

The City Council for the City of Junction City, met in special session at 6:30 p.m. on Thursday, September 6, 2012, in the Council Chambers of City Hall, 680 Greenwood Street, Junction City, Oregon.

PRESENT: Mayor, David Brunscheon; Councilors Jack Sumner, Bill DiMarco, Jim Leach, Randy Nelson, Herb Christensen, and Laurel Crenshaw; City Attorney, Carrie Connelly; City Administrator, Kevin Watson; City Planner, Stacy Clauson; Consultants Bob Parker and Beth Goodman; Administrative Assistant, Tere Andrews; and City Recorder, Kitty Vodrup.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Brunscheon called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

II. CHANGES TO THE AGENDA

None.

III. PUBLIC HEARING – AMENDMENT TO JUNCTION CITY ZONING ORDINANCE AND COMPREHENSIVE PLAN, FILE NO. CPA-12-01

Mayor Brunscheon thanked the public for attending the meeting and announced that the Council would be considering amendments to the Comprehensive Plan and Zoning Ordinance. The proposal would be reviewed for compliance with statewide planning goals and Oregon Administrative Rules. He reviewed the public hearing elements and rules for the meeting.

Mayor Brunscheon opened the public hearing and asked if there were any actual or potential conflicts of interest. Councilor Leach stated that he had a conflict of interest as he would be making recommendations in his official capacity as a City Council member and his property at 93048 Highway 99S, Junction City would be included in the Urban Growth Boundary. He removed himself from the Council table and took a seat in the audience.

Staff Report

Administrator Watson stated that the City was currently in Customized Periodic Review and this allowed Junction City to plan for future residential and business growth needs. Periodic Review requires the City to review the sufficiency of residential, commercial, and industrial land within the City's current Urban Growth Boundary (UGB) and is guided by state rules and planning goals. The City was in "customized" review because the process was split into two phases. A Department of Land Conservation and Development (DLCD) grant award of \$130,000 (that was ultimately reduced to \$61,000) was received to assist in doing this work.

Phase I of Customized Periodic Review (2008 and 2009):

- Identified land for industrial and commercial (which included the state facilities to the south).
- Conducted UGB Alternatives Analysis for industrial land and a preliminary Local Wetlands Inventory.
- Resulted in expansion for the state prison and mental hospital site, as well as the Grain Miller's site.
- Held Public Meetings and received public input:
 - Citizen Comprehensive Planning Committee (CCPC), Planning Commission, City Council, Local Wetlands Inventory Open House, Community Visioning Workshop (2008), and other public input opportunities.

Phase II of Customized Periodic Review (2010 – 2012):

- Identified residential and park uses needs.
- Refined conclusions on commercial land need types.
- Finalized Local Wetlands Inventory and developed a Local Wetland Protections Program.
- Conducted a UGB Expansion Alternatives Analysis for residential, commercial, and parks uses.
- Provided revisions to City's zoning ordinance and Comprehensive Plan.

- Conducted public meetings at Community Visioning Workshop (2011), CCPC, City Council, and Planning Commission. 10 meetings were held between June 2010 and May 2011.
- Customized Periodic Review Subcommittee was comprised of City Council, Planning Commission, and CCPC members. 7 meetings were held between February 2012 and June 2012. The committee made revisions to the Economic Opportunities Analysis (EOA).
- Provided notice regarding development of wetland regulations in January 2012 mailing to property owners.

Additional:

- The Economic Opportunities Analysis was conducted by ECO NW. The EOA was adopted in 2009 and acknowledged by the state in 2010.
- The Community Visioning and CCPC meetings were facilitated by Paul Hoobyar.
- The Housing Needs Analysis from 2010 -2012 was conducted by ECO NW.
- The Local Wetlands Inventory and ESEE (Economic, Social, Environmental, and Energy) Analysis (2008 – 2011) was conducted by Winterbrook Planning and approved by the Department of State Lands (DSL) in 2011.
- The foundation of the Alternatives Analysis was the Parks and Open Space Master Plan, which was locally adopted by the City.
- Applicable Statewide Planning Goals: Goals 5 – Natural Resources (includes Wetland Inventory and Wetland Protection Program); Goal 9 – Economic Development (Commercial Land Need); Goal 10 – Housing (includes Residential and Park Land needs, as well as what land within the City's current UGB is available and useable).
- The expansion process has been guided by Oregon Revised Statute (ORS) 197.298. There are four priorities within this ORS and two apply to Junction City: 1. Exception Areas – for pre-existing rural developed areas, like the properties along Highway 99; and 2. Agricultural and Forestry Lands, which look at soil quality factors.

