

**CITY OF NEWBERG  
STORMWATER AD-HOC COMMITTEE**

**July 21, 2011**

**7:00 a.m.**

**Newberg Public Safety Building - 401 East Third Street**

**I. CALL MEETING TO ORDER**

Chair Clyde Thomas opened the meeting at 7:00 a.m.

**II. ROLL CALL**

Present:	Chair Clyde Thomas	Al Blodgett	Don Clements
	Joe Kavale	Leonard Rydell	David Craig

Absent: Jadene Stensland (excused)

Staff

Present: Sonja Johnson, Environmental Specialist  
Alan Lee, Environmental Services Supervisor

**III. APPROVAL OF JULY 7, 2011, MINUTES**

<b>MOTION #1: Kavale/Rydell</b> moved to approve the July 7, 2011, minutes as amended. (6Yes/ 0 No/ 1 Absent [Stensland]) Motion carried.
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**IV. STAFF REPORT**

Sonja Johnson began by addressing the comments brought forth by the committee members at the last meeting. The first was regarding how the City would know which properties will require more stringent requirements for facilities based on the severe erosion definition. In the Design Standards Manual, the City will reference soil survey maps from the Soil and Water Conservation Districts or the National Resources Conservation Services (NRCS) who have mapped the area as to the type and category of the soils. The 72-hour storm duration was also discussed at the last meeting. Storms are detailed in the Design Standards Manual and staff will look very strongly at incorporating a 72-hour storm as opposed to a 24-hour storm. Ms. Johnson referred to the Stormwater Manual Code Summary where she has highlighted the changes she has made in the Code as well as the actual changes within the Code.

**V. PUBLIC COMMENT**

None.

**VI. DISCUSSION OF PROPOSED STORMWATER CODE**

Leonard Rydell thought the City was not going to require performance bonds, but can see it as a requirement when an engineering design is required. Ms. Johnson asked for more clarification from the committee, perhaps a consensus motion concerning the performance bonds as well as the maintenance bonds.

**MOTION #2: Rydell/Craig** moved to delete the requirement for a performance bond on both one Equivalent Dwelling Unit (EDU) of net impervious up to one acre, and from one acre and above.

Don Clements stated the committee did go back and forth discussing the bond issue at the last meeting, but what the committee did not know was how difficult a bond would be to acquire as well as the requirements.

Leonard Rydell stated the only time a performance bond is done is when it is a public works contract and you want to guarantee that the contractor is going to perform. He does not believe a performance bond has any place in ordinary development. The City already has a mechanism in place to ensure a developer performs, such as in a subdivision.

Ms. Johnson stated if the committee removes the bond section it will also strike it for all public improvements, not just private, and that is where the City is hesitant.

David Craig does not understand how that is an issue. It can be stated it is required for public works projects, but agrees wholeheartedly with Mr. Rydell. Mr. Craig has worked in the construction industry for 25 years and all the mechanisms are there to ensure all the aspects of a private development are fulfilled before the Certificate of Occupancy is issued. It is an unnecessary financial burden. If a private citizen wanted to develop their own property, such as a retail shop on an acre of property, they will not have the ability to be bonded. The only time you go back on a bond is when someone does not perform which normally only happens when a company is going bankrupt or out of business.

Al Blodgett asked staff if it will be difficult to change the verbiage in order to separate public and private. He believes it would be much more customer-friendly if that were done. Ms. Johnson replied that staff can put the bond requirements in a contract instead of the regulations. Staff will strike those two sections if the committee requests it.

Don Clements stated he will abstain from the motion, because he does not feel he has enough information to vote.

**VOTE ON MOTION #2:** (6Yes/ 0 No/ 1 Abstain [Clements]/ 1Absent [Stensland]) Motion carried.

Leonard Rydell stated he is torn on the maintenance bonds because too often he has had some of his projects designed only to have them fall apart at the maintenance stage. He has had developers who had good intentions but did not carry it through. Mr. Rydell does not want more requirements but would like to be sure projects are completed correctly. It is also good for the maintenance of landscaping.

David Craig said he believes there is a better way to address maintenance either through civil penalties or another mechanism the committee could come up with, which would provide folks with the incentive to keep those facilities maintained. A better solution is needed other than spending money on a two-year window since he suspects a lot of these facilities that are neglected occurs after the first couple of years.

Leonard Rydell said a level of enforcement can be added where the City can issue a violation, a stop-work order during construction, or a summary abatement as a way to handle this issue.

