

*City of Burien*

BURIEN PLANNING COMMISSION MEETING

March 16, 2010

7:00 p.m.

City Council Chambers

MEETING NOTES

**Planning Commission Members Present:**

Joe Fitzgibbon, Jim Clingan, Janet Shull

**Absent:**

Rebecca McInteer, Rachel Pizarro

**Others Present:**

David Johanson, senior planner; Scott Greenberg, planning director; Nicole Faghin, Reid Middleton, Inc.

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**Roll Call**

Because a quorum was not present, the meeting was not officially called to order. Chair Fitzgibbon began the informal discussion at 7:00 p.m. and presided.

**Agenda Confirmation**

Absent a quorum, no action to approve the agenda was taken.

**Public Comment**

Chair Fitzgibbon explained that the commission could not take public comment without a quorum.

**Approval of Minutes** – None

**Old Business**

- A. Shoreline Master Program Update: Discussion and Possible Recommendation

The discussion began with item 21F. Senior planner David Johanson noted that staff was not recommending a change to the proposed policy language. The commissioners concurred with the language as proposed.

With regard to item 21G, Mr. Johanson said the policy language was taken from the Comprehensive Plan. He said the suggestion was made to replace the word “waterfront” with “publicly owned street ends.” He stressed that absent a significant change in the

meaning or intent from what is in the Comprehensive Plan, staff suggests against making changes.

Commissioner Shull agreed with the recommendation of staff not to change "waterfront" to "publicly owned street ends" in every instance where the term appears in the policies. Commissioner Clingan concurred. Chair Fitzgibbon agreed with the notion of being consistent with the Comprehensive Plan language, but suggested "publicly owned street ends" could in some cases be clearer.

With regard to 21H, Chair Fitzgibbon suggested the language of the first sentence should be consistent with the Comprehensive Plan. He supported the addition of "protects private property rights and individual privacy" in paragraph (a). Commissioner Clingan agreed. Commissioner Shull agreed as well but said it was not absolutely necessary to add the language given that the concept is in one of the overarching goals.

Mr. Johanson called attention to paragraph (b) and said the only exception staff had to the proposed additional language was the phrase "when used in a manner that results in no net loss of shoreline ecological function," noting that the phrase is repeated often throughout the document; adding it to (b) would not be of any particular benefit. Mr. Johanson also informed the Commission that staff was not in favor of striking out "any new parking that is developed would be."

Chair Fitzgibbon suggested (b) should read "Ensuring that public parking is available and limited to a level appropriate to the capacity of the public access site, and is harmonious with the surrounding neighborhood." He said both new and existing parking should be harmonious with the neighborhood. Commissioners Shull and Clingan concurred.

Mr. Johanson said staff agreed with the suggested language in paragraph (d). The commissioners agreed. Commissioner Shull observed that the first "and" could be eliminated.

Mr. Johanson suggested the proposed additional language for (e) would not be beneficial since the entire section is talking about street ends. Commissioner Shull agreed and proposed that the new language would not be helpful at all. She recommended against including it.

Chair Fitzgibbon suggested (e) should read "Installing limited trail improvements and enhancements in city rights-of-way to allow access to the water." Commissioner Shull said she could support that language.

Commissioner Clingan asked what "installing limited trail improvements" would consist of. Mr. Johanson said that would be one way the City could manage its street ends. Commissioner Clingan said he wondered where the trails at the street ends would go but said he could live with the language suggested by Chair Fitzgibbon.

Commissioner Shull allowed that in light of the overarching policy language paragraph (e) may belong somewhere else. Mr. Johanson pointed out that item 21L talks about promoting a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points, which pretty well captures the intent of paragraph (e).

Community Development director Scott Greenberg commented that all of the subsections of 21H refer solely to street ends. Paragraph (e) talks about how people get from street ends to the water. Use of the word "limited" implies that major trail systems or connections are not what are being called for.

Chair Fitzgibbon said if that is the case, "Installing limited trail improvements and enhancements in city rights-of-way to allow access to the water" would provide the most clarification. Commissioners Shull concurred.