Wetlands:

- Goal 5 requires jurisdictions to complete an inventory and significance determination for wetlands, using the Local Wetland Inventory (LWI) rules that are outlined in Oregon Administrative Rules (OAR) 141.086.
- The City identified the locally significant wetlands in the LWI, and the Department of State Lands (DSL) has approved.
- OAR 660.023.0050 (1) directs local governments to adopt a Comprehensive Plan, provisions, and land use regulations to achieve Goal 5 protection for the significant wetlands. Two options were available: safe harbor (protect all significant wetlands) and the standard option (the City conducts its own analysis on how to protect the wetlands). The City chose the standard option and assigned partial protection to the wetlands, to ensure that development could still occur and to minimize flood impacts.
- The Wetlands Overlay District will not prevent any of the current allowable regulations to occur on the properties. Administrator Watson referred to a posted list of allowable uses that would continue. He noted that this was not a taking but a requirement by the state for the City to show how to protect the environmental and wetlands areas.

Public Comment and Modifications to Documents:

- Many public comments were received in the Planning Commission public hearing process, and the City has made document modifications:
 - To the justification and findings report, Alternatives Analysis for commercial lands, and the EOA.
 - To remove the wetland designation for the Oaklea Site bike path.
 - To reduce the width of the Wetland Overlay District, so it coincided with the current wetlands and extended to the top of the ditches.
 - To permit fences, provided they do not interfere with water flow and do not violate any of the City's easement provisions.
- The City also received comments regarding the building of a WalMart store, but the City has not had any discussion nor received any plans regarding WalMart or any other big box store. Before any property comes into the City, it would need to be properly zoned, analyzed, and go through a public process via the Planning Commission

Planner Clauson added that the Planning Commission did unanimously recommend approval of the proposal before the Council. One clarification was that the 20-foot area for study in the wetlands was retained for wetlands CC-04, CC-01, and CC-02. In all other areas, the proposal was to eliminate the 20-foot area on either side.

Mayor Brunscheon invited public testimony and noted that each speaker would have three minutes.

Public Testimony

Ms. Edith Loveall, 1315 Oak Drive, Junction City, expressed her opposition to identifying the drainage ditches as wetlands. She stated that none of the Councilors have property along the ditches, so this would not bother them, but would affect every person that does own property there. The ditches are manmade canals, expressly for flood control, and are not natural waterways. They remain dry during the summer and do not have the characteristics of wetlands. Renaming the flood control ditches to wetlands does not enhance their value and only brings rules and regulations to make life harder for everyone who lives nearby. Caroline Stimson from DSL said that all she regulated was the digging out and filling out of wetlands. Aren't the easements that are already in place sufficient to regulate them? What would the City gain by putting them under the protection of DSL? The Councilors are not the representatives of the environmentalists, but are the representatives of the people, and the people do not want their flood control ditches to be wetlands.

Ms. Sandra Kowall, 1790 Rose Street, Junction City, stated that urban growth is inevitable and they didn't want urban sprawl, but at some point it seemed enthusiasm overcame common sense. The unintended consequence of this was that people who do not represent the voice of a lot of Junction City people were saying that flood control ditches were wetlands and most of the people felt they were not. The fear is that eventually more restrictions would occur, due to the wetlands designation. People were worried and were willing to put off the Urban Growth Boundary until the proposal was more thoroughly considered. One of the considerations originally was that there needed to be room for industrial growth, but there was still a zoning area for that at this time, so there was time to think.

Mr. Jeff Haag, 27430 8th Street, Junction City, stated that many people at the meeting had an issue with the wetland overlay. The Planning Commission worked hard to make sure no additional burden would be placed on property owners and also removed the 20 foot overlay. It was important to remember the CCPC voted 17 to 0 and the Planning Commission voted 7 to 0 to do this work and they had been working very hard on this for many years. He wanted to see this move forward and hoped the Council would also approve it unanimously. If the ditches could be removed from the wetlands without a significant delay, he would be all for that, but he was not interested in another Phase III that ended up taking another year or two.

Mr. Donald Allgood, 1160 Quince Drive, Junction City, donated his 3 minutes to Ms. Cheryl Glaser.

Ms. Cheryl Glaser, 770 Spruce Street, Junction City, stated that her property was inside the proposed UGB, but outside the City limits. She bought her home in 1999 and at no time was the issue of wetlands brought up by Lane County Planning. Her federal flood control channel was maintained by the Army Corp of Engineers, until the City of Junction City took over the maintenance of mowing once a year. She requested that her area of the ditch not be sprayed, and she keeps the vegetation below 18 inches. She attended initial wetland inventory meetings and thought she was being told that she did not have wetlands on her property. The flood control channel is not a year round body of water and before 1965 it was a small ditch. She had the dream of developing on her property, after annexing into the City. She did not receive notification that the Planning Commission was holding meetings to change the designation on her land to include wetlands and did not receive a letter in January. If she had been aware of these meetings, she would have attended and voiced her opposition to the overlay designation. She appreciated the recent modifications made by the Planning Commission, but did not agree with the drainage ditches being classified as a wetland and wished it would not be affecting her property in this way.

