

City of Burien

BURIEN PLANNING COMMISSION MEETING

March 23, 2010

7:00 p.m.

City Council Chambers

MINUTES

Planning Commission Members Present:

Joe Fitzgibbon, Janet Shull, Jim Clingan, Rebecca McInteer, Rachel Pizarro

Absent:

None

Others Present:

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

Roll Call

Chair Fitzgibbon called the meeting to order at 7:04 p.m. Upon the call of the roll all commissioners were present.

Agenda Confirmation

Motion to approve the agenda as printed was made by Commissioner McInteer. Second was by Commissioner Shull and the motion carried unanimously.

Public Comment – None

Approval of Minutes

A. March 9, 2010

Motion to approve the minutes as submitted was made by Commissioner Shull. Second was by Commissioner Clingan and the motion carried unanimously.

Old Business

A. Discussion and Possible Recommendation: Shoreline Master Program Update

Senior planner David Johanson called attention to item 33 and said staff was in agreement with the proposed change to paragraph (a). He noted that the revision allows for maintenance of existing or approved conditions without a shoreline review or

vegetation management plan. Actions beyond the maintenance threshold, however, would need some sort of review. The commissioners concurred.

With regard to paragraph (b), Mr. Johanson said mitigation may not always be necessary where alterations to vegetation within the shoreline jurisdiction are made. He said the recommendation of staff was to revise the paragraph to state that if mitigation of impacts is necessary, it should take the form of a vegetation enhancement and should result in improvements to ecological functions.

Commissioner Clingan asked what triggers vegetation conservation requirements. He asked if the City will be directing property owners to change the vegetation in their setback and buffer areas. Mr. Johanson said vegetation management will only be required when alterations are made. According to BMC 19.10.020, alteration includes but is not limited to grading, filling, dredging, draining, channelizing, applying herbicides or pesticides, or any hazardous substance, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping or trimming or relocating or removing vegetation, or any other human activity that results in or is likely to result in impact to existing vegetation, hydrology, wildlife or wildlife habitat. Walking, fishing, passive recreation, or regular maintenance such as lawn mowing does not constitute alteration. Community Development director Scott Greenberg noted that the definition already applies within the shoreline area and all critical areas. The proposed language is more flexible.

Commissioner Clingan said he was concerned about including words such as pruning, noting that it could become an enforcement nightmare. Mr. Johanson said pruning could be considered to be regular maintenance, depending on the extent of the pruning. Pruning back a rosebush would be maintenance, but pruning a significant tree on a steep slope by removing the lower limbs would not. In the bigger picture, the vegetation conservation section seeks to fill the gap between existing critical areas and the water.

The commissioners agreed with the recommendation of staff.

Mr. Johanson noted that the proposed revisions to paragraph (c) and its subparagraphs are intended to provide additional clarification with regard to the notion of where revegetation is required the focus should be on the areas that are the most degraded. He said staff was not recommending the proposed change to subparagraph (iv) because the fact that lawn is not an acceptable ground cover is addressed in subparagraph (vi). He said staff agreed with the comments about subparagraph (v) in that any proposed alteration will result in the loss of vegetative areas; such losses will trigger improvements somewhere else.

The commissioners agreed with the recommendation of staff.

Mr. Johanson referred next to item 92 and noted that the same issue is called out in item 45. He said the initial discussion focused on accessory structures and where they can be located. The intent was to build in flexibility with regard to where accessory structures

can be placed. In item 45 the term of concern was “where feasible.” He said staff revisited that section and the wording of paragraph (g) under item 92 adds the word “appurtenances” in the context of how it is used in the shoreline management code. The notion that Whatcom County has a sort of administrative variance for such structures is not exactly correct; their administrative variance process is intended to deal with single-family structures. As proposed, accessory structures and appurtenances must be behind the home and outside of the buffer, with the exception of fences up to six feet tall, which are exempted. The “where feasible” phrase was eliminated.

There was unanimous consensus in favor of making the proposed change as recommended by staff.

