

*City of Burien*

BURIEN PLANNING COMMISSION MEETING

December 15, 2009

7:00 p.m.

Miller Creek Room, Burien City Hall

MINUTES

**Planning Commission Members Present:**

Joe Fitzgibbon, Jim Clingan, Janet Shull, Brian Bennett, Stacie Grage, Rebecca McInteer, Rachel Pizarro

**Absent:**

None

**Others Present:**

David Johanson, senior planner; Chip Davis, planner

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Chair Fitzgibbon called the meeting to order at 7:06 p.m. At the call of the roll all commissioners were present.

**Agenda Confirmation**

Commissioner Grage moved to accept the agenda as presented; second was by Commissioner Shull. Motion carried 7-0.

**Public Comment**

**John Upthegrove**, 1808 SW 156<sup>th</sup> St., stated his opposition to any public access to Lake Burien and any involvement by the City in the care of the lake. He asked that the Planning Commission remove a line in the draft Shoreline Management Program update stating that the highest priority for developing new public access to shorelines be placed on areas without existing public access, stating he believes that refers primarily to Lake Burien. He would prefer public access to shorelines not be an elevated priority.

**Bob Edgar**, 12674 Shorewood Dr. SW, stated his belief that that the saltwater shoreline receives greater protection than the freshwater shoreline, citing the difference in zoning designations (RS-12,000 vs. RS-7,200), a definition of critical saltwater habitat but not one of critical freshwater habitat, a difference in the protections of shorelands of the second class vs. secondary tidelands and no mention of gates, security guards or a park ranger if public access to Lake Burien is developed. He told the commissioners that it is their obligation to address these perceived discrepancies before forwarding any recommendations about the update to the City Council.

**Jennifer Kropak**, 2681 SW 151<sup>st</sup> Place, said that in reference to the “no net loss” policy contained in the Shoreline Master Program update, she wants the master program to include a policy of no unintended gain at the expense of the existing Lake Burien property owners. She wants property owners to have the right to rebuild in the existing footprint of their houses in the event of a fire or other damage to the structure greater than 50 percent. She said she thinks Pierce County’s Shoreline Master Program is less restrictive than King County’s, so she wants the commission to look at the Pierce County model instead.

## **Approval of Minutes**

Chair Fitzgibbon noted one change to the minutes of the November 10, 2009, meeting as presented, a correction to the time the meeting was called to order. Commissioner Grage moved to approve the minutes. Commissioner Pizarro seconded the motion. Motion carried 7-0.

## **Public Hearing**

### *a. Fee in lieu of parking and related zoning code amendments*

Chair Fitzgibbon opened the public hearing at 7:18 p.m. There being no public testimony, Chair Fitzgibbon closed the hearing at 7:19 p.m.

## **Old Business**

### *a. Discussion and possible recommendation on fee in lieu of parking and related zoning code amendments*

Chip Davis, planner, reviewed his presentation to the commission at its last meeting and the discussion that ensued. The optional fee-in-lieu-of-parking program would eliminate one possible barrier to downtown development and would provide another tool to encourage redevelopment of existing properties in downtown and Old Burien. He said staff is recommending the fee-in-lieu program have a fixed fee per parking stall of approximately 70 percent of the cost of developing a downtown Burien parking stall. That figure is initially set in the proposed ordinance at \$7,000 per stall. This proportional approach has been successful in other cities, he added. The fund established by the payments will be reserved for provision of publically accessible parking spaces in the Downtown Commercial (DC) and SPA-1 (Old Burien) zones, or for other uses the City Council determines would reduce the demand for parking in downtown Burien.

Mr. Davis directed the commissioners' attention to Table 19.20-2, the parking rate demand schedule for commercial and mixed-use developments. He explained that the schedule takes into account the current Puget Sound economic environment and has been set at 90 percent of the typical parking rates to serve the proposed uses. The schedule provides an additional incentive to developers to use the fee-in-lieu program.