Ms. GM Hanavan, 1280 Quince Drive, Junction City, donated her time to Mr. Lou Hanavan.

Mr. Lou Hanavan, 1280 Quince Drive, Junction City, stated that the Local Wetland Inventory (LWI) and the WRD overlay proposal were very significant components of the JC Comprehensive Plan, because they extend land use controls beyond the state and local levels and introduced federal regulatory agency (EPA) land use control, to local, privately owned properties. They engaged Greta Murdoff, an Oregon Department of State Lands approved wetland scientist to do a soil sampling yesterday of the floodwater channel easement area on their property. The sample confirmed the findings shown on the LWI done of the Junction City urban growth area by the firm of Winterbrook. The finding was that the soil was not a wetland, but it was an excavated, seasonally flooded waterway. The WRD overlay proposal takes their channels into the wetland designation and makes them subject to EPA regulations. They were asking the Council to remove all PEMCx coded channels on privately owned property from the WRD Overlay Proposal, because the soil was not wetland. The Winterbrook LWI resulted from an EPA grant to the Oregon Department of State Lands (DSL). With the grant, DSL made offers to Oregon cities to pay for their wetland inventories, and Junction City accepted their offer. The contract to do the LWI was between Winterbrook and DSL. An undated notice with a map from the Junction City Planning Commission and City Council received in late July was the first notice they received of the public hearings on proposed land use regulations that may affect the permissible uses of their property and the first receipt of a map, showing their property was being affected. The map was titled Junction City Proposed Changes and included their floodway channel in the proposed WRD Overlay. There was no indication in the notice or on the map that the wetlands inventory had already been completed and filed with the DSL. The map showed the JC logo at the top and the LCOG logo at the bottom. In the week prior to the JC Planning Commission's public hearing on August 16th, he collected the signatures of nearly 200 Junction City citizens on a petition opposing the wetland designation of the channels on private land. Subsequent to the JC Planning Commission's public hearing, additional petition signatures were submitted by friends and neighbors for a total of over 200 citizens opposed to wetland designation of private land. These citizens equate to 20% of the voters in the last JC election. The original objective of their channels to control water drainage is in direct contradiction with the EPA's wetland objective of allowing an area to return to its native state. EPA regulates wetlands for public benefit, and the WRD proposal includes the objective of Junction City protecting wetlands as a community asset, which implicitly takes privately owned land into public domain, and wetland designated land is subject to the present and future regulations of EPA. But it is the private landowners of designated wetlands that remain legally obligated to pay real estate taxes and liability insurance premiums on the wetlands. If a landowners wants to build anywhere near a designated wetland on their property, DSL can determine where the general wetland boundary is for the 2012 fee of \$378, but before proceeding, the area must also be delineated by a wetland scientist. This will cost the landowner a minimum of \$3,000 in today's dollars for a small residential project, in addition to all presently existing permitting costs and fees. Their property is part of the Stanley Hall Subdivision, July 2, 1964 recorded plat which created a 20 foot wide floodway channel easement to be used as such forever by dedication by Stanley and Doris Hall to and accepted by the City of Junction City. This mutual promise did not include the City designating it a wetland to use as a community asset. He asked that the Council please review the letters and testimony he and his wife had provided to the Planning Commission.

Mr. Clark "Corky" Wilde, 1180 Quince Drive, Junction City, stated that they respectfully requested that the Council leave the public hearing open for 30 days to allow for additional public comment. When they first read the notice of proposed land regulation to adopt the new wetland resources overlay district, they were surprised that the drainage ditches were listed as possible wetlands. These ditches were not wetlands, but were manmade ditches created for flood control and had been in existence for many years. The vegetation in the ditches was the same as that growing in vacant fields outside the City limits. They were concerned that the variety of proposed land use regulation changes were being lumped together under one ordinance amendment. They requested that the Council remove the wetland issue from CPA-12-01 and not approve the amendments as currently written, as it would not be in the best interest of the City and its residents to approve them. It was noted at the August 16, 2012 Planning Commission meeting that the state would continue to allow the City to maintain the drainage ditches,

but this verbal agreement could be changed in the future. New regulations could be implemented in the future regarding wetlands that could end up causing more stipulations, taking of their land, and other costly requirements. The Planning Commission made some changes to the wetlands at their meeting on August 29, 2012, but he did not want the drainage ditches to be classified as wetlands, because they were not wetlands. A wetlands designation would make it harder for people to sell their homes and will cause their property values to decrease. If it took additional time to make these changes, that was part of being in City government and part of what the Council was elected to do.

