

River Plan / North Reach: Industrial Development and Natural Resources Integration Task Group Meeting #12
Friday, April 18, 2008

Facilitator: Don Hanson

Integration Task Group Members: Ann Gardner, Susie Lahsene, Bob Sallinger

Bureau of Planning Staff: Shannon Buono, Brian Campbell, Sallie Edmunds, Eric Engstrom, Diane Hale, Roberta Jortner, Matt Lustig, Steve Kountz, Arianne Sperry, Deborah Stein

Other City Staff: Paul Ketcham, Chris Prescott

Audience Members: Sebastian Degens, Dan Dishongh, Bill Dungan, Steve Pfeiffer, Phil Grillo, Seth King, Wayne Kingsley, Barbara Quinn, Robin Bellanca, Curt Schneider, Bob Short, Travis Williams

Handouts: Draft River Environmental Regulations (River Team Hybrid Proposal), Mitigation/Restoration Fee Calculator, Memo from BDS to BOP regarding proposed N Reach/River Environmental Regulations

Introduction

Don Hanson convened the meeting at 1:41 and reviewed the agenda:

- Approve the March 20 & 21, 2008 meeting notes
- Overview of River Team's hybrid proposal
- Discussion of Code component
- Discussion of Fee component

Hanson asked if everyone had a chance to look at the meeting notes. After no reply, he suggested they approve the meeting minutes later in the meeting.

River Team Hybrid Proposal

Edmunds introduced three revised maps: a draft regulatory map built on the natural resources inventory (NRI) map and greenway trail maps that have been presented in the past; a regulatory map; and a map displaying recommended River Plan/North Reach investments, including potential infrastructure projects, restoration sites (pearls), trails and viewpoint investments the city might undertake.

Campbell provided an introduction to the hybrid proposal. He indicated it had been clear from the beginning of the process that the task group had a difficult task. He continued by noting that the working harbor is important to everyone in the room and one of the top priorities in the state. Everyone also recognizes that natural resources need to be protected and enhanced. Staff had to design a program with innovative regulatory features acknowledging the primacy of industrial needs that are critical to river access, but also accounting for natural resources present in the area. Staff will continue to try to meet the objective of designing a program that is more efficient at combining these elements. Staff recognizes that City review below OHW is a very contentious issue and is working on a proposal to regulate in the water in a way that doesn't conflict with other

regulatory agencies. Campbell concluded by stating that staff is committed to refining the cost factors to appropriately scale the cost of the fee to the impacts.

Hansen suggested that task group members give feedback on the latest proposal. Lahsene responded first and distributed a handout displaying a graphic comparing the current greenway code, the River Team hybrid proposal, and the Port/Working Waterfront Coalition proposal released in March. Lahsene indicated that when the Port reviewed the Team hybrid proposal, it was clear staff heard some of the comments at the March task group meetings, but it was also clear that there are missing elements. She said it appears that in exchange for regulating areas of high and medium rank along the riverbank, in water, and some uplands, there is a greater area of review with substantially greater costs. The key issues relate to cost and the duplication of review below OHW. To the extent that the hybrid proposal doesn't address those issues, the Port is still not on board with the process. Lahsene continued by indicating that the Port/WWC proposal acknowledged that some fee for development below OHW was appropriate, provided the review was eliminated. The River Team proposal is different because there would be a fee and review in addition to Corps requirements. Lahsene said that in the Port/WWC proposal there are exempt activities with a fee but no review landward of the riverbank. If a project occurs on an unhardened bank, there could be review and a fee. Beyond 75 feet there is no review or fee. Lahsene stated that the main issues for the Port are the amount of review, the area of review, and the cost of the fee.

Sebastian Degens of the Port stated that with the River Team proposal the development fee applies to the entire site, even on sites where the Port might exceed greenway requirements such as T-5 where the Port addressed all non-conforming uses on the site. For example, the Port just finished a \$13 million project situated back from the bank that can't be seen from the water. Greenway review wasn't required, yet a fee would be imposed with the River Team proposal. Degens pointed out that the Port has many sites like that and uniform application of the restoration fee is a barrier to furthering the economic development of the harbor. There are other situations where the mitigation costs are quite high. For example, the Port has been thinking of a new dock at T-5, and bank work adds 10-15% to the project. The Port is utilizing river bank geotextile materials well, but there are still situations of bank failure and times when rip-rap is needed. Degens concluded by stating his principle concern is that the Port has large properties, and many projects that are away from the water would have fees under the River Team proposal.

Hanson summarized his interpretation of the Port's perspective as, why should there be a development fee if the development is away from the water. Lahsene indicated the Port recognizes there are habitat areas that are important to protect; however, there are concerns that the trade-off being proposed is burdensome when one of the key objectives for the working harbor is to encourage expansion while protecting habitat. With the River Team proposal there will be habitat but no economic expansion.

