PLANNING COMMISSION MINUTES
November 10, 2011
7 p.m. Regular Meeting
Newberg Public Safety Building
401 E. Third Street

TO BE APPROVED AT THE DECEMBER 8, 2011 PLANNING COMMISSION MEETING

I. ROLL CALL:

Present:	Philip Smith, Chair	Thomas Barnes, Vice Chair
	Art Smith	Gary Bliss
	Cathy Stuhr	Allyn Edwards
	Lon Wall	Mayor Bob Andrews
Absent:	Kale Rogers, Student PC	
Staff Present:	DawnKaren Bevill, Minutes Recorder	
	Steve Olson, Associate Planner	
	Sonja Johnson, Environmental Specialist	
	Alan Lee, Environmental Services Specialist	

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 October 11, 2011 meeting.

MOTION#1: Stuhr/Edwards approve the minutes from the Planning Commission Meeting of October 11, 2011 as written. Motion carried (7 Yes/ 0 No/ 0 Absent).

IV. COMMUNICATIONS FROM THE FLOOR:

No items were brought forward.

V. LEGISLATIVE PUBLIC HEARING:

APPLICANT: City of Newberg
REQUEST: Proposed Stormwater and Erosion Control codes to implement the Willamette River TMDL Plan. The Willamette River TMDL (Total Maximum Daily Load) Implementation Plan is an agreement between DEQ and the City to protect the Willamette River from illicit discharges and adverse effects from construction site stormwater and post-construction stormwater. The proposed stormwater and erosion control codes are intended to implement the plan and control the adverse effects of stormwater and erosion.
RESOLUTION NO.: 2011-296

Opening of the Hearing:

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Chair Smith opened the hearing and asked the Commissioners for any abstentions, conflicts of interests, or objections to jurisdiction. None were brought forward.

Sonja Johnson gave the staff report and reviewed the following changes that have been made since the workshop that was held on October 11, 2011 (see the official meeting packet): The Illicit Connections definition now matches the Illicit Discharge section; the word *"convey"* was removed from the Stormwater Facility definition; and Street Wash Water has now been included in the definitions section. Clarification was given to the Pollution, Responsible Party, and Stormwater definitions, as well. Under the Erosion Control, Section 13.25.04 (H-3), a limit was defined in regard to erosion and sediment controls; charity fundraising events were exempted under the Conditional Exemption, Section 13.30.05; Illicit Connections, Section 13.30.06, were redefined and the Illegal Dumping definition, Section 13.30.07 has been clarified. Staff removed reference to removing excessive vegetation and removal of invasive species from Riparian Destabilization, Section 13.30.08. Suspension of Discharge Access, Section 13.30.14 was clarified and re-worded; Stormwater Management, Section 13.35.01 (B) was narrowed to include only homeowner projects; Maintenance, Section 13.35.06 (G) was changed to say, *"functionally unaltered"*; and clarification to options was given to the Mitigation Options, Section 13.35.08 (D). Ms. Johnson stated the change to the municipal code is necessary due to DEQ requiring the City have enforcement mechanisms in place. Public education has been helpful but cannot be counted on alone.

Chair Smith referred to the written comments staff received from David Craig, who served as a member of the Stormwater Ad-Hoc Committee. Ms. Johnson explained that when the Ad-Hoc Committee went through the code they did not want it to apply to small homeowner projects. She does not recall wanting to change it in order for developers to create a brand new home but instead for additions, decks, etc. Chair Smith referred to 13.35.02 (B-1) and stated Daniel Craig believes projects should be extended to others besides homeowners. Ms. Johnson believes he is referring to the case where someone buys a plot of land and it takes time for the owner to be able to afford to build a home on it. By the time the house is built, the homeowner may not be exempt from the code. But, it would still be a homeowner project in that respect because it is not a developer who is building it.

Commissioner Stuhr stated Section 13.35.02 (B-1) says it is only exempt for projects on a single lot containing an existing single family residence, and so Mr. Craig's issue is referring to unbuilt existing lots. Chair Smith believes this raises an issue to be discussed, and that the code language needs to be clear on how we address existing vacant lots. Mr. Olson stated Mr. Craig questioned whether the code should treat two additions differently, based on whether the owner lived in the house or not. Mr. Craig's second point was what should be done in regard to vacant lots in subdivisions that have not been built out yet in the City. There are some sub-divisions that are platted but are largely or partly unbuilt at this time.

Commissioner Bliss asked Mr. Olson if this code should be retroactive. Mr. Olson replied he was not recommending that, but the language needs to be clear regarding what will apply when there is an existing platted lot with no stormwater pond in the subdivision. Commissioner Bliss stated when it is a platted subdivision with no houses built on the lot, you cannot plat until the improvements are bonded and a bond is only good for so long. If the improvements are in place and it is an established use, he is unsure if it can be changed retroactively. He agrees with Mr. Craig's objection.