Ms. Karen Wilde, 1180 Quince Drive, Junction City, deferred her time to Mr. Gary Crum.

Ms. Marian Tracer, 94505 Oaklea Drive, Junction City, deferred her time to Mr. Mike Reeder.

Mr. George Tracer, 94505 Oaklea Drive, Junction City, gave his time to Mr. Mike Reeder.

Ms. Katherine Garvey, 94705 Oaklea Drive, Junction City, deferred her time to Mr. Gary Crum.

Ms. Margy Nitzel, 93317 Prairie Road, Junction City, deferred her time to Mr. Michael Reeder.

Mr. James Hukley, 1382 Cloudmont Drive, Junction City, yielded his time to Mr. Michael Reeder.

Mr. Mike Reeder, Law Firm of Arnold Gallagher, 800 Willamette Street, Suite 800, Eugene, stated that he had been representing GMH and Lou Hanavan for 48 hours, and they had hired a wetlands biologist to inspect their property. The biologist determined they did not have wetlands, and he provided written documentation and photos to the Council. He continued that the first threshold issue was whether or not these ditches were wetlands, and he believed the inspection done by the biologist was a representation for all of the drainage canals. He requested that the Council leave the record open for 30 days, so he could provide a detailed wetlands analysis from their consultant. He added that a secondary issue was if the canals were wetlands (which he did not think they were), would they be locally significant. Winterbrook Planning had determined that the canals were locally significant wetlands, and he noted that out of the eight determining factors to consider land as wetlands, the central canal only had one. The hydrological significance was that these ditches provide a stormwater function and that is why they were created in the first place. There were no other indicators showing that these canals were locally significant. The third issue was the policy issue and the question that if these were wetlands and locally significant, does the ESEE Analysis require this governing body to attach additional local government regulations on the property. He referred to page 14 of the ESEE Analysis, "However protecting low quality LSW on otherwise buildable land can have the unintended consequence of increasing housing costs or decreasing job opportunities, which have adverse social consequences. Because most relatively low quality wetlands listed in Table 1 offer some aesthetic value and limited fish and wildlife habitat value, their protection should be balanced against the adverse impacts on the buildable land supply for housing and employment. Finally, Junction City decision makers place a high value on individual property rights and oppose unnecessary government regulations. Generally speaking, the City is opposed to multiple layers of government regulation and for this reason is loath to duplicate regulations already enforced by DSL. This social value accounts for the City's decision to provide flexibility in the Junction City Water Resources District." Mr. Reeder continued that he would submit to the Council that they take this same language and modify the ESEE analysis to apply no local, additional regulations on the canals, specifically the central canal. He noted that the ditches provide a stormwater function and do not have the cattails, salmon, and other features that wetlands in other riparian areas have. He reviewed that the easiest and best thing for the Council to do would be to determine that these ditches were not wetlands and remove that designation from the Local Inventory and WRD Overlay District. The alternative would be to not attach any additional local regulations, because he felt they were not significant and did not provide additional value to the City of Junction City.

Mr. Charles R. Wallace, 1120 Quince Drive, Junction City, deferred his time to Mr. Gary Crum.

Ms. Theresa Padilla, 1140 Quince Drive, Junction City, deferred her time to Mr. Gary Crum.

Ms. Claudia Allgood, 1160 Quince Drive, Junction City, deferred her time to Mr. Gary Crum.