Campbell asked Degens if staff can get some good information on cost measures from the Port. Staff needs real-world costs to make the development fee realistic. Degens indicated that in talking with Toyota about T-4, they indicated they were concerned about going forward with LEED certification because it is a significant cost at about 1% of project cost.

Gardner indicated it is a brand new idea to impose a restoration fee in an area zoned for industrial development that contains untold amounts of public and private investment over the last century. Industrial businesses hoped to find a code that is workable for City staff and business, and also works with other processes and regulations. Gardner continued that they hadn't anticipated additional regulations, and there are other forces at work that will influence development on these sites. Gardner indicated she wanted to present a stronger statement, and could characterize the River Team proposal as a third paradigm produced by staff without looking at the Port/WWC proposal. Gardner concluded by stating this proposal and the fee is a non-starter.

Sallinger indicated he was generally pleased with the proposal and sees a lot of things that were positive steps, but does not want to walk away from the process or really critique the proposal until there is more detail. For example, he wants to know what the process is that follows the discretionary on/off site mitigation choice. Sallinger said this reads as a recipe to move everything off-site. He referenced the Watershed Health task group's discussion, about offering a menu of on-site options to choose from instead of transferring all landscaping requirements off-site. Sallinger continued that he is still concerned about the inventory changes and wants to get on the ground and understand what removing the low ranked banks from the proposed e overlay would mean. Sallinger said he wants to sit down with staff and really understand what the fee calculator means, how it works, if it is fair and look at some examples. He concluded by stating he wants to make sure this isn't setting precedent for other reaches. He suggested the group hear comments from Bureau of Environmental Services (BES) staff.

Ketcham indicated BES staff had not established a formal bureau position to this point, but had been following this very closely and the River Team hybrid proposal is largely in alignment with previous BES comments. BES is supportive of City review below OHW because they know of many times where other jurisdictions don't take into account necessary concerns. BES also thinks putting the burden on the City to coordinate with other agencies to include City comments in their processes is good. Ketcham continued that BES recognizes the fee is a new approach in looking at a landscape level plan and it is difficult to find a way to address natural resources/landscape issues without a plan. An important part is to have resources to support restoration at the same time development is occurring, and whether the 1% level is a fair percentage or not is for policy makers to decide. The City is also putting its own money on the table and working to find other funding, recognizing a partnership with industry to get this restoration completed.

Hanson asked if it takes more time or is more cumbersome when the City reviews below OHW. Ketcham responded that the City would be working in the same time frame as the other reviews, but the issues brought up might cause the other agencies to take additional things into account.

Sallinger asked if the special appropriation (\$1 million) was included in the Mayor's budget, and Edmunds replied that it was not. Campbell suggested that the budget process is not over and there may be a way to find support from the other three Commissioners.

Hanson asked Sallinger if he had any other comments to share before opening the forum up to the audience. Sallinger indicated he wanted to ask Gardner and Lahsene if the OHW issues are something they really can't do without, or if there is room to negotiate. Lahsene indicated the main problem is the uncertainty of what happens when the City's response conflicts with that of another jurisdiction's and referenced the T-4 sheetpile wall.

Gardner agreed with the point Sallinger made about the unanswered details. Gardner noted that she is seeing much of this proposal for the first time, although it apparently has been discussed outside this forum with other bureaus, and she doesn't feel comfortable accepting it until she knows the details. Gardner indicated that there are approximately ten more issues that still need resolution before it receives her support. For example, balanced cut and fill; NRI inventory accuracy; the landscape map, which was assumed as illustrative but is being represented by staff as a consensus decision; alternative analyses; non-conforming upgrades; and management and restoration of the restoration sites, which she assumed would be taken over by a third party, but this proposal suggests that the City will manage it. Gardner indicated there are a handful of remaining significant issues, but she has really appreciated working with Sallinger and Nancy Munn to better understand the natural resources perspective and issues.

Campbell indicated that staff understands below OHW is still a big issue, and staff is going to meet with the other agencies to find out how it can work better. Campbell said it was not staff intent to indicate the City would manage the restoration site program, and mentioned the bureaus' request for proposal for a recommended management structure for the restoration site program.

Edmunds suggested that the balanced cut and fill issue is addressed with the River Team proposal as well. Lahsene indicated the Port had done a hydrological study associated with filling at T-1 and determined minimal impacts. The Port is also concerned about not receiving credit for in-water cuts. Gardner was concerned that it says in the regulations that balanced cut and fill is a primary source of mitigation. Campbell stated it is already part of the existing regulations, and the proposal allows payment of a fee to the city restoration program in lieu of balancing on-site.

Sallinger suggested he could see supporting the proposal strongly, but also suggested that there isn't a list of anything that has been settled and he could see every part of it falling apart. He stated he didn't even know where to begin the horse trading.

Campbell suggested this formal task group may not be the best forum for further negotiating, and doesn't know if it is even possible without the detail. He indicated that the group needs to continue working on the proposal to get it to council and staff may need to bring this group together again in the future, but the details need to be worked out first.