Mr. Davis noted that the related zoning code amendments would establish the optional fee-in-lieu program, establish the annual review and adjustment of the per-parking-space fee, establish payment of the fee in lieu at the time of building permit issuance, and establish a biennial review of the fee-in-lieu program with a report to the City Council.

Continuing, Mr. Davis explained that applicants will be allowed to meet all or a portion of their parking requirement through participation in the fee-in-lieu program. However, if the applicant uses a parking demand study to establish the number of required parking spaces then they will not be able to use the fee-in-lieu-of-parking program to further reduce the number of spaces. Staff will be tracking the number of parking spaces that have been purchased through the fee-in-lieu program for each property to ensure that future tenants aren't charged again for those spaces.

Commissioner Pizarro asked why a developer doing a parking study would result in the fee-in-lieu program not being available to them. Mr. Davis responded that it is an effort to keep people from "playing the system" by trying to argue for a further reduction in the required parking spaces while participating in the program that already has a 10 percent reduction built in. He reiterated that it is an optional program; a developer can either provide the required number of parking spaces, conduct a parking demand study, or participate in the fee-in-lieu program for some or all of the required parking.

Chair Fitzgibbon complimented staff on the work done on the proposed program and said he feels it would give a lot of flexibility to businesses in the downtown to grow and for new businesses to come in.

Commissioner Shull moved the Planning Commission recommend to the City Council approval of proposed ordinance and Burien Zoning Code amendments related to implementation of a downtown fee-in-lieu-of-parking program as outlined in the staff recommendations. Commissioner Pizarro seconded the motion. Motion carried 7-0.

## **New Business**

### *a. Introduction of the Shoreline Master Program Update*

David Johanson, senior planner, gave a brief overview of the purpose of the Shoreline Master Program update agenda item, noting the commission will conduct a public hearing on the topic on January 12, 2010, and introduced Karen Stewart, with the consulting firm Reid Middleton, and Bob Fritzen, shoreline planner with the state Department of Ecology.

Mr. Johanson noted that when Burien incorporated in 1993, it simply adopted the shoreline regulations King County had in place at the time and those are fairly outdated. The draft update is Burien's first Shoreline Master Program generated by the citizens and the members of the Shoreline Advisory Committee. Mr. Johanson then turned the presentation over to Mr. Fritzen.

Mr. Fritzen summarized the purpose of the state Shoreline Management Act, passed in the early '70s, as a means to prevent piecemeal development along the shorelines. He said often the act is characterized as a chair with three legs, one of which is to protect the environment, one to provide public access to waters of the state, and the third to recognize water-dependent uses. Guidelines were developed to help administer the act; the guidelines are standards used to help write shoreline master programs. The Revised Code of Washington (RCW) mandates periodic updates of the guidelines to incorporate up-to-date best available science and current Endangered Species Act listings, among other things.

Mr. Fritzen explained that the jurisdictional area of the Shoreline Management Act for Burien is measured 200 feet landward from the ordinary high water mark and waterward generally out to mid-channel. He said a shoreline master program is a set of policies and the implementing regulations, with the addition of goals as an option. It is based on an inventory and analysis, he added, with the analysis resulting in shoreline designations similar to zoning. The analysis drives policies and regulations based on habitat, existing development pattern and the wants and goals of the local citizenry as reflected in a city's comprehensive plan.

One of the principles of the guidelines, Mr. Fritzen said, is to achieve no net loss of environmental functions, such as long shore drift of sediment or protecting habitat for priority species. In theory, he continued, with no regulations there would be net loss, so the target of the master program is to remove impacts to the environment through mitigation when development and redevelopment occurs. Mr. Johanson agreed, noting that the shoreline inventory establishes the baseline against which no net loss is measured. The challenge for Burien, he continued, is how to achieve no net loss in Burien's highly developed urban environment.

Ms. Stewart reiterated that the Shoreline Management Act is a state program that is implemented locally. She explained the role of Reid Middleton in developing the update to Burien's Shoreline Master Program, starting with determining what Burien has in its current Shoreline Master Program that is