Mr. Gary Crum, 25534 Hall Road, Junction City, stated that they were talking about the UGB expansion, wetlands, and other things, but he felt they were really talking about mistakes and what to do about them. He referred to advice he provided to former students on acknowledging mistakes, apologizing, and doing something to correct the damage done. He noted that citizens felt as though they were ambushed with a wetlands designation being assigned to their properties and had not been provided with an opportunity to provide input on that decision. He referred to Administrator Watson providing the wetland discussion history and that there had been many public opportunities for comment. He referred to obtaining wetland information from the DSL website: *Just the Facts about Local Wetlands Inventory*, bullet 8, "Hold a public meeting to review the draft maps. Planning Commission and elected officials also review the draft LWI products." *Frequently Asked Questions about Local Wetland Inventories* reads, "Can I comment on the wetland map before it is adopted by the City? Answer – Local knowledge is important to making the LWI as accurate as possible. The City will host a public meeting when the LWI is ready for review. Watch your local newspaper for the announcement or contact the Planning Department to be sure you are notified of the meeting." Mr. Crum noted that he had attended nearly every meeting on this issue over the last few years and wondered when this opportunity had been provided, so he made a public records request to City staff and asked for the announcement, agenda, and minutes of the meeting where this occurred. In response, he was provided with the meeting information for the March 16, 2011 CCPC meeting. Mr. Crum expressed his disagreement that the public had been given an opportunity to provide input at this meeting and stated that the City did not do what was legally required. He noted that this is why things had been adversarial and as difficult as they had been. Mr. Crum referred to OAR 141.086.350 Locally Significant Wetland Criteria (1) Exclusion, which reads, "Regardless of the standing in relation to the criteria in OAR 141.086.350, wetlands shall not be designated as locally significant if they fall within one of the following categories: A. Wetlands are artificially created from uplands that are created for the purpose of controlling, storing, or maintaining stormwater." He provided this information to staff and the argument changed to these were pre-existing stream beds. He expressed his disagreement that these were pre-existing streams and provided information to counter this, including speaking with the current and past Public Works Directors, speaking with Dodie Hall and other long time Junction City residents, and doing research on the maps and geology of the region. He referred to the precise north/south and east/west direction of the drainage ditches, which parallel existing streets and the grid of the City. He reviewed the Council options of Plan A: Approving the amendments as currently written; Plan B: Waiting to approve the amendments until the wetlands designation was removed from the canals; or Plan C: Write a letter to DSL, apologizing for not allowing public input, and asking them to retract their approval of the draft LWI, so the City could follow proper procedures in an expeditious fashion.

Council Questions

Mayor Brunscheon asked if there were any Council questions. Councilor DiMarco noted that he would like to hear comments from DSL representatives. Councilor Crenshaw added that she would like to have a definition of "wetlands."

Ms. Anna Buckley, Program Manager of DSL Wetlands Program thanked the Council for the opportunity to speak and hear all the comments. She continued that wetlands were defined in Administrative Rule and Statute, "Wetlands mean those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions." A standard methodology that the US Army Corp of Engineers developed was used to identify a wetland by using three indicators on the landscape – soils, plants, and hydrology, and you have to have all three in order to be a wetland. On the hydrology component, you have to have hydrology for two weeks or more and water on the surface or below the surface within 12 inches.

Some wetlands don't have all three criteria because of the way they are managed. For instance, a lot of areas on Agricultural lands that are wetlands are called Farm Wetlands because they are seeded and cropped with a different crop and if the land management ceased then the wetland vegetation would come back. That also can be applied for some of the canals in Junction City and if they've been mowed or sprayed, they may not have the wetland vegetation that would normally be there if the management practice ceased.

Councilor Crenshaw asked if the time of year made a difference for when the soil test was done to find the 12 inches of hydric soil.

Ms. Buckley responded that wetlands soils are called hydric soils and those soils could be looked at anytime of the year. The wetland hydrology in the soils will create redoximorphic features and some other indicators, which can be seen anytime of the year. When soil pores have been filled with water that used to be filled by air, anaerobiosis creates those certain features.

Mr. Bill Ryan, Assistant Director of the Department of State Lands, Wetlands and Waterway Division, stated that he wanted to address the issue of manmade versus natural status of the drainage ways. It's clear that those drainage ways have been excavated over time to maintain and enhance their flood carrying capacity. The primary function of those areas, if they were wetlands, was providing flood flow or drainage. The way the state regulation works is that manmade drainage features created entirely from uplands are not jurisdictional. DSL doesn't regulate those, but if they are created even in part from an existing or previous jurisdictional area, wetland, stream, or waterway, then that feature remains jurisdictional. They run into this all the time in agricultural lands, and it is rare that they run into this in a more urban environment. In many agricultural lands, coastal streams have been straightened and channelized in order to increase their drainage across the agricultural land, but they still function as salmon streams or other and are regulated by DSL, even though they might cross areas that did not used to have a stream channel in them. This is what can be seen in the east/west and north/south alignment of the Junction City drainage ways. He referred to some maps that they had brought to the meeting, which showed the drainage patterns of the meandering channels that go right into where Junction City was founded. The City grid was put on top of that, but those drainage features continue through the City and they have been manipulated to move them along roads and pass under culverts to exit the City to the northwest. So that is why those areas are still potentially jurisdictional in the LWI. The LWI was an information document, and the intent was to indicate where there were likely to be regulated wetlands in features. He referred to one of the property owners hiring a wetlands specialist to examine if their property was a wetland or not, and he had not seen that data yet, so could not comment on that. But DSL did have a process in place that would allow a refinement of the LWI. The process included DSL or someone else going out to a property and determining if a wetland was present on that property. If it is determined that the property is not a wetland, the LWI information would be refined. This refinement process is built into the planning process.