Chair Thomas stated the question of landscaping was raised at the last meeting and asked staff how the City currently handles incomplete landscaping. Ms. Johnson replied the City does not currently have the ability to recoup expenses from inadequate maintenance on private facilities which is why the current language contains a

summary abatement section. The City does have a landscaping requirement under the Development Code that uses a surety as opposed to a bond. Perhaps the option is to change the language as Mr. Rydell suggested and call it a surety or financial assurance.

Don Clements stated one of the problems is if you want to occupy a project and the landscaping is not done due to it not being conducive at that time. He is unsure if the City currently has the ability to give temporary occupancy.

Joe Kavale stated the same situation arose when building The Allison. They did not want to put the landscaping in during the middle of the summer so they obtained a temporary occupancy from the City and financially covered the cost until the landscaping was completed, which is what he would consider assured. He has also heard of the City holding a Certificate of Deposit (CD) in two names; the City's name and another entity's name being held for the completion of a road.

Leonard Rydell discouraged the use of a temporary occupancy permit due to his business experience.

David Craig said he thinks the system the City of Newberg currently has works. It gives the ability to post financial responsibility whether by check, CD, or in the way of a bond if possible. It gives the incentive to finish the project or lose the money.

Al Blodgett stated from his years of working with the City, he has seen temporary occupancy work well.

Leonard Rydell asked if the word "assurance" can be used instead of "bond".

David Craig stated the wording will not change the fact that there is still a requirement. He does not see this applying to stormwater facilities as much as it would to landscaping. He would rather see something on the enforcement side; a perpetual solution instead of a short-term solution. Joe Kavale agrees with Mr. Craig and suggested Terry Mahr, City Attorney, speaks to the committee about it. Leonard Rydell agrees, as well.

Chair Thomas reiterated the committee's discussion; eliminate maintenance bonds and deal with maintenance through enforcement

Leonard Rydell suggested the one sentence in the maintenance bond box located under number one regarding projects lying within the 100 year flood plain or stream corridor overlay are subject to additional requirements, should be deleted.

Chair Thomas explained that sentence came from a comment made by Jadene Stensland at an earlier meeting where she stated a lot of jurisdictions have a statement like that within 100 feet of the 100 year flood plain. Ms. Johnson stated the stream corridor overlay sub-district closely follows the 100-year flood plain.

David Craig said he agrees with Mr. Rydell; if there are additional requirements then they need to be defined. The only other issue he would bring up for discussion is what the requirements would be for stormwater facilities for an area that fell between one Equivalent Dwelling Unit (EDU) and one acre.

Leonard Rydell stated he is involved in a project with Habitat for Humanity where they want to take one lot and divide it into two lots; remodeling one house and the City required improvements on a second house. He asked would that count as more than one EDU or would each parcel be judged separately. Ms. Johnson replied the

requirements are based on the net impervious area of the project itself. If doing two houses at once, it would be based on how much new impervious area is created.

Don Clements stated changes in the Development Code would change many of these issues. Ms. Johnson stated the Development Code may be changed later but it is not part of the committee's tasks to look at the Development Code. The City understands that code requirements may be creating stormwater.

Joe Kavale asked if language could be added stating the net impervious area is figured on what you are doing on your project property and not on adjacent property. Ms. Johnson will consult the Engineering Division and the Planning & Building Department regarding that suggestion. She will also ask other staff if, as discussed by the committee, streets are considered to be part of the net impervious areas.

David Craig said he wants to be sure everyone is on the same page and would rather the language state stormwater facilities "may" be required rather than just stormwater facilities "are required" due to the many examples that can fit into that scenario. Ms. Johnson stated there is a proposed clause in the Code that is a variance so if the project follows the regulations but does not fulfill the intent of the Code, then the opportunity is available to apply for a variance.

Ms. Johnson stated the reason staff used the definition of an EDU as a limit for the tiered requirements is because that is the average impervious area in the City on a lot and the City should be able to handle that much in the stormwater system.

David Craig referred to Section 13.35.07 regarding maintenance and requiring that the maintenance agreement be deeded to the property and the maintenance plan, as well as annual reporting and asked if that is something the committee would want applied to every stormwater facility or just to stormwater facilities that are in the one acre and above.

Leonard Rydell suggested it should go down to the more than one EDU level. His goal is to encourage people to realize what they do in their yard does make a difference in the big picture.

Ms. Johnson stated one of the handouts at the last meeting was an example of a report the City may require. The Stormwater Inspection and Maintenance Report requires only a contact name, brief description of what was done, and a signature. Ms. Johnson passed around a copy for the committee to view (see official meeting record for the report). The stormwater facility definition that has been discussed has been changed from the originally proposed definition to one that has been required by the City. Originally, it had stated that a facility was one that the City approved instead of required. Many municipalities are struggling with smaller facilities that people do not realize they have on their property and do not understand what they have to do to maintain it. The agreement helps them understand that they have a facility and how they need to maintain it.