Mr. Johanson asked if "city rights-of-way" should be used in all instances where the phrase "waterfront street end" is used. Commissioner Shull took a step back and said she would prefer to use "waterfront street end" given that that is the specific type of access talked about in the section. Commissioner Clingan concurred.

In the final analysis, the conclusion was that (e) should be left as worded.

With regard to paragraph (f), Mr. Johanson said the suggestion of staff was to have it read "Minimizing the potential impacts associated with their use on adjacent private property, including but not limited to protecting individual privacy and ensuring public safety." The commissioners agreed with the proposal.

Mr. Johanson suggested paragraph (g) should read "Developing a street ends plan that promotes waterfront access and public safety." Chair Fitzgibbon concurred.

Commissioner Shull noted that "public safety" had been added to (f) and as such having it in (g) would be redundant. She allowed that including the phrase would not cause any harm.

Mr. Greenberg said the recommendation of staff was not to use the suggested language changes for item 21I, consistent with the commission's previous discussion regarding "shoreline" and "waterfront." The commissioners agreed.

Mr. Greenberg pointed out that the original language of item 21J talked about both existing and future visual access to the shorelines. The proposed language change would apply only to existing visual shoreline access. He said staff was recommending against making that change.

Commissioner Clingan said he had been mildly entertained by the visual aspect references in the document. He said visual access requires designated view corridors, which is not something the law would allow the City to require across private property.

Nicole Faghin with Reid Middleton explained that a visual corridor or visual access would apply only where there is designated public access, either visual or physical. The first step would be to determine if public access has been applied to a property. If it had been, the second step would be to determine if it is physical or visual. So it would need to be determined if a property is in the realm of being considered something that might have public access applied to it.

Chair Fitzgibbon suggested that if the word "City's" were to be deleted from 21J, the applicability of the policy would be expanded. Mr. Greenberg said the word is intended to clarify which shoreline is specifically being referenced.

There was agreement to leave the language as originally written.

With regard to item 21K, Mr. Greenberg suggested that to make the proposed revision would change the tone of the policy. He added that using only the words "preserved" and "preserving" would be inconsistent with state law that talks about enhancing public access to the shorelines. He said the recommendation of staff was to not change the language from the original drafting. The commissioners agreed.

Moving on to item 21L, Mr. Johanson said the recommendation of staff was not to make the proposed wording change.

Commissioner Clingan agreed, suggesting that the additional language would be redundant. Commissioner Shull agreed as well, as did Chair Fitzgibbon who added that "on publicly owned lands" could preclude the City from options property owners may at some point actually want.

Mr. Johanson explained that the intent of item 21M is to make it clear there is policy language and a permitting process in place to address how bring about access as part of a subdivision should one be proposed. He said access just does not happen on its own; it is usually associated with some other permit application.

Mr. Greenberg said there was no proposal to change the language of 21N. He said staff did not oppose having a plan for public access, pointing out that the City has plans for streets, bicycle and pedestrian paths, capital improvement plans, parks and open space plans. A public access plan would fit into the realm of functional plans that help implement policy language. The City Council would need to add the creation of a public access plan to the work program at some future time. There is no requirement to include such a plan in the Shoreline Master Program.

Commissioner Shull said she would like to see the commission suggest to the council that creating a public access plan should be added as a work program item. Mr. Greenberg said staff would review the issue and come back with a recommendation as to whether it should be policy language as part of the Shoreline Master Program or a separate work program item.

Mr. Greenberg pointed out that item 23 applies to SW 172<sup>nd</sup> Street and the suggestion made was to add the term "historically significant community" to the regulation. He said staff could find no instance in which making the revision would actually change the regulation, so was recommending not adding the term.

Chair Fitzgibbon said he could empathize with the concern but suggested the Shoreline Master Program is not the appropriate place to deal with the issue.

Mr. Greenberg said there were no recommendations for specific changes to items 24 through 27.

Commissioner Clingan suggested that the issue of access that is at the heart of item 24 was addressed by the commission on March 9. If access becomes an issue down the road, the impact on Lake Burien will be addressed appropriately.