Chair Smith stated clarification is needed so the exemption applies to new single family residences that are completed by the homeowner. He then asked staff if the grandfather exception will not be in compliance with DEQ. Ms. Johnson in unsure in regard to DEQ, however she pointed out that staff has tiered the stormwater requirements so that if someone builds a house on a single lot that is currently unbuilt and they create less than 2,877 square feet, they will have to provide a project summary and the general stormwater flow direction but

may not need any stormwater facilities; or if they create more than 2,877 square feet, they have to propose methods for stormwater facilities and it can be something as simple as an infiltration rain garden that will take care of the stormwater on their lot. The City will not require anything on the smaller projects.

Commissioner Bliss referred to the last sentence, item 13.35.01 (A) which discusses volume and asked what the intent is. Ms. Johnson replied research has shown that people have tried to control the amount of sediment that is entering the rivers and streams and if volume can be controlled, velocity of the streams can be controlled as well which limits the amount of erosion and sediment that enters the streams. Commissioner Bliss asked staff how the volume is controlled. Ms. Johnson replied restricting volume by retaining, detaining, or infiltrating it. There are many cities that are requiring pre-built stormwater volumes and velocities, although Newberg is not. Depending on the size of the project, you may or may not have to put in a detention pond according to the design standards manual. Detention ponds are not always appropriate for small projects.

Commissioner Stuhr referred to the discussion at the workshop regarding the Conditional Exemptions, Section 13.30.05, and car washing, RV's, gutters, etc. and asked where that issue went. Ms. Johnson had considered adding boats, but the only thing the TMDL requires the City to address is residential car washing.

Commissioner Bliss referred to Stormwater Treatment; Section 13.35.03 (B-1) and stated downstream facilities needs to be quantitative; you need to know how far downstream you need to analyze. Ms. Johnson explained staff thought seriously about it but if you are over inundating stormwater facilities downstream due to the amount of water being sent down, it should not be the problem of those others downstream. She referred to 13.35.03 (B-2) and stated if there is no increase to existing erosion or flooding problems that the project should be fine. Commissioner Bliss asked how to determine that if it is not reported and flooding occurs downstream. Ms. Johnson replied if there is currently no flooding at that facility, then the project should not be creating a flooding problem. If there is currently a flooding problem at that facility, it cannot be made worse by the project.

Commissioner Bliss referred to Section 13.35.01 and stated (3-B) & (4-B) seem repetitive since the square footage has already been defined for a single family lot. Under Section 13.35.02 (B) they are exempted. Ms. Johnson stated that was a confusion that the Stormwater Ad-Hoc Committee had as well. The intent when the code was written was to not have an arbitrary number, so they chose one equivalent dwelling unit which is what the stormwater fees are based upon; an average impervious area for an average residential lot.

Commissioner Bliss asked if 150% is a legal surcharge under the Penalties, Section 13.40.07. Ms. Johnson replied she has a meeting with legal counsel next week regarding that issue as well as another section regarding public comment before granting a variance. She will check with Legal and advise. Commissioner Bliss then referred to Section 13.40.07 (2d); in regard to the failure or refusal to reimburse the City for expenses incurred as a result of summary abatement he sees no consistency in regard to the percentage. Ms. Johnson replied the expenses the City would incur for the summary abatement would be included in the surcharge. She will ask legal counsel about the correct language.

Public Testimony:

Undecided:
Larry Anderson stated he believes this is a much better document than the original and appreciates the work staff has done in removing overly harsh requirements. He is still concerned because the MS-4 permit does not require the City to regulate small developments. It clearly states the City is to implement and enforce stormwater run-off from land disturbance greater than or equal to one acre as well as in one acre post-construction run-off control. It can be very expensive to build stormwater facilities and the smaller the area is, the more (relatively) expensive it is to treat water. When a City begins regulating small development areas they

tend to regulate far beyond what DEQ requires. Mr. Anderson likes the emphasis on design and protection of the stream corridors and watersheds but he would like to see it not imposed in ways that are expensive to enforce. An estimate has never been calculated in regard to the cost of the requirements. What is the cost for a stormwater treatment system for a single family home? It is overreaching to require properties owned by one person to develop a stormwater facility when others do not. It would be easier on undeveloped lots than on non-single family and commercial properties. He asked for the work that has been done in the stormwater code to not be included in the MS-4 permit with DEQ if it is unnecessary. Much of the code is borrowed from Washington County, Clackamas County, and Portland, which are larger agencies and have expensive requirements. He is unsure if staff understands that the MS-4 permit can be met very simply. There are provisions in the code such as design review to help regulate it already.

