

City of Burien

BURIEN PLANNING COMMISSION
SPECIAL MEETING
March 30, 2010
7:00 p.m.
Multipurpose Room/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

Roll Call

Chair Fitzgibbon called the meeting to order at 7:00 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 Pizarro and the motion carried unanimously.

Public Comment – None

Approval of Minutes – None

Old Business

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

Senior planner David Johanson called attention to the Planning Commission draft of the Shoreline Master Program update developed by action and discussion over the past several meetings. He noted that there remained several information requests and began the discussion with them.

The first issue dealt with piers, docks and floats, or what is called in the draft document “over-water structures.” He said the recommendation of staff was the language included on page IV-20 of the draft. The new language defers to the regulations of the Department

of Fish and Wildlife and the Army Corps of Engineers. If those regulations change, the City will not need to update its Shoreline Master Program accordingly.

Commissioner Clingan voiced his support for the change, especially the strike out of (h) on page VI-21.

Chair Fitzgibbon indicated his agreement and reiterated the notion of having the Shoreline Master Program matching the regulations of the Department of Fish and Wildlife and the Army Corps of Engineers. It should be expected that their standards will change over time, thus they should not be set in stone at the city level.

Commissioner Shull concurred. She pointed out, however, that in some instances the Department of Ecology has asked jurisdictions to be more prescriptive and suggested they may have a comment on the wording.

Commissioner McInteer asked if the Army Corps of Engineers and the Department of Fish and Wildlife even have regulations for over-water structures. Mr. Johanson said the Army Corps of Engineers has standards associated with its regional general permit. He said he did not know if the Department of Fish and Wildlife has any specifically written code regulations relative to docks, piers and floats.

Chair Fitzgibbon suggested that if the Department of Ecology wants jurisdictions to adopt more restrictive standards on the size of over-water structures, they should say so and be specific. Mr. Johanson said staff had not conferred with the Department of Ecology. The consultant, Nicole Faghin with Reid Middleton, had conversations with the Department of Fish and Wildlife and other jurisdictions. He stated that it is possible that the Department of Ecology will want to see more prescriptive language after it reviews the City's submittal.

Commissioner Shull commented that regardless of what the Department of Ecology will ultimately say, the City should move forward with the language as proposed because it represents what will work well for Burien.

Mr. Johanson called attention next to page VI-6 and the topic of the wetland rating system. He said the revised language encapsulates the discussion the commission had on March 23. The proposal is to adopt the appendix with all three of its alternatives for determining wetland buffers. The applicant would select which alternative to use when making application for a project. Mr. Johanson stressed that the wetland rating would only apply to wetlands within the shoreline jurisdiction. The commissioners agreed with the proposed revision.

Mr. Johanson turned next to the issue of designated view corridors and the desire of the commission to have staff return with a definition or description. He said the discussion involved developing an access plan that would include view corridors. One of the potential motions on the second page of the staff memo included making that

recommendation to the City Council. Mr. Johanson explained that the term “access” includes both physical and visual.

Commissioner Clingan said it was his understanding that view corridors involve views across public properties. He pointed out that the document includes many references to visual access, but the document does not define or describe what the term means. He said that was why he previously raised the issue. Mr. Johanson suggested the development of an access plan is one way the issue could be further refined.

Chair Fitzgibbon voiced the opinion that a public access plan would be a valuable document for the City to have.

Commissioner McInteer pointed out that no view easements have been allowed in Burien, so the issue needs to be more readily developed than it could be in the Shoreline Master Program.

Mr. Johanson said the final follow-up item was related to nonconforming homes and undeveloped lots. He said a quick check of the City’s GIS yielded the information that with a 50-foot buffer and a 15-foot building setback approximately 140 to 165 of the 300 to 320 single family structures in the marine shoreline jurisdiction would become nonconforming, or about half of the total. On Lake Burien, there are approximately 68 homes located outside the 30-foot buffer, and only two located within the 15-foot building setback. There are between 45 and 60 vacant lots in the marine shoreline jurisdiction, which is 200 feet landward of the ordinary high water mark. Of those, only 20 to 30 are literally on the waterfront.