Councilor Crenshaw commented that Mr. Ryan had said that if even if part of a channel was in the original wetlands stream that would make the whole channel a wetland, yet if the soil test didn't uphold this, then it could be declared not a wetland through the refinement process. She asked for clarification.

Mr. Ryan responded that this was a confusing area and they had discussions on this frequently. The intent behind the Removal-Fill law was to protect those waterways and wetlands and the functions that they provide. In this case, it was really clear that those swales were providing a drainage function and the idea was primarily to protect the naturally occurring waterways. There was a recognition that a lot of naturally occurring waterways have been modified very significantly by people, but they are still providing those functions, whether it is a drainage function, water quality function, or habitat function in a lot of areas, and so the law says if you take a swale or a stream and you reroute that stream but it was a natural stream to begin with, then whatever that new alignment is, is still regulated by the Removal-Fill Law.

Councilor Crenshaw stated that she was hearing Mr. Ryan say that the drainage ditches inside Junction City limits were regulated by DSL.

Mr. Ryan responded yes they were, as far as they could tell from the information that had been provided by the Local Wetland Inventory. The refinement process was really intended to provide a more refined scale. The Local Wetland Inventory consultants did not visit or do a soil test at every single property. They looked at the information that was available - the topography, the soils, the drainage patterns, and they did do field verification. Based on the information that they have collected, those areas appear to be jurisdictional, but that final determination would depend upon a determination by DSL.

Ms. Buckley added that the drainage ditches would be regulated as a wetland or a waterway, so if they did not meet wetlands criteria and it was a relocated natural waterway then they would still be regulated by the state; it would just be regulated as a waterway and not a wetland.

Councilor Crenshaw asked if the City would need to receive permission from DSL to mow the drainage ditches, if the City did not adopt their standards for maintaining the ditches.

Ms. Buckley responded no. Whether or not Junction City adopts a wetlands overlay, DSL would regulate these features, assuming they were jurisdictional, whether they were wetlands or waterways. The Removal-Fill Law regulates earthwork, and DSL does not regulate vegetation removal or spraying. If the City was going to excavate the ditches and it exceeded 50 cubic yards then the City would need a permit.

Mayor Brunscheon asked if there was a cost for property owners to go through the refinement process.

Mr. Ryan responded there was no cost from DSL. Caroline Stimson, DSL staff, primarily does this work and would go out to the property and look at soil, vegetation, and hydrology and make a determination as to whether there was likely to be a wetland present on the site or not. If there were no wetlands there, DSL would still be looking to see if it was a waterway or drainage feature. DSL could do this on a case by case basis, or property owners could also hire a consultant to do that work.

Ms. Buckley added that they had brought wetland determination forms to the meeting and she encouraged people to take a copy if they wanted to request a free onsite inspection. She clarified that there had been mention of a DSL certified wetland biologist, but DSL does not certify wetlands consultants. There was no certification in the state, and wetland consultants come from a variety of backgrounds, such as biologists, engineers, geologists, soil scientists, and hydrologist. That is why any wetland determination or delineation that was done by a consultant had to be reviewed and approved by DSL before DSL would say it was a jurisdictional determination. She encouraged property owners that hire a consultant to make sure to have DSL review the information, so they could make sure that it meets the standards that they need to follow.

Councilor DiMarco commented that before DSL received the LWI from City staff last June, it had not been approved by the Planning Commission or Council and had been proposed by staff that it be adopted as part of this process with the rest of the package. He asked what DSL's jurisdiction was over the canals, before receiving the draft LWI.

Ms. Buckley responded that DSL would have regulated earthwork in the canals, prior to the Local Wetland Inventory being submitted to them.

Mr. Ryan added that their regulatory authority would extend to those ditches if they were waterways or wetlands, before the inventory or after the inventory.

Councilor DiMarco noted that it has been stated in certain venues that the City having an overlay and another layer of regulation would be better for the City because it would protect the City from DSL regulations, but he had not seen anything to substantiate that. He added that it seemed like DSL's level of regulation would be less than what the City was proposing, and he asked for DSL comments on this.

Ms. Buckley responded that she had not read the City's Wetland Overlay Proposal in detail, but generally Local Wetland protections prohibit vegetation removal. It was required by Goal 5 to protect them, and the ESEE Analysis allowed the City to do some partial protection. The state regulations don't regulate vegetation removal, and the City

could apply for a permit to impact wetlands and then do mitigation elsewhere. She noted that doesn't work as well when there were conveyance drainage canals that are needed to maintain connectivity, and she didn't think that people would want to be putting structures in the canals. In some ways, local protection program provides more protection for the resource than the state, but it was a matter of opinion.

