is the average impervious area of an average residential lot. If you have a single family residential lot, that exemption speaks to homeowner projects. Chair Smith stated it does not clarify that and a developer will read that believing a new single family home is exempt. Ms. Johnson asked how that should be worded. The purpose was to exempt homeowners from having to comply if they only want to do a simple project. Chair Smith suggested, “Projects on single lots that are zoned as single family residential and are adding less than “X “amount of impervious surface.” Commissioner Bliss believes the entire page needs to be reviewed due to conflict. Steve Olson stated one other potential confusion in the language is the “single family residential zone” which the City does not have; it would be clearer to refer to single family development and not use the word “zone.”

Commissioner Bliss referred to page 29 Section 13.35.08 (B 24) and stated how far down stream needs to be defined. Also (D) and how far down stream of the project and to what end and why 150% of the mitigation fee? Ms. Johnson explained the mitigation is one or more of the options. The intent was that if there is a variance when providing stormwater facilities due to site constraints, the City or neighbors will not have to deal with the stormwater produced by the project. Staff will change the language to, “one or more.” She would like to leave that up to the developer and the City in order to negotiate with the developer depending on the area affected and the size of the project. The 150% should be some kind of deterrent in asking for a variance. Commissioner Bliss suggested talking to the City Attorney on that percentage. Chair Smith stated this could become a legal case. He asked staff the procedure about a variance being granted. Barton Brierley explained this is not set up in the same way as a zoning variance would be. There would be no hearing or notice; the requirements are just to ask for the variance. There is a procedure about an appeal that does allow someone who does not like the decision to appeal that and that appeal would first go to the City Manager and then to City Council.

Chair Smith recessed for a six-minute break at 8:35 p.m.

Commissioner Barnes referred to page 28, Section 13.35.05 (B) and asked if private property catch basins will be inspected. Ms. Johnson replied if it is a private facility they are not maintained by the city. The current code is from the time of adoption on and does not pertain to existing facilities. Chair Smith stated if existing facilities never have to come up to code they can continue to contribute to stormwater pollution. Should this implementation of this reform try to fix problems that already exist? Ms. Johnson stated if the City can minimize what further development will do that is a positive thing. It would be nice to not have to grandfather in older stormwater facilities. Many cities are asking previously approved stormwater facilities to sign maintenance agreements but are not requiring them.

Commissioner Stuhr stated there are inconsistencies on capitalization throughout the code. Barton Brierley replied there is not much capitalization in the new municipal code.

VI. ITEMS FROM STAFF:

Update on Council items:

Barton Brierley stated the Lumberman’s site has been approved for a Goodwill store (just under 20,000 sq. ft.) on Portland Road and a new Jack in the Box Restaurant has been approved on

Springbrook Road and 99W. Also, the animal shelter construction will begin as soon as the contract is signed. It will develop over time as money becomes available.

The County Commissioners will be hearing population projections for the county on October 27, 2011 at 10:00 a.m. Mr. Brierley invited the Planning Commissioners to attend. That same morning, the sixth graders at Mountainview Middle School will be making a presentation on design projects on two Newberg sites. He asked for some of the Commissioners to attend from 8:00 – 9:45 a.m. and/or the second session is 11:30 a.m. – 1:15 p.m. Mayor Andrews will also be attending.

The City Council approved the City doing a bicycle route through Newberg from behind Safeway to the skate park. It is not a bike lane but arrows in the roadway telling drivers to watch for bicycles, and bicycles to go with the direction of traffic. They will be installed in the spring. A map of the bicycle routes in Newberg is available. The Cultural Center parking lot was approved and decided on impervious pavers as opposed to asphalt.

The next Planning Commission Meeting is scheduled on Thursday, November 10, 2011.

VII. ITEMS FROM COMMISSIONERS: None.

VIII. ADJOURN:

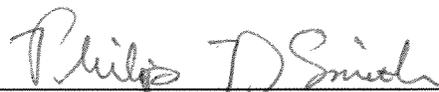
Chair Smith adjourned the meeting at 9:15 p.m.

Approved by the Planning Commission on this 10th day of November, 2011.

AYES: 7 **NO:** 0 **ABSENT:** 0 **ABSTAIN:** 0



Planning Recording Secretary



Planning Commission Chair