Commissioner Wall asked staff if this document is an attempt to make the EPA or DEQ happy and if there are requirements in this document which deals with anything other than being in compliance with the regulations. Ms. Johnson stated the EPA tasked DEQ so in essence, the City is pleasing DEQ and DEQ is trying to please the EPA. The committee and staff tried to follow comments received last fall and follow the TMDL requirements and not do more than what they require. Also, the committee was very concerned with how it would affect small homeowners and the costs and that is why the tiered requirements came into play. Commissioner Wall asked if this is the minimum code language to satisfy the requirements. Ms. Johnson said that the city does not want to institute more fees. Staff looked at comparable cities in the area and what is required by the TMDL implementation plan and tried to create a non-burdened code. Mr. Anderson read what the EPA rule is for runoff control. He believes the City does not need to require stormwater detention on less than one acre.

Chair Smith asked Mr. Anderson what he specifically wants changed and asked for clarification in regard to the MS-4 permit. Ms. Johnson explained it is for the stormwater system and is the EPA's permit for stormwater. She explained to Mr. Anderson that the City is not permitted as a Phase II but has been asked to comply with the TMDL which states the City needs to develop a municipal code or enforcement mechanism for stormwater management for new and redevelopment projects that disturb one acre as well as addressing impacts from projects that are smaller than one acre. She also pointed out it is on net-impervious area and not project size. She believes Mr. Anderson is referring to requirements by DEQ for Phase II.

Chair Smith recessed for a five-minute break to return at 8:40 p.m.

Chair Smith closed the public testimony and asked for comments from staff. Ms. Johnson stated the Stormwater AD-Hoc Committee was very concerned about costs for developers and not to overburden people when they drafted the proposed code. They did not want a blanket requirement for all projects and that is why the projects were tiered. The City is required to do this by DEQ; they have seen the code and largely agreed to it. Their comments have been incorporated into the code.

MOTION #2: Stuhr/Art Smith in light of the issues brought forward, recommends tabling Planning Commission Resolution 2011-296 to the next meeting. Motion carried. (7 Yes/ 0 No/ 0 Absent).

Mayor Andrews asked staff when they are referring to grandfathering in platted land, to take into account that the City has some activity going on outside the City of Newberg that may become annexed where lots are not developed, but may have been platted. If grandfathering, will that include the lots which exists at this time within the City or is that looking at other prospective areas? Staff will meet with the City Attorney regarding grandfathering in current plats inside and outside the City.

Commissioner Bliss would like for Section 13.35.03 (B-1) to specifically state how far down stream. Commissioner Edwards suggested striking (B-1) and follow with (B-2). Commissioner Bliss agreed.

Commissioner Edwards stated there should be a clause addressing the Mayor's question. It should be defined. Ms. Johnson will send it to DEQ for further advice if there is a change.

VI. ITEMS FROM STAFF:

Update on Council items:

Steve Olson stated the County considered the population projection and decided not to adopt it at this time. The likely outcome is that the County will hire a demographic research center to do a new study for the entire county. The study would affect Newberg's population projection, which would require revisions to land projections, employment projections, and the UGB expansion.

Kale Rogers was reappointed as student Planning Commissioner, and Commissioners Phil Smith and Cathy Stuhr have been put forward to be reappointed to the Planning Commission. Staff recommended they attend the City Council meeting on Nov. 21, 2011.

The Planning Commission was interested in meeting for a holiday celebration before the next Planning Commission meeting, which is scheduled for Thursday, December 8, 2011.

VII. ITEMS FROM COMMISSIONERS:

Commissioner Bliss inquired as to the outcome of Ballot Measure 36-149. Mayor Andrews stated the initial, unofficial results showed the measure failed on a 65% to 34% margin last Tuesday, November 8, 2011. On November 21, 2011, the City Council will be doing a debriefing on this issue during the Work Session due to the many voters who voted for a change. The City Council wants to be representative of all of the citizens and more receptive. The City Council has adopted an affirmation of the City logo which has been slightly modified with guidelines on its use. The City Council has also directed staff to examine branding as it applies to the City of Newberg and in partnership with other organizations inside the City. The City Council adopted a strategic plan for the Library and a supplemental budget #1. On Tuesday at the McMinnville City Club Meeting, the Chairman of the Tribal Council for the Confederated Tribes of the Grand Ronde pledged four million dollars from the tribes towards the local government match for the Newberg-Dundee bypass.

VIII. ADJOURN:

Chair Smith adjourned the meeting at 9:25 p.m.

Approved by the Planning Commission on this 8th day of December, 2011.

AYES: 6 **NO:** 0 **ABSENT:** 1 (Bliss) **ABSTAIN:** 0

Dawn Karen Beeler
Planning Recording Secretary

Philip Smith
Planning Commission Chair