Hanson summarized his interpretation of meeting comments, stating that applying the fee to development far away from the river is the biggest concern. The fee can be debated for a year, but it is based on the location, which therefore makes location a larger concern. Sallinger indicated he is troubled by the fact that the City didn't step up with funding, and the group has said all along that they didn't want this on the backs of industry. Campbell pointed out that there are three other commissioners and the budget process is not over yet. Sallinger replied that there are other big projects like South Waterfront going forward, and he doesn't know where the disconnect is, but he doesn't see the leadership from the City to make this program happen. Lahsene agreed.

Edmunds said she hadn't heard much positive about the proposal from Gardner or Lahsene, and pointed out that staff had lessened the review and eliminated the setback in the i overlay. Gardner stated that they have been challenged over the last week to complete some quantitative analysis of the proposals, and they may have lost sight of some of the positive aspects. She said staff heard

their comments and she appreciated that. Many issues are fundamental differences that will make it hard going forward. Gardner stated if anything went forward to the River Plan Committee from this task group, it would have to be a staff proposal. Edmunds replied that staff had expected that outcome due to the number of issues making it difficult to reach consensus. Staff will try to outline where consensus had occurred and forward fair proposals for the undecided issues. Gardner indicated she was not aware of that assumption.

Gardner noted that the materials distributed for the meeting contained the statement, "once the landscape level plan was developed", indicating that consensus or agreement had been reached by task group members and a plan had been developed. She said it was simply illustrative and stressed that the task group had not reached agreement on any proposal, and no official products had been developed.

Lahsene suggested she heard from Campbell and Edmunds that the proposal is still under revision, and perhaps there would be some value in meeting again and staying engaged. She stated she thought the group could try to reach greater consensus. Sallinger indicated that he thought the group was very cordial, but still very far apart and they had all started the process thinking that there would be more investment. Gardner pointed out that there will be more investment through the superfund and Natural Resource Damages (NRD) processes. Sallinger said he thought this process was about making local decisions and setting priorities to prepare for when the NRD money arrives. Lahsene suggested that you still have to have the businesses operating, and the 1% fee may not be significant, but layering on all the fees is really burdensome.

Williams indicated he kept hearing negative references toward the river and how the investment in restoration would harm businesses. He continued by saying that there hadn't been investment in the natural state of the river, and this is about working toward improvement in the future. He suggested that not all businesses need to be on the river and river-dependent uses should take precedence.

Kingsley stated there are two kinds of businesses here: those that need to be on the river and those that don't. The ones that need to be here, you can nail to the wall. The rest of us should be getting out. There is nothing business friendly in this proposal. If he had his choice of where to locate a business, it wouldn't be in the Portland area.

Grillo indicated most of the land where the 1% fee applies is outside the high and medium ranked areas. The fee shouldn't apply to development in these areas.

Pfeiffer indicated he is hearing far more pessimism than he thinks is warranted. He suggested, from the perspective of previously serving on the Planning Commission, that taking it up the pipe prematurely is a disaster. He thinks we should keep working to narrow the differences and then produce alternatives in print to present to the policy makers. For example, with the below OHW piece he understands where Ketcham is coming from; the federal government may have jurisdiction but if there aren't resources present they won't regulate those areas, such as beaches. The City should keep the interest there. He suggested staff should also take it to the next level of detail. Campbell agreed with Pfeiffer and indicated staff is going to continue to work on the proposal and take a refined version to the Planning Commission. He added that he hesitates to propose another meeting with this group.

Sallinger said he wants to see what City staff can do about the restoration funds. He is tired of seeing five stakeholders walk in to the Commissioners' offices and beg. He indicated he wants to see the bureau directors get together to see what they can do.

Quinn stated that as a community member from N Portland, she thought the reason everyone was at the table was that there is a pending disaster with species and she wants to see that disaster averted.

Hansen suggested the group circle back to next steps. Edmunds acknowledged that the fee is a sticking point, but tends to agree with Pfeiffer that the group has made progress and is closer together than some members believe. She suggested that if the Port and industrial community look carefully at the River Team hybrid proposal they might be able to identify more features they like. She pointed out that staff will meet with state and federal agencies to discuss below OHW issues and balanced cut and fill has been addressed. Hansen suggested that staff could draft the story of where we are for the River Plan Committee, have this task group critique it, then work out the details.

Lahsene emphasized that the two remaining issues are the application and size of the fee, and how the below OHW issues are going to be resolved.

Ketcham asked if it would be possible to have some explanation about how the fee is going to work and some specific examples. Gardner suggested it might also be helpful to have some information about other City fees and regulations in place, such as stormwater fees and system development charges. Lahsene suggested the Port could prepare some examples as well.

The group agreed the next and final meeting would occur May 1st from 1:30 – 3:30 pm at the 1900 Bldg, Room 7a. It was also agreed that Paul Ketcham from BES would participate as a task member in the next meeting.

Hanson adjourned the meeting at 3:20 pm.