

**MILWAUKIE CITY COUNCIL
WORK SESSION
FEBRUARY 28, 2000**

The work session came to order at 6:30 p.m. in the Milwaukie City Hall Council Chambers. Present were:

Milwaukie City Council: Mayor Tomei and Councilors Kappa, King, Lancaster, and Marshall.

Metro Councilor David Bragdon.

Planning Commissioners Hammang and Miller and Park and Recreation Board members Hughes and McCarty.

Metro Staff: Elaine Wilkerson and Brenda Bernards.

City Staff: City Manager Bartlett, Assistant City Managers Bennett and Richards, and Planning Director Rouyer.

Goal 5 – Metro Presentation

Bragdon explained that Metro was presenting this information to get input on its Goal 5 proposal. The purpose of the proposal is to develop measures to conserve, protect, and restore riparian corridors in the Metro region. Metro is proposing a regional plan to assist cities such as Milwaukie in compliance efforts. The project could also help local jurisdictions with unique circumstances, such as Milwaukie's downtown/riverfront plan and issues with Kellogg Creek.

Wilkerson reviewed the "Streamside CPR Program" discussion draft. The technical advisors are continuing their work, and she asked Council to consider this an evolving document with a focus on regulatory requirements.

The purpose of the Program is to protect riparian corridors for fish and wildlife habitat in order to meet Statewide Planning Goal 5, the Federal Endangered Species Act (ESA), and the 4(d) rule. The Metro Framework Plan recognizes the need to balance green and built aspects and to create linkages. **Wilkerson** saw this as an opportunity to coordinate efforts and provide an umbrella to participating local jurisdictions. The principles of the proposal are: protection and restoration of habitat are equally important; local jurisdictions have choices and flexibility; and all new development must contribute to habitat improvement.

Riparian corridors and related vegetation are critical because they provide food, water, and protection for fish and wildlife; travel routes; water temperature reducing shade; streambank stability; and stormwater runoff filtration. About 25% of the original 1,200 miles of streams in the region have been undergrounded in pipes. DEQ has listed 213 of the 900 stream miles as water quality limited, and northwest species have been listed by federal and state governments. It is critical to meet both human needs and those of fish and

wildlife. Urban riparian corridors are being degraded by current activities including construction of impervious surfaces, replacement of natural drainage with storm water systems, loss of important vegetation, and increased pollution.

The proposed Streamside CPR Program complies with Statewide Planning Goal 5 and is consistent with Title 3 -- *Stream and Floodplain Protection Plan*. It will also help determine how much land outside the urban growth boundary is needed to meet state requirements. **Wilkerson** projected that the Metro Council will have adoption documents by the end of June.

Metro staff concluded that all streams are regionally significant resources. Uses conflicting with the riparian corridor must be prohibited or limited. The habitat system must be continuous in order for fish to thrive and reach their spawning areas.

There are three program options: regional safe harbor that regulates the riparian and impact area; local alternatives that would provide a discretionary review on a case-by-case basis; and creation of a local riparian district plan. She discussed the residential exceptions to the safe harbor option that would limit disturbance depending on lot size, percentage of lot in the regulated area, and proximity to the riparian corridor. Existing houses or lawns would not be affected unless the owner applied for an addition. Milwaukie may wish to consider a local riparian district plan for its downtown area and give it a special level of treatment.

Councilor Kappa asked if the safe harbor concept specifically addressed storm water runoff.

Wilkerson replied that it did not do so directly; however, it does consider runoff area and impervious surfaces.

Councilor Kappa asked if flooded lawns could be restored.

Wilkerson was not sure how that would be handled in the context of non-conforming buildings.

Councilor King discussed FEMA's "three strikes you're out" program for areas that consistently flood.

Wilkerson reviewed the safe harbor, non-residential exceptions that would allow for limited disturbance in the regulated area if development could not be accommodated elsewhere in the lot. Local jurisdictions could, if they chose, vary from the safe harbor concept on a case-by-case basis. The riparian district concept would allow local jurisdictions flexibility to create large areas for redevelopment and mixed use. She reviewed the streamside restoration goals for development or redevelopment in the regulated area.

Councilor King had difficulty with one stream being more valuable than another since all had importance to the network.

Wilkerson said the Columbia Slough is an example of a stream that has undergone a lot of man-made changes. She agreed this was a valid concern for the technical advisory group to consider.