Chair Fitzgibbon concurred and added that the commission is not in a position to determine whether or not access will be good or bad relative to Lake Burien. It would be inappropriate to include in the Shoreline Master Program a statement indicating that there will never be access to Lake Burien, or that there definitely will be access to Lake Burien. If the issue of access arises at some point, it will need to be evaluated according to the standards and state law.

Commissioner Shull agreed.

With regard to items 25, 25A, 26 and 27, Chair Fitzgibbon said the issues raised are not questions the commission has been asked to answer. In each case, the answers would come as part of a formal process at a later time.

Turning to item 28, Mr. Greenberg explained that the comment refers to 20.30.035.2 and subparagraphs (a), (b) and (c). He said the suggestion is that the subparagraphs should be clarified so that the existing property along SW 172<sup>nd</sup> Street will not be impacted or disturbed in any way in order to provide physical or visual access to the water. The criteria in (a), (b) and (c) apply to shorelines of the state and inside the shoreline jurisdiction. He said staff was recommending that the draft language be retained.

Commissioner Shull agreed with the recommendation of staff.

Commissioner Clingan said the concern relative to SW 172<sup>nd</sup> Street is that the improvements planned for the south side of the street could trigger the access issue. There are some open right-of-way areas that are the cause for concern for some citizens. However, the areas are surrounded by private property and are not set to be developed. He agreed the language should be left as it is in the draft. Chair Fitzgibbon was in agreement with Commissioner Clingan.

Mr. Greenberg suggested there was nothing relative to items 29 and 30 that would justify making a change to the draft language. The commissioners agreed.

Mr. Johanson said staff did not have any objections to the proposed wording change for item 30A, but noted that it is repetitive and would not add much to the goal. Commissioner Clingan agreed. Chair Fitzgibbon also agreed but added that while redundant he would not object to leaving it in; when the time comes to look at the plan in full, it could be determined that some of the redundant language could be eliminated.

It was agreed to leave in the proposed additional language.

With regard to item 30B, Mr. Johanson called the attention of the commissioners to item 69 and suggested policy REC 2 should read "Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses and result in no net loss of ecological function." He said the phrase "leave the natural areas undisturbed and protected" could limit possibilities.

Mr. Greenberg noted that item 69 is part of the recreation element, though there are public access aspects involved vis-a-vis parks, recreational facilities and open spaces.

Chair Fitzgibbon favored the proposed language for item 69 but asked if staff was suggesting the same language for item 30B.

Commissioner Shull said it was her understanding staff was suggesting not making the changes proposed for the first part of item 30B and changing the last part of item 30B to read the same as the proposed language for item 69. Mr. Johanson said that was the intention of staff. Commissioner Shull suggested the proposed language change for the first part of item 30B was not necessary because in all instances where the policy will be applied the City will have to consider the designation of the shoreline environment.

The commissioners supported the recommendation of staff.

Commissioner Shull called attention to a letter the commission received subsequent to the March 9 meeting. She observed that the letter referred to some existing Comprehensive Plan language related to SPA-2, the Ruth Dykeman Center. In short, the existing Comprehensive Plan policy language is clear in saying that public access to the water is prohibited. She said she was surprised to find out that language exists. Mr. Johanson said staff is looking into that policy language to determine if it is consistent with the Shoreline Management Act and the state guidelines. Help has been sought from the Department of Ecology and there should be an answer before the next commission meeting. If it is determined that the existing language is inconsistent, it will need to be changed through the proper process.

Mr. Johanson said the issue with the proposed wording change to item 30C is the addition of the word "public." He said the recommendation of staff was not to make the change.

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Chair Fitzgibbon expressed the view that the change would not add much value to the section or yield better protections for private property. Commissioners Clingan and Shull agreed.

Mr. Johanson said staff was not recommending the proposed change to item 30D. The commissioners unanimously agreed.

Mr. Johanson said staff agreed with the suggestion to change "facility" to "facilities" in the first part of item 30E, but did not agree with the suggested wording change to the rest of the section. The commissioners agreed.

Mr. Johanson noted that beginning with item 30F the focus was on the circulation element. He commented that there is an inherent conflict associated with providing circulation systems; it is not possible in every case to absolutely protect privacy. While the objective makes sense and is something the City strives to do, the proposed wording will not resolve every conflict. He said staff was recommending no change to the original wording of item 30F. The commissioners accepted the suggestion of staff.