With regard to paragraph (k) of item 92, Mr. Johanson said the proposed wording clarifies that detached accessory dwelling units are not allowed in the buffer or setback.

Chair Fitzgibbon referenced Comprehensive Plan policy HS 1.11 and asked if it would be necessary to modify it at some future time to acknowledge the change to (k). Mr. Johanson said he did not think so. Accessory dwelling units are permitted in the shoreline district, but not inside the buffer.

Commissioner Clingan asked what the outcome would be for an existing accessory dwelling unit located within 65 feet of the ordinary high water mark should the primary residence burn down. Mr. Johanson said the accessory dwelling unit would be allowed to remain; if determined to a nonconforming structure, the nonconforming section of the code would apply.

The commissioners supported the change as recommended by staff.

Nicole Faghin called the attention of the commission to item 16, noting that it has to do with the way the critical areas ordinance for Burien is set up. She said there is a clearly stated exemption from regulation for small Category 3 wetlands of less than a thousand square feet. By pulling the critical areas ordinance into the Shoreline Master Program, the areas also will be exempted from protection under that program. The issue was put to the Department of Ecology and their recommendation was to include the small wetlands in the shoreline program and regulate them.

Ms. Faghin said the code section in question is 20.30.025. With respect to the item 16 comment, a new item will need to be added to clearly state that “small wetlands less than a thousand square feet and hydraulically isolated, or manmade ponds smaller than one acre and excavated from uplands without a surface water connection to streams, lakes, rivers or other wetlands, will be regulated under the Shoreline Master Program as a wetland.”

The commissioners agreed to hold off making a decision about the proposed language until after reviewing how the issue would be regulated.

Ms. Faghin called attention to item 65A and the issue of how Lake Burien has been categorized as a critical area with respect to the Shoreline Master Program. She said the commenter suggests that the lake is called a Category 2 in one place and a Category 4 in another place. The inconsistency dates back to adoption of the critical areas ordinance in 2003 and involves a map and regulation language. When the critical areas ordinance was adopted, the King County map showed Lake Burien as a Category 2; that was pulled forward into the critical areas ordinance. However, the critical area regulations were written to call out Lake Burien as a Category 4. The two categories have different buffer width requirements.

Ms. Faghin said the inventory done for the Shoreline Master Program update was based on a mapping exercise, so it called out Lake Burien as a Category 2. When the regulations language was drawn up, the text of the critical areas ordinance was used as the foundation, so Lake Burien was called a Category 4.

The Department of Ecology was asked for direction. They indicated that with respect to the critical areas ordinance, the discrepancy will need to be addressed by the City in the next update of the ordinance. With respect to the Shoreline Master Program, an addendum or errata will need to be included for the inventory that explains the discrepancy and where it came from. Additionally, the regulatory language should have all references to any category stricken with respect to Lake Burien.

Ms. Faghin said the item 17 comment suggested the wetland rating system that should be used is the Washington State Wetland Rating System for Western Washington Revised. In 2003 when the critical areas ordinance was adopted, there was a different system in place that had been adopted by the Department of Ecology for identifying, delineating, categorizing and rating wetlands. The City adopted that system into the critical areas ordinance. The rating system has since been updated, however. The Department of Ecology wants wetlands as they relate to the Shoreline Master Program properly rated based on the new system.

Ms. Faghin said the Department of Ecology has recommended a three-step process for addressing the issue: a delineation, a rating system, and identification of buffers. The delineations are to be based on the very specific language of the delineation manual. Once a wetland is delineated, a rating for it will need to be evaluated based on the revised Department of Ecology rating system. The required buffer will be predicated on delineation and the category in accordance with the Department of Ecology manual documentation, Appendix 8C. The cleanest approach will be for the City to adopt the entire Department of Ecology document that determines buffer widths as an appendix to the Shoreline Master Program and reference it in the Shoreline Master Program. In addition, a wetland definition will be added to section 20.40 of the Shoreline Master Program, with the language taken straight from the RCW.