Commissioner Clingan said he raised the question in order to better understand how many structures and families would be affected. He suggested the number is quite high and said he was bothered by making so many structures nonconforming. The provisions allow for rebuilding structures that are damaged by one means or another, so hopefully the point is moot. However, nonconformance is something that must be disclosed as a part of any real estate transaction, and that could make a property more difficult to sell and therefore affect the price. It should come as no surprise that some in the community are concerned about that. Redmond has approved a plan that includes only a 20-foot buffer on the shore of Lake Sammamish.

Mr. Johanson said the proposed buffers of 50 feet in the marine shoreline and 30 feet for Lake Burien came about through a process involving staff, consultants and the Department of Ecology. The foundation for the buffers is set in the guidelines. The 30-foot buffer for Lake Burien was developed by mirroring the requirements for the wetlands. The document entitled “Protecting Nearshore Habitat and Functions in Puget Sound, An Interim Guide” dated October 2007 was relied on in developing the proposed 50-foot buffer for the marine shoreline. The document indicates buffers ranging from 98 feet to 328 feet intended to protect ecological functions. He said the table on page III-40 lists additional sources with buffers ranging from 78 feet to 600 feet. The fact that Burien’s shoreline environment is largely built out played into what the buffer should be. The average setback for the single family homes in the three most-developed reaches of

Burien's shoreline was determined to be 68 feet. Research was done to determine the buffer widths imposed by other jurisdictions with similar shoreline environments, and it was found that Federal Way has a 50-foot buffer and Des Moines has a 115-foot buffer. Considering all of those factors, it was determined Burien should have a 50-foot buffer.

Mr. Johanson pointed out that along with the 50-foot buffer, the proposal includes relief mechanisms, including the common line setback that is obtainable through a conditional use permit process.

The vegetation conservation area extends 150 feet. So even though the City's buffer is only 50 feet, the vegetation within 150 feet must be managed to capture the available scientific information. Ensuring no net loss of ecological function will occur through a combination of vegetation management, buffers, and permit reviews. The indication Burien has received from the Department of Ecology is that the proposed buffers will be accepted.

Commissioner Clingan voiced concern about the proposed tripling of the current setback that exists along the shoreline, and doubling the setback that currently exists on Lake Burien. He said he did not like the idea of turning about half of the structures on the shoreline into nonconforming uses. The City probably should act as an advocate for its citizens rather than as an agent for the state and cut the buffers down to 20 feet and leave the setback where it is, he said. If the City's plan gets turned down, negotiations could take place then.

Commissioner McInteer said three parties have come together to develop the current buffer recommendation: staff, the consultant, and the Department of Ecology. She said her initial reaction was that the commission should accept their recommendation, which is based on the data. The public needs to bring its emotions up to date. There has been no testimony by anyone who wants to see Lake Burien or Puget Sound become a rocky bathtub. The testimony has been that the public likes fishing, swimming, boating, and seeing birds and wildlife. The buffers that currently are in place will not be enough to protect the shoreline. Buffers have a purpose, which is to protect ecological functions, including flora and fauna. She said she was troubled by creating nonconforming structures, but in the end the City will be in a better state going forward with the proposed buffer width. To reduce the width below 50 feet would be to go against the data.

Commissioner Shull said she would not be comfortable in reducing the buffer width from what is recommended in the draft document for many of the same reasons. She said she understands the concerns relative to nonconforming structures, but the fact is much of the development along the shorelines was done before there was solid and compelling science regarding the cumulative impacts for the city and the region. Burien is not the only community dealing with the issue of increasing the buffers and the nonconformities it will create. There are good provisions in the draft that will allow structures to be rebuilt if they are destroyed, and for the development of vacant properties up to the common line setback. The proposal achieves a good balance of protecting the environment, looking out for private property rights, and the interests of the public.