With regard to item 30G, Mr. Johanson reminded the commissioners that one of the overarching policies is to protect private property rights and suggested the proposed language revision was not needed. The commissioners concurred.

Mr. Johanson said staff agreed with the proposed language for item 30H. Commissioner Shull said it would be a hard sell to convince public transit agencies to provide public transit to every little street end in the city.

Chair Fitzgibbon suggested the policy is moot given how unlikely it is that Metro would add a new bus route to serve places like Maplewild Avenue. He said, however, that he could support the recommendation of staff. Commissioner Clingan agreed.

Turning to item 30I, Mr. Johanson said the recommendation of staff was to have it read "Parking in shoreline areas should directly serve a permitted shoreline use. Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights."

Commissioner Shull said she would prefer to see the last part of the section read "and is harmonious with the surrounding neighborhood." Private property rights are protected by law, and the focus should be on parking areas that will fit the local neighborhood. The other commissioners concurred with the suggestion.

Mr. Johanson said staff was not recommending any change to item 30J. Chair Fitzgibbon said he could support adding "harmonious with the neighborhood." Commissioner Shull agreed with the sentiment but suggested that it did not need to be repeated in each policy. Commissioner Clingan agreed.

Mr. Greenberg said the focus of item 30K is the notion of having efficient parking in the shoreline area. The proposed language would change the meaning and have it apply only to parking facilities on public land. He said staff was recommending no change.

Commissioner Shull proposed that making the change would trigger the loss of the value of the policy, which encourages shared parking and minimizing impervious surface area. Chair Fitzgibbon and Commissioner Clingan agreed.

Mr. Greenberg explained that item 30L is policy language relating to utility facilities and is in the circulation element because of the utilities that exist in public rights-of-way. He said staff was recommending not making the proposed change. The commissioners concurred with staff.

Mr. Greenberg noted that item 31 deals with public access regulations. He said section 20.30.035(2.a) states that public access provided by shoreline street ends, rights-of-way and other public lands shall provide, maintain and enhance visual access to the water and shoreline in accordance with RCW 35.79.035. He noted that the commenter mentioned that the section of the RCW only concerns limitations on vacations of streets abutting bodies of water. The section talks about maintaining, enhancing and preserving access and connects back to state law. He said the recommendation of staff was to leave the regulation unchanged, and the commissioners agreed.

Mr. Johanson pointed out that item 31A had been addressed at an earlier meeting of the commission. With regard to item 31B, he pointed out that the language of paragraphs (a) and (b) was taken directly from the Comprehensive Plan. For the sake of consistency, the action taken with regard to item 21C should apply to (a); he said staff was not recommending any change to that paragraph. The recommendation of staff was accepted by the commissioners.

Mr. Johanson said (b) refers to Policy PA-4 and recommended eliminating "on private lands" and approving the balance of the proposed wording change. The commissioners agreed with the staff recommendation.

With regard to (c), Mr. Johanson said the recommendation of staff was to retain the original language. He pointed out that the City has always been reticent to get into the business of regulating views. The commissioners offered no opposing views.

Mr. Johanson said in light of the previous discussions with the commission, staff was recommending no change to paragraph (a) of item 31C. The commission accepted the recommendation.

Mr. Johanson proposed not making the suggested wording change to paragraph (b). Chair Fitzgibbon stressed the need to be consistent with the existing policy language, but said that did not mean the City should encourage the broadening of roadway shoulders, especially in the shoreline. Mr. Johanson pointed out that roadway shoulders can be used for bike lanes.

Commissioner Shull said when she thinks of visual access to outstanding scenic areas she thinks of roadside pullovers. She said she associates the broadening of road shoulders more with safe walking and biking areas. She said she could agree to retaining the original language.

Mr. Greenberg suggested the language could be broadened to refer to visual access being provided along city rights-of-way in an appropriate manner. The commissioners said they could support revising the language in that way.

With regard to paragraph (c), Mr. Johanson recommended keeping the existing Comprehensive Plan language. The commissioners concurred.