Appendix 8C will determine buffer widths on a case-by-case basis. The first step is to work through the rating system. Generally, a Type 4 wetland has a 50-foot buffer, and a Type 3 wetland as a 150-foot buffer. Appendix 8C allows for some flexibility in how to

determine buffers; it allows for reducing the width where there is more intense development, allows for buffer averaging, and so forth.

Mr. Greenberg said the flexibility incorporated into Appendix 8C eliminates the need for the City to create the science to support the flexibility. The Department of Ecology likes the approach, which will allow the Shoreline Master Program to comply with the Department of Ecology guidelines.

Answering a question asked by Commissioner Shull, Ms. Faghin said it will not be possible to determine where a specific wetland fits until it is categorized; size alone is not the determinant. The categorization process takes into account the functions and values of a wetland, which in turn informs the process of determining buffer width.

Chair Fitzgibbon asked who would be responsible for delineating and rating wetlands, city staff or the Department of Ecology. Mr. Greenberg said currently the City requires critical area studies for any development in a critical area. That approach will continue, so the applicant would have to pay to have the determination made.

Commissioner Clingan suggested the commission should hold off making a decision one way or another on the proposal until the next meeting, giving the commissioners a little more time to review the specifics. Mr. Greenberg said that would be okay with staff.

Commissioner Shull called attention to Figure 5 under 20.30.050 and noted that there is a reference to Lake Burien. She asked if those dimensional standards could change. Mr. Johanson pointed out that Appendix 8C applies only to wetlands. Some stretches of shoreline may not have any wetlands, and in those cases the riparian buffer would apply. Figure 5 would not change.

Commissioner McInteer said she liked the flexibility the proposed approach offers, but she agreed the commission should be given more time to review the particulars before reaching a decision.

Mr. Johanson turned next to item 49 and the topic of providing access to beaches via stairways or trams. The proposal is that impact to slopes should be minimized by having neighboring properties share facilities such as stairways or trams. He said the City's experience with sharing has been that sharing tends to be problematic. He recommended using the word "encourage" in place of "shall."

The commissioners agreed with the proposal.

Mr. Johanson called attention to item 91 and the process used to install a mooring buoy. The use matrix table in the proposed Shoreline Master Program calls for a conditional use permit. However, upon further review staff concluded that that process would be too onerous. In conference with the Department of Ecology, he said staff was recommending the review process should be shoreline exemption instead of a conditional use permit. Any other permits required by the Department of Natural Resources or the Department of

Fish and Wildlife would still apply. The commissioners agreed with the recommendation of staff.

The issue of overwater structures was focused on next. Mr. Johanson referred to the language supplied to the commissioners at the March 16 meeting.

Ms. Faghin said the issue relates to 20.30.075 and the need for overwater structures to be more inclusive. She said a global change was made to the text to correct that issue. The commissioners agreed with the revision.

Ms. Faghin noted that all new development standards were added to the section, starting with paragraph (h). Additionally, two new elements were added dealing with decking and piles to be consistent with the Department of Fish and Wildlife requirements. A new section was added with regard to repair and replacement as well, and another addressing floats and swim platforms.

Commissioner Shull called attention to paragraph (b)(i) and asked if the statement “all new overwater structures on Lake Burien are exempt from the grating requirement” should in fact reference replacement structures. Ms. Faghin said the section has to do with replacements of up to 100 percent, so the resulting replacement structure would in fact be an entirely new dock. She allowed that some rewording could provide clarity and proposed deleting “all new.” The commissioners concurred.

Commissioner Clingan referred to the development standards in paragraph (h) and suggested that the level of detail included is too much. Some of the details may not apply to specific properties, and the issue previously discussed relative to sharing stairways and trams may equally apply to sharing docks and the like. Ms. Faghin explained that the Department of Fish and Wildlife and Corps of Engineers standards are very strict, and applicants wanting a permit for a dock must obtain their permits as well as the City’s permits. The section was drafted to line up with those other processes so that an applicant will not find themselves spending time and money in design work only to find out that the City’s standards do not mesh with the standards of the other two permitting agencies. That was the reason for including all of the detail.