Recommending a reduced buffer and setback will not achieve the goal of protecting the shoreline environment.

Commissioner Pizarro voiced her support for the comments made by commissioners McInteer and Shull.

Chair Fitzgibbon thanked Commissioner Clingan for bringing up the issue for discussion. He said the issue gets to the heart of what the Shoreline Master Program update is seeking to accomplish. The state has asked all jurisdictions to do a better job of protecting the shorelines than has historically been done. The Shoreline Management Act was originally approved by the voters 40 years ago when it was realized what harm was being caused by having a fragmented approach to development along the shorelines. Since then the body of knowledge of what can facilitate and what can damage shoreline ecological functions has advanced. The fact that some structures will be made nonconforming is not the end of the story given that the provisions include flexibility for reconstructing buildings that are destroyed and that allow for some structures to be expanded.

Continuing, Chair Fitzgibbon said there is an added value that comes to property owners whose properties are on a shoreline that is ecologically healthy. A healthy and viable shoreline is one of the things that make Burien a good place to live. He said he would not support reducing the buffers from what has been proposed.

Commissioner Clingan brought to the table a hypothetical situation. He allowed that a structure destroyed by fire would be allowed to be rebuilt, but he asked how a garage, cabana or other improvement located in the right-of-way would be handled. Mr. Johanson said the City will look at every situation on a case-by-case basis and apply the standards as appropriate. The first test would be to determine whether the garage or cabana had been legally established. After that, the applicable section on nonconforming structures would be applied.

Commissioner Pizarro asked if development of a public access plan, if the City Council decides to go in that direction, would offer an additional opportunity to continue reviewing the citizen comments. Mr. Johanson said that concept remains loosely defined. He said serious thought would need to be given to how to develop the plan and the appropriate level of public involvement.

Answering a question asked by Commissioner Pizarro, Mr. Johanson said the Shoreline Master Program, once it is adopted, will be placed on a regular update cycle just like the Comprehensive Plan.

Chair Fitzgibbon said the commission has been working diligently on the Shoreline Master Program update for about four months. Because of the high level of interest in the topic, it would be a good idea to have the draft on the table for a couple of months after the commission makes its final recommendation and before the City Council begins its deliberations. That would allow the public to be fully prepared with questions for the

City Council. Mr. Johanson said there will be at least one public hearing before the City Council, and following the council process the Department of Ecology will schedule a public hearing locally.

Commissioner Clingan said he has spoken to several people who think an interim period would be a very good idea indeed. He said the public turnout had been impressive from day one of the commission's work and the comments made have been reasonable and instructive.

Chair Fitzgibbon thanked the commissioners and staff for their work on the topic. He allowed that the draft update is not perfect and will face additional revisions at the council level. No jurisdiction that has undertaken the work has found it to be easy and without controversy.

Motion to recommend to the City Council approval of the draft Shoreline Master Program dated March 30, 2010, was made by Commissioner McInteer. Second was by Commissioner Shull and the motion carried unanimously.

Motion to recommend to the City Council that a public access plan be prepared after the new Shoreline Master Program is in effect was made by Commissioner Pizarro. Second was by Commissioner Shull and the motion carried unanimously.

New Business – None

Planning Commission Communications

Chair Fitzgibbon highlighted the fact that commissioners McInteer and Shull were meeting as commissioners for the last time. He said he had thoroughly enjoyed serving with both and noted that they would be missed.

Director's Report

Mr. Johanson reported that the Shoreline Master Program update is scheduled to be discussed by the City Council on April 5.

Adjournment

Motion to adjourn was made by Commissioner Shull.

Chair Fitzgibbon adjourned the meeting at 8:15 p.m.

Approved: May 11, 2010

/s/ Joe Fitzgibbon, chair