Mr. Johanson noted that paragraph (d) had been covered in previous discussions.

The commissioners agreed with the recommendation of staff not to change the language of paragraph (h).

Mr. Johanson read to the commission section 20.30.085(2.h) that is referenced by item 31D. He explained that the issue was discussed in detail by the Shoreline Advisory Committee. The notion of hand-carried watercraft was brought forward as a way to limit the possibility of introducing invasive species to Lake Burien. He said staff was not recommending any changes to the language. The commissioners agreed with staff.

Item 31E was discussed earlier in the meeting.

Mr. Johanson directed the attention of the commission to items 67 and 68, which he noted both related to public access. He noted that the comments relative to policy ALL 5 and PA 3 had been addressed already. He commented that the issue relative to REC 3 also had been dealt with.

With regard to item 83, Mr. Johanson commented that the issue is related to the topic of the number of lots in a subdivision that could trigger public access. He said there are approximately 90 lots within the shoreline jurisdiction around Lake Burien. To determine the implications of access and lot capacity, staff looked at the existing lot sizes and applied the buildable lands capacity methodology. The zoning around the lake is RS-7,200, which means the minimum lot size is 7,200 square feet. Multiplying the minimum times five yields 36,000 square feet, which is the amount of land that would be required to get a five-lot subdivision. However, it must be kept in mind that access tracts, stormwater tracks and the like do not count toward the total lot area. On average, about 10 percent of the land area is needed for access-related items, which means that approximately 40,000 square feet is needed to achieve five lots. There are four lots on Lake Burien that meet that criteria based on lot area alone, and Mr. Johanson showed the commissioners aerial photos of each one with the lot configurations outlined.

Mr. Johanson called attention to item 86 and the concern about private property liability when public access points are open to unregulated public access. He referenced RCW 4.24.210 that states that anyone who allows people to recreate on their properties without charging them for the privilege is not liable for any injuries, absent an obvious hazard that was previously known to the property owner.

Ms. Faghin brought the attention of the commission to the topic of bulkheads and other shoreline stabilization structures, beginning with item 39. She suggested that while the comment is a good one, the issue has been addressed sufficiently. She recommended against making any change. There was agreement not to make a change.

With regard to item 39A, Ms. Faghin said the issue in paragraph (a) deals with normal maintenance and repair of bulkheads. She said the concern is not being inconsistent with the exemption language of 20.35.025(4).

Mr. Johanson clarified that the language of 20.35.025(4) is taken straight from the WAC. The commissioners agreed that no change was warranted. With regard to paragraph (b) he said staff did not object to the proposed language change relative to minimizing the transmission of wave energy, and the commissioners agreed to allow the proposed wording.

Docks, piers and floats were addressed next. Ms. Faghin provided the commissioners with copies of proposed language revisions to section 20.30.075. She said one comment received pointed out inconsistencies in the definition. She said staff concurred and was suggesting use of the term "overwater structures" to refer to docks, piers, floats and rafts.

Ms. Faghin noted that items 41 and 44 both talk about the need for more information about repairing and replacing docks. She said staff took the existing section and broke it into three separate parts: general regulations for public and private overwater structures; repair and replacement of existing public and private piers and docks; and recreational floats and swim platforms, both repairs and new.

Ms. Faghin said the only major change to 20.30.075 is the use of the term "overwater structures." In the regulation section, no changes are recommended to paragraphs (a), (b), (c), (d), (e), (f) and (g), except for substituting the term "overwater structures." For paragraph (h), new development standards are introduced specific to how big the docks and piers can be that can be rebuilt. As proposed, there are size limitation standards for docks used by a single-family residence, joint-use docks shared between two properties, and docks shared by three or more residential units. New development standards also are outlined that address how wide a dock can be under the regulations handed down by the Department of Fish and Wildlife, which is 4 feet wide for the first 30 feet and 6 feet wide for the next 30 feet, with no more than two additional fingers a maximum of 2 feet wide, and ramps no more than 4 feet wide.

Ms. Faghin said there was a comment about grating, or structure types that allow light to penetrate. According to the Department of Fish and Wildlife, Lake Burien is not a

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salmon-bearing lake, so there is no requirement from them for grating. Accordingly, staff will not be requiring grating on Lake Burien.