Chair Fitzgibbon offered his support for the specific language and the attempt to align the City’s standards with those of the other permitting agencies. What appears to be a new restriction will actually save property owners a possible costly step in the process.

Commissioner Clingan suggested the section will encourage people to take very good care of their existing docks. He also noted that a maximum of two new recreational floats will be allowed on Lake Burien, and asked where that recommendation came from. Ms. Faghin said that came from staff and the consultant and was based on the size of the lake and the programs of other jurisdictions.

Commissioner Shull said the programs in some jurisdictions allow either a dock or a swim float but not both. She said she was bothered by the strict limitation on swim floats

applicable to the entire lake. Mr. Johanson said staff could look into taking that approach.

Ms. Faghin clarified that the language relative to floats is intended to indicate structures anchored in 15 feet of water or more. Commissioner Shull said she could understand the reason behind the restriction but suggested it could be troublesome in practice. The limitation would make more sense if the floats were joint-use structures.

Mr. Greenberg pointed out that there are not a lot of guidelines for docks and overwater structures in the Shoreline Master Program guidelines. There is nothing included about the total number of floats or about what their maximum size should be.

Chair Fitzgibbon commented that if all of the property owners along Lake Burien have decided not to have a swim float, there will be no problem. However, there is a fairness issue involved: the strict limit means the first two in the door will be winners and everyone else will lose out. He said he could support language allowing either a dock or a float but not both.

Commissioner Clingan observed that the two floats currently in the lake appear to be part of the Lake Burien community. Mr. Johanson said he has been told that the floats are jointly owned, but that information has not been verified.

Commissioner McInteer suggested the staff should go back and get the information the commission needs in order to make a decision.

Ms. Faghin said limiting swim floats on waters where there could be conflicts between people and motorboats certainly makes sense. In the case of Lake Burien and along the city's marine shorelines, that particular issue does not really apply.

Staff was directed to come back with additional information and to take up the issue again at the next commission meeting.

Turning to the issue of nonconformance and the percentage threshold, Mr. Johanson said the staff reviewed nine readily accessible Shoreline Master Programs from other jurisdictions. Three of them included the notion of allowing single family residential structures to be rebuilt if they suffer damage not exceeding 75 percent. Six of the programs allowed single family structures to be replaced provided the replacement did not involve expansion or the creation of any new nonconformance. For one of the nine programs it could not be determined if it differed from the zoning code for the jurisdiction. Seven of the nine did not have a percentage threshold but stressed that replacement cannot create any new nonconformance. The WAC specifies that for jurisdictions that do not have their own regulations, structures damaged beyond the 75 percent threshold can be replaced only if they comply with all new regulations. Burien's regulations include a 50 percent threshold and require an application be filed within 18 months. Most jurisdictions require the replacement work to be completed within 24 months.

Chair Fitzgibbon pointed out that the current 50 percent standard was adopted by the City only a year ago and at the time received absolutely no public comment. He said, however, that he could support the 75 percent threshold given that catastrophic events are rare, and the other things being asked of shoreline owners. He said he was sensitive to the fact that using the 75 percent threshold in the Shoreline Master Program would mean all property owners outside of the shoreline jurisdiction would be held to a higher standard.

Commissioner Clingan agreed. He pointed out that the threshold triggers some regulations that other property owners in the city would not have to adhere to under the same circumstances.

Commissioner Shull said she was leaning toward making the change from the 50 percent threshold to a 75 percent threshold. She agreed that the number of instances in which the threshold will be met can be assumed to be few. Structures damaged to any degree can be rebuilt under the provisions; the threshold only triggers buffer enhancements.

Commissioner McInteer commented on the need to be consistent with the rest of the code. She suggested the 50 percent threshold is reasonable. The point most people have missed is the fact that any damaged structure can be rebuilt, whether the structure is conforming or nonconforming. She said she would not support changing the threshold to 75 percent.

