

# SWAC Notes for June 18, 2014

## Attending Members

Tim Smith (Chair)  
Councilor Jim Taylor  
Councilor Kim Freeman (phone in at 12:45)  
Brandon Smith  
Mark Caillier  
Sam Kidd  
Mayor Lore Christopher  
Michael De Blasi  
Matt Knudsen

## Staff

Bill Lawyer  
Elizabeth Sagmiller  
Mike Griffin  
Kat LaFever  
Billy Johnson  
Dorothy Diehl

## Absent

None

## Meeting came to order at 12:32 p.m.

Chair Tim Smith called the meeting to order.

Elizabeth told the group she had completed the environmental portion of the updates to the Comprehensive Plan, which has gone through committee successfully.

### Erosion Control DEQ Program

Tim Smith reported on his recent issues with DEQ requiring small lot permits to be held by all individual lot owners before he (as the developer) could close his 1200c permit. He'd received another bill for payment, but no other DEQ response so far. He's sent in his permit cancellation, but no one has called to express approval or disapproval.

Elizabeth explained to the group that DEQ has decided to enforce a Small Lot 1200c program, which they hadn't enforced before. It used to be that local builders were under local programs, and the developer was under DEQ. Now developer cannot close their 1200c until ALL the builders have small lot permits from DEQ. The DEQ does effectively nothing for inspection or enforcement.

Elizabeth has been talking with progressively higher staff at DEQ, no decisions yet, but the Western Region Administrator took her aside at the ACWA Stormwater Summit and said that DEQ has gotten the message on this issue from Keizer's point of view and while they can't just absolve us of this Small Lot enforcement, they realize that DEQ really didn't do due diligence in letting Keizer and others know it would be suddenly enforced. They are looking into whether they can re-open the 1200CN permit (earlier than the plan of spring 2016 after public comment) so Keizer can be included. It would allow all 1200c

permits that are less than 5 acres in size to be administered by the City.

Tim said it's not his job to get all the builders to sign up for small lot permits. Once they are sold to builders, how is it the developer is held on the hook? He appreciated Elizabeth going to bat with DEQ, because every developer and the builders all have to pay twice, once to DEQ and again to Keizer. One help, in the meantime, is that any subdivisions whose runoff is routed underground (UIC) will not fall under this small lot requirement, assuming the system is functional both during construction and after.

### **SW Fee Credit Discussion**

In the Stormwater Utility Ordinance (Ord. #2007-563), Section 5(e), page 10, the last sentence reads, "the council shall establish by Resolution methods for allowing credits under this subsection." The stormwater credit issue was brought up during the budget process and staff was directed to resolve the issue as the ordinance indicates that the Council has to take action. The Keizer City Attorney met with Elizabeth, and confirmed that the main issue lies with this 'Council shall' language.

The last time the SWAC met, the group made a recommendation to pursue taking a look at development of a stormwater credit program, after design standards are developed and in place. So based on this new guidance from the Council, staff can do one of two things: 1) fix the ordinance language to remove the 5(e) section and related language, or 2) revise the whole ordinance to bring it up to date with this and other issues.

Tim Smith said that developers and builders are required to do stormwater treatment and controls anyhow, so why give a credit when it's for things already required. Elizabeth said also that the City Finance Director has made it clear that rates would have to go up to make up the difference of any credits given.

The Mayor said she's not in favor of credits if it's likely to raise rates. Mark Caillier said that it took Salem 3 years to come up with their credit program language, and there is no credit for single family residential at all. Several SWAC members confirmed that even in cases of getting a credit, it would never even come close to covering the cost of building the facilities.

Tim Smith said he feels it would be appropriate to take credit language out of the ordinance now, and the SWAC can always revisit the issue in future, outside of ordinance language (just as a program). Councilor Jim Taylor said that the council who approved this ordinance back in 2007 didn't know how things would run with credits, it was simply something people were looking into at the time.

Elizabeth said that Design standards will be started within the next year or so, and that a credit concept could be revisited after they are in place. But the SWAC members agreed that it may not be in Keizer's best interest to have a stormwater credit, as we already have a methodology in place for large rate payers (those with multiple ESUs) to lower their fee, by removing some of their impervious area (ESUs). Legal has confirmed that this serves the same function as a credit. And this method avoids the costly and complex implementation rules required for a credit program.

*Mayor Lore Christopher made a motion recommending the elimination of sub-section 5e, and other language related to stormwater credits, and suspend all staff work towards a SW credit until a later date – and direct staff to make any other necessary edits to update the ordinance to current regulatory conditions, then bring back to SWAC for approval, and forward to City Council. This was Seconded, and passed unanimously.*

The Mayor recommended including an explanation/update of the new direction recommended by the SWAC in the next staff report to council.

### **Permit Renewal (NPDES)**

Keizer's NPDES MS4 Phase II permit expired on February 28, 2012. However, this doesn't mean Keizer

doesn't have a permit; we simply have to work under the old permit (administratively extended) until the new permit is issued. Elizabeth has the OARs and the MOA between the DEQ and EPA to reference that the old permit continues until DEQ gives new one. DEQ has one lone MS4 employee currently, after some employees left. The Manager position is still being hired; it just closed so probably won't fill that position for another month or two. Then once the manager is on board, they will help hire the Permit Writer.

Keizer is on the DEQ steering committee for Phase II MS4 permit, to develop a permit structure that will work for existing and new Phase II's into the future. Examples of new Phase II's include Jefferson, Tangent, Eagle Point, Rogue River, and Albany.

General versus Individual Permit – Most Phase II communities don't believe a general permit will actually make things any better for DEQ or existing individual permittees, and could make things more prone to 3<sup>rd</sup> party lawsuit (as any General Permit would naturally gravitate to 'lowest common denominator' type requirements). With a General Permit, all stormwater management plan (SWMP) elements would be put inside the permit document, creating the need for a Major Permit Modification (and public comment, etc.) for any change or adaptive management. On the other hand, Individual NPDES permits allow conditions to be more equitable, because the MEP standard is individualized and tailored to the community, rather than trying to push all these highly variable conditions into one single permit covering all sizes and types of Phase II permittees.

Elizabeth said that this process will likely be ongoing for at least another year or two. Permittees have been given no information on how the new permit might look. Jim Taylor asked if it were easier for smaller Phase II's to do a General Permit, and Elizabeth confirmed that this would be the case. However, existing permittees are saying to go ahead and do general permits for the small cities, but for larger or more established Phase II's, keep individual permits as an option. Sam Kidd mentioned that DEQ tried to get the Phase I's to do a General Permit, but there was significant opposition and it didn't go through.

DEQ started out this Phase II Steering Committee by saying "General Permits are where we're going," but the Phase IIs pushed back. Our hope is that the new MS4 manager may see the issues and perhaps back off forcing the general permit. Elizabeth will keep the SWAC informed, and the steering committee (Phase IIs) are meeting in the interim.

*Because the remainder of the summer appears fairly free of needed deliverables from the SWAC, this group will reconvene in the fall.*

**Meeting Adjourned at 1:17 p.m.**