Councilor DiMarco stated that he had also heard that originally DSL was the cause of the 20-foot buffer zones, but through further research he had heard that DSL was concerned with the high water mark and that the buffer zones in the overlay were City initiated.

Ms. Buckley responded that the 20-foot margin of error, originated from the Department of Land Conservation and Development, and about seven years ago, DSL developed a model code that local governments could take and modify for their individual local community needs. Within that is a margin of error that has to do with the accuracy of the LWI, and with improved tools, the LWI polygons are accurate within five meters. So they just rounded up to 20 feet in the model ordinance that local governments can adopt. This area is used as a screening tool to give more scrutiny to prevent the landowner from inadvertently working in wetlands, but the 20-foot margin of error is not something that DSL regulations require.

Councilor Sumner asked about the Clean Water Act regulations governing the waterways. Ms. Buckley responded that the DSL gets their authority to regulate wetlands and waterways from the Removal-Fill law, which is a state law that was passed in 1967. There is also the Clean Water Act, Section 404, and that is implemented by the US Army Corp of Engineers. The Environmental Protection Agency (EPA) gave authority to the Corp of Engineers to implement that, and the Clean Water Act is a separate set of regulations.

Councilor Sumner asked for clarification that the drainage ways were governed by DSL, whether designated as wetlands or waterways, and that DSL determines whether it is a wetland. Ms. Buckley responded that DSL makes a determination of state regulated wetlands and does regulate wetlands and waterways.

Councilor Sumner asked about the dedication of land from Stanley Hall. Mr. Hanavan responded that Stan and Dodie Hall dedicated the land to the City for the use of the waterway, but the property owners still own the property and pay taxes on it.

Councilor Sumner referred to the CCPC public meeting where it was voted 11:2:2 to process the draft LWI. His assumption was that it was then going to go to the Planning Commission and Council before being sent to DSL, but that did not occur.

Councilor DiMarco noted that had the process been followed as Councilor Sumner had stated, DSL might have received a different version of the LWI, especially if the Council and Public Works had been able to provide input. He asked for comments on amending the LWI.

Ms. Buckley asked what specific amendments the City would want to make. She continued that the LWI relies upon a scientific method for identifying wetlands and assessing their functioning using the Oregon Fresh Water Wetlands Assessment method. Based upon what she knew of the results of the Local Wetland Inventory, the scientific information would not change. Based upon her cursory review of the process for public involvement, it looked like there was adequate opportunity, not unusual to any other local wetland inventory public review process.

Councilor DiMarco asked for further clarification on LWI amendments.

Ms. Buckley responded that they have not had any City ask to have LWI approval removed, but they have had amendments to the LWI and that process was outlined in state rules. This would include reopening and getting new information, and this would probably take a year to process.

Mr. Ryan added that the department had already approved the LWI and was comfortable with that approval, based upon the information that was provided by the consultant. A

request to amend it would need to come with technical information and field data to support the amendments. Then DSL would review to see if that made sense or not.

Ms. Buckley stated that she was in Junction City for the first public meeting in March of 2009 or 2010, and she had met with Winterbrook Planning prior to that. She accompanied them on field reconnaissance and discussed these features. She also talked about this with the previous Planning Director. So as far as she knew, there was adequate, local government involvement.

Mr. Ryan added that DSL had a process in place for amending Local Wetland Inventory that has already been approved. DSL has not had a situation occur where a jurisdiction has asked DSL to rescind their approval of a LWI, so DSL would need to check with their legal counsel to see if that would be possible.

Councilor Crenshaw asked if DSL's approval of the LWI had included the 20-foot margin of error.

Ms. Buckley responded that the LWI approval was basically that the local wetland inventory was done and it met the administrative rules. The LWI was not a regulatory map, but was a planning tool and the goal for the accuracy was within five meters.

Councilor Crenshaw asked if that was the 20 feet.

Ms. Buckley responded that the 20-feet came from an overlay district ordinance. She added that not every wetland's polygon on a map would have that level of accuracy and some would have more than that, especially if they were topographically defined, which a lot of Junction City's ditches were.

Councilor Crenshaw stated that what she was asking was there had been a request from the Planning Commission to remove that 20 foot on certain pieces of the canals, and was that an amendment that DSL had already approved.

Ms. Buckley responded no.

Councilor Crenshaw stated that if the City chose to remove the 20 feet, the City wouldn't be in violation of anything that DSL requires.

Ms. Buckley responded that was correct.

Councilor DiMarco noted that there was already fifteen feet or five meters.