Commissioner Clingan asked if the percentage threshold was to be based on assessed value or replacement cost. He advocated for replacement cost. Mr. Greenberg said when the zoning code was adopted in 1999 the City moved away from using replacement value because it was impossible to calculate with any degree of certainty. In cases of catastrophe, the City does not want to be put in the position of having to challenge figures. Assessment value is a fixed number generated by a third party.

Commissioner Shull stated her preference for retaining the assessed value language. Chair Fitzgibbon concurred, as did Commissioners McInteer and Pizarro.

With regard to the Ruth Dykeman property, Mr. Greenberg said the Comprehensive Plan specifies that Special Planning Area 2 includes the site on Lake Burien. The policy language goes on to state that while the City encourages and supports the continued operation of the center, any proposed change in use in the future should be reviewed to ensure that public access to the water is prohibited, and support the historical link with Old Burien.

Mr. Greenberg said staff checked with the Department of Ecology and found that the policy language barring public access to the water is inconsistent with the current state shoreline guidelines and the Shoreline Management Act. Accordingly, when the Comprehensive Plan is next updated the language of the policy will need to be revised.

Mr. Johanson called attention to item 13 which refers to the use matrix in the Shoreline Master Program. He said the proposed language does not apply because there is no use with a higher review process in an adjacent shoreline jurisdiction. He recommended no change and the commissioners concurred.

With regard to item 51, Mr. Johanson said staff agreed that using the phrase “persons requesting an exemption” would be clearer than the draft language. The commissioners agreed with the proposed language change.

Turning to item 87, Mr. Johanson said the issue was that a specific definition be created for the duties, responsibilities and expertise of the shoreline administrator. He observed that the proposed Shoreline Master Program includes a definition in 20.40.125 that indicates that the shoreline administrator is the city manager or his or her designee in the Community Development Department who is responsible for administering the City of Burien’s Shoreline Master Program. He said staff was not recommending any change to the language. The commissioners agreed with the staff recommendation.

Commissioner Clingan asked how many structures in the shoreline district might be made nonconforming with the buffers and setbacks as proposed. Mr. Johanson said he would have to research that and bring the information to the commission at its next meeting. Commissioner Clingan said he would also like to know how many undeveloped properties exist in the shoreline district.

Commissioner Clingan said he continued to have reservations with the proposed buffer widths and setbacks in the proposed Shoreline Master Program, which are significantly greater from what currently exists. Nonconforming structures are potentially more difficult to sell, and the stricter requirements could even reduce property values. Whether or not the Department of Ecology has concerns, the City has the authority to submit its own customized plan. While the provisions that allow damaged structures to be rebuilt are lenient, the wider buffers may trigger some financial burdens for property owners.

Chair Fitzgibbon suggested holding that discussion over to the next meeting. He added that regardless of what the final decision is relative to buffer widths and setbacks, some will think the City has gone too far and others will think the City did not go far enough.

Commissioner McInteer said change is coming to Burien, and that change will involve certain state and federal standards. Burien will not be able to be a shire unto itself. The commission should listen to everyone with an opinion in an attempt to come to a logical and intelligent recommendation. It will not be possible to make everyone happy.

Commissioner Clingan suggested that the Shoreline Master Program should include a definition for designated view corridor. There are many references in the plan to view access, and some clarification would be in order. Mr. Greenberg agreed to look at that issue and come back with a recommendation.

There was agreement to schedule the next commission meeting for March 30.

New Business – None

Planning Commission Communications – None

Director's Report

Mr. Greenberg reported that at its meeting on March 22 the City Council delayed its appointment of new commissioners. He said Commissioners Shull and McInteer will remain on the commission until replacements are selected. The intent of the council is to wait until work on the Shoreline Master Program is completed.

Mr. Greenberg said a bill passed by the Legislature and signed by the governor extends the time limits for preliminary subdivisions of five lots or more from five years to seven years. The change will expire in 2017.

Adjournment

Motion to adjourn was made by Commissioner Shull. Second was by Commissioner Pizarro and the motion carried unanimously.

Chair Fitzgibbon adjourned the meeting at 9:15 p.m.

Approved: May 11, 2010

/s/ Joe Fitzgibbon, chair