Ms. Faghin said staff has included a development standard relative to pilings consistent with the Department of Fish and Wildlife. The department limits pilings to 5 feet in diameter and allows only steel or untreated wood. The spacing of pilings is predicated on limiting the total number of pilings in the water.

With regard to repair and replacement, Ms. Faghin said the recommendation of staff is to impose the standards that apply to the construction of new docks if 50 percent or more of a dock is to be replaced, and to use different standards where less than 50 percent of a dock is to be replaced. If all that needs to be done is replacement of the decking, the recommendation is that for docks that are 8 feet or wider should have grated decking to accommodate light penetration.

Ms. Faghin said the recommended regulations for floats and swim platforms would limit the total number of new structures on Lake Burien to two, limit the size of each to 150 square feet, require that they be located in 15 feet or deeper water up to 200 feet from the ordinary high water mark, and require that they be fully encapsulated. Any repair or replacement of floats and swim platforms would have to follow the development standards for docks and piers.

Mr. Johanson said staff was not expecting feedback on the new language until the next meeting.

With regard to shoreline designations and buffers, Mr. Johanson called attention to item 2. He shared with the commissioners a map showing the proposed Shoreline Residential and Urban Conservancy designations. One comment made was in regard to an area along Maplewild Avenue near the slide where there is a lot of intact vegetation and low-intensity residential uses that are set back from the water; the request was to protect the area by designating it Urban Conservancy. He said there are in fact houses along that stretch along with some vegetation, but not enough to warrant the Urban Conservancy designation. The commissioners were unanimous in not wanting to see the designation changed from Shoreline Residential.

Mr. Johanson said a comment was also received regarding the area near the Duffy property in which a different shoreline designation was requested. He said there are buildings in the area and a substantial amount of vegetation compared to other areas, but said staff was not recommending a change from Shoreline Residential.

Mr. Johanson said the third request was in regard to the private beach that is owned in common by the Shorewood Community Club. The argument made was that the conditions of the area match the criteria for Urban Conservancy. Mr. Johanson noted, however, that the size of the piece, the fact that it is surrounded by and is residential in nature, staff believes the Shoreline Residential designation is appropriate.

Commissioner Shull said she agreed wholeheartedly with staff regarding the first site. With regard to the second two properties, however, she said the comments had some merit. She agreed, however, with the notion that the small size of the two sites would argue against having a designation different from their neighboring properties.

Chair Fitzgibbon argued against breaking up the different designations and applying a different one for each reach. He agreed with Commissioner Shull that the argument could be made for Urban Conservancy for the second and third sites.

Commissioner Shull asked if the comments relative to the second and third sites had been run by the City's state Department of Ecology representative. Mr. Johanson said they had not and that he would do that. He added that for the community beach site, if designated Urban Conservancy the existing use would not be permitted.

Mr. Greenberg pointed out that according to the shoreline permit matrix, 20.30.001, there are only three differences between Shoreline Residential and Urban Conservancy: cell towers are a conditional use in Shoreline Residential and prohibited in Urban Conservancy; community beach is not a permitted use under Urban Conservancy; and residential multifamily requires a substantial development permit in Shoreline Residential and a conditional use in Urban Conservancy for areas zoned single family. There are differences between the two zones when it comes to development standards.

Commissioner Clingan said he would argue against changing the shoreline designations. Commissioner Shull agreed. Chair Fitzgibbon said his preference would be to edit the matrix to make community beach a conditional use under Urban Conservancy and to redesignate the second and third sites.

Mr. Johanson said a comment was made about the need to base the buffer width for the Urban Conservancy designation on science, which would mean at least 100 feet, preferably 150 feet. The draft table calls for a buffer of 50 feet. He pointed out that there is only one portion of the Urban Conservancy area that is not also a steep slope critical area, which also has vegetation management standards. A 100-foot buffer would fall either in the critical area or the shoreline buffer.

The commissioners were in agreement not to seek an increase in the buffer width.

**New Business** - None

**Director's Report** - None

**Adjournment**

The meeting ended at 9:46 p.m.