Councilor Kappa believed all three options should be left open for local jurisdictions to consider, but the standards would need to be consistent. He supported voluntary compliance if there were compelling reasons identified for taking that approach.

Mayor Tomei asked if off site mitigation could be considered for redevelopment.

Wilkerson responded that there have been discussions related to off site mitigation and riparian improvements within the same watershed. It will be important to set expectations through established performance standards.

Councilor Marshall said, in broad term, people living next to waterways are being penalized. He was concerned about those residential and commercial areas that were not in the regulated area but contributed to the problem with extensive impervious surfaces. He used the Costco parking lot as an example. How can nearby development be regulated? It appeared to him that the safe harbor option was what should be done and would cost the local jurisdictions the least. However, he assumed that the local riparian district would be used even though it would be the most expensive alternative.

Councilor Kappa commented that some cities like Milwaukie have several confluences. There need to be development practice agreements with those areas upstream and outside the urban growth boundary.

Councilor Marshall agreed that could have significant impacts on the performance criteria.

Wilkerson added that this proposal would affect all the area within the three-county Metro boundary, and the 4(d) rule does require that everything in the watershed meets the standards.

Councilor King commented on east county housing developments that are above the buffer but still impact what goes into Johnson Creek.

Wilkerson said the criteria would apply to the entire watershed not just the riparian areas. People cannot be required to remove existing development, but rehabilitation to overcome current problems could be addressed. Title 2 addresses parking, parking structure, and the need for less impervious surface and more landscaping.

Councilor Lancaster was concerned about the already huge infrastructure deficit along with the inability to comply with other Functional Plan elements.

Rouyer provided a map of the area and identified the impact and buffer areas.

Wilkerson explained that development on vacant land would be regulated away from the water unless there were existing lots of record.

Councilor Kappa asked what the status of Kellogg Creek would be if it was restored.

Bennett said it would still have to meet floodway regulations.

Wilkerson discussed development and redevelopment. She suggested that Milwaukie consider the riparian district approach. The downtown, for example, could be translated into a riparian district with clearly defined rules. Development could contribute to restoration efforts that would result in amenities.

Mayor Tomei suggested that development or redevelopment outside the riparian area could also contribute.

Wilkerson agreed that everyone could take some responsibility for the riparian area including residents disconnecting their roof drains from the storm system. A downtown development local improvement district could contribute toward a habitat that would become a regional attraction.

Councilor Marshall reiterated that development outside the immediate area may impact the waterways.

Councilor Lancaster asked how one might objectively assess those types of impacts.

Wilkerson suggested, for example, that development applicants might have to verify that standards are being met or exceeded.

Councilor Lancaster asked if the scientific analysis might not create conflict.

Wilkerson said it likely would, but the number of studies on urban areas has increased in the recent years. It will be important to monitor and evaluate the program.

Rouyer asked if there were any restrictions on the size or number of riparian districts and who would review and approve the district plans.

Wilkerson suggested, in the case of an already-developed area, that the study area could be geographically defined. She also recommended thinking of the district as being larger than a single property owner. The discussion draft sets out performance standards and preliminarily suggests a peer review.

Councilor Kappa wanted the region to also address stormwater runoff issues for development beyond the 200-foot buffer zone. He was also concerned with takings and LUBA appeals.

Councilor King had concerns there might be inherent problems with a peer review board for riparian districts.

Rouyer was pleased with the local, case-by-case option. She was, however, concerned about the inherent expectations that local staff could provide Goal 5 expertise. In that sense, the safe harbor option was a good approach. The local riparian district would give Milwaukie an option for improving the waterfront and adding amenities to encourage community vitality. She would encourage Metro to adopt performance standards that would allow some local flexibility in the downtown area.

Bartlett suggested that staff prepare a draft letter for Council review by March 2 based on tonight's comments.

Councilor Marshall wanted clearly defined performance standards.

Wilkerson added that, since National Marine Fisheries Service (NMFS) is driving the program, definitions would probably be clear. Metro also had concerns about staffing issues and is working to provide as much guidance as possible.

Councilor King noted the Johnson Creek Watershed Council has a technical advisory committee working on regulations and definitions.

Councilor Kappa asked how the tree ordinance would work into this program.

Rouyer said, although these were separate regulations, they will work together.

Bartlett announced that the City Council would meet in executive session pursuant to ORS 192.660 at the end of the work session.

The work session ended at 8:00 p.m.

Pat DuVal, Recorder