Ms. Buckley responded yes and it was not a jurisdictional boundary until they actually get a delineation and the 20-foot margin of error was in the City's ordinance. DLCDD was going to have to approve the City's wetlands protection plan, and as far as she knew, it was not a state statute or rule to have that margin of error.

Mayor Brunscheon and the Councilors thanked Ms. Buckley and Mr. Ryan for their attendance and input.

Attorney Connelly stated that she had received a written request during DSL testimony from Mike Reeder, on behalf of Discount Windows, to leave the record open. This brought the total to three requests to leave the record open. She reviewed that the City's code was not clear on whether the Council needed to leave a record open or not, but the code did provide that in Type IV hearings such as this, that upon request, the Planning Commission shall keep the record open for an additional 7 days.

Mr. Haag asked if he could speak. Mayor Brunscheon responded that he could after the break.

Mayor Brunscheon announced a break at 8:33 pm. The meeting reconvened at 8:47 p.m.

Mr. Haag stated that they had heard the Assistant Director of DSL state that ditches and waterways would be regulated by the DSL whether or not on the wetland inventory, and these ditches and waterways did not just magically appear. They also heard Ms. Buckley say she was here for public meetings on Phase I, and if they redo this work packet, it

could take up to a year. The Director said this would be new territory, and when Mr. Haag heard new territory, it sounded like bifurcation. The most important thing he heard DSL say was the process allows for refinement after it was adopted. So that means they could go back and look at the things that people would like to see changed. The Planning Commission had removed the overlays from the ditches. The canals are protected just as they were before and according to DSL since 1967. The commercial land need was a huge benefit to Junction City's tax base and it couldn't be ignored. It was going to be a huge tax base for the schools, for the fire department, and jobs for Junction City. This would not create traffic, but would save a million trips a year to Eugene to spend 25 million dollars that Junction City gives Eugene every year. He asked the Council to move this forward with a unanimous vote.

Mayor Brunscheon asked for discussion on the Council wishes for closing or leaving open the public hearing or records.

MOTION: Councilor Christensen made a motion to close the hearing.

Councilor DiMarco asked when Lane County's public hearing would be scheduled.

Administrator Watson responded that it was originally October 16th, but that date would not work for the county, due to staff turnover. The County needs 30 days advance notice from the City to hold their meeting.

The motion died, for lack of a second.

Mayor Brunscheon asked if the Council wanted to leave the record open for 7 days or up to 30 days.

Councilor Crenshaw stated that since the county had already changed their schedule, she was in favor of leaving open for a short period of time.

Councilor DiMarco stated that he did not see the point of leaving it open, unless it was left open long enough to make a difference and come up with new solutions.

Councilor Christensen stated that from what they had heard tonight that the result was going to be the same and he didn't see what additional public testimony was going to bring forth that hadn't already been provided.

Councilor DiMarco stated that he hoped that if the Council did leave the public hearing open that staff and the Council would be working in the meantime to come up with a solution. He noted that the process had been flawed, and the citizens deserved every chance to make their case. He added that he did not agree that the designations were inevitable, no matter what.

Councilor Sumner asked about the refinement process.

Ms. Buckley responded that a wetland determination by DSL included a DSL staff member going on site and writing a report. If changes are made, that is the refinement. That process can take a couple of weeks, depending on current DSL staff load as they only have 2.2 full time employees. If a property owner hires a consultant to do the wetlands determination, it is then submitted to DSL for review and they have 120 days to make a decision, but usually determinations are made within 60 days. Mr. Ryan added this was property by property.

Councilor Sumner asked Mr. Bob Parker from ECO NW if in he had seen a wetlands inventory that was done by a consultant changed by another firm. Mr. Parker responded that he had not.

Mayor Brunscheon stated that the Council needed to make a decision.

MOTION: Councilor Sumner made a motion to leave the record open to receive written testimony for 7 days and close the record for oral testimony. The motion was seconded by Councilor Nelson.

Councilor DiMarco noted that the County was not ready and he did not think they would be ready in 7 days. He recommended leaving it open for a longer period of time.

VOTE: The motion passed by a vote of 5 to 1, with Councilors Sumner, Leach, Nelson, Christensen, and Crenshaw voting in favor and Councilor DiMarco voting against.

Mayor Brunscheon stated that the written record would stay open for 7 days until Friday, September 14, 2012 at 9:00 a.m.

After discussion, the Council consensus was to hold a special Council meeting on Tuesday, September 18, 2012 at 6:30 p.m. to continue deliberations.

Mayor Brunscheon thanked the public for their attendance and comments.

IV. ADJOURNMENT

As there was no further business, the meeting was adjourned at 9:09 p.m.

ATTEST:

APPROVED:

Kitty Vodrup, City Recorder

David S. Brunscheon, Mayor