Ms. Johnson explained the City should be able to handle and provide at least 2,877 square feet so perhaps the use of an EDU is confusing because if you have a large lot and you build a large house up to the set-backs, you will trigger these regulations because you will be creating more than 2,877 feet of net impervious area. Conversely, if you build a small house that is 1,200–1,600 square feet your project will probably not fall under the regulations.

David Craig asked if someone builds a 3,000 square foot home and the net impervious surface when completed is 3,000 square feet, will the additional 123 square feet of impervious surface that takes them over the limit trigger a stormwater facility or are there smaller things they could do like disconnecting their rain drains which

will make the net impact to the system less than the average 2,877 square feet. The Code states if you are create more than one EDU of net impervious area, stormwater facilities are required. Ms. Johnson stated that the maintenance agreements and annual reports would only be for required facilities because that is how it is defined in the definition section. She will look into whether disconnecting the rain drains would create what would be considered a stormwater facility.

Chair Thomas asked how many people would fall into that category in the City of Newberg. David Craig replied it is at least 50% because the average is one EDU for the entire City.

Joe Kavale suggested adding a sentence under Maintenance that says, "All stormwater facilities shall be maintained per best management practices and in addition engineered facilities shall have additional requirements as specified below." Sonja Johnson will confer with other staff on Mr. Kavale's suggestion.

Leonard Rydell pointed out that home ownership changes on the average every five years and making people aware of ways to preserve the environment down the road is very important. He is not a fan of having every property owner send in paperwork to the City but there needs to be a way to encourage and educate the public.

Joe Kavale stated regarding education, the Environmental Protection Act (EPA) website has an incredible amount of pamphlets for all of this. A great place to begin education is also with school age children. He also hates to think of burdening the public or the City with paperwork. Ms. Johnson stated as part of the TMDL requirements, the City is required to provide educational outreach and so they try to do that. One of the goals is providing education to the children since the City believes children will come home and bring the information to their parents. The main reason why the City has this section is so people understand they do have a facility and they need to maintain it for the public good.

Ms. Johnson stated that some cities send annual letters out to facility owners. The City could have a fillable form online or, if the property owners do not have access to a computer, then it could be filled out and mailed in.

Leonard Rydell suggested including the letter in the water bill on an annual basis.

Al Blodgett stated the City is mandated to send out an annual newsletter to the citizens regarding the status of the City's water, which may reach more people than the monthly water bill. Ms. Johnson stated both are very good ideas and will take the suggestions under advisement. Mr. Kavale is not certain either way is a guarantee of reaching everyone responsible for a facility. Mr. Blodgett agreed due to absentee owners.

Joe Kavale asked if anyone has thought about incentives for people to disconnect their drains. In Portland you can have your water bill reduced by doing so. Ms. Johnson stated the City began a Stormwater Credit Program in December of last year for residential properties as an incentive.

The committee has completed their task of looking at the stormwater code and Clyde Thomas asked for clarification on how to proceed from this point. The next task the committee is scheduled to look at is the current design requirements. Ms. Johnson would like the committee to provide suggestions for the City's current design standards manual such as what sections of other cities' design standards that the committee would like to see incorporated. The committee's handbook has several design standard manuals from other cities and some of them go into a lot of detail. Currently, Newberg's design manual is very basic and needs to be improved on in order to provide people with the right tools to comply with the proposed requirements. City staff understand that they will need to add some design and maintenance requirements for non-structural facilities.

Leonard Rydell asked for clarification on the 72-hour storm. Ms. Johnson explained Jadene Stensland had asked staff to look into that and staff will investigate whether a 72-hour storm duration is better than the currently required 24-hour duration. Alan Lee stated three inches within 24-hours is defined in the five-year storm by DEQ. He has worked for the City for 22 years and has never seen that happen. Ms. Johnson stated that what causes most of the stream erosion is the multiple storms that come to the area. Cities are starting to use the 72-hour duration storms instead of the 24-hour storms because of the increased stream volume and velocity created by these multiple storms.

## **VII. OTHER BUSINESS**

None

**VIII. NEXT MEETING AUGUST 4, 2011  
7:00 A.M. TO 9:00 A.M.  
PUBLIC SAFETY BUILDING, 401 EAST THIRD ST.**

## **IX. ADJOURNMENT**

Chair Thomas adjourned the meeting at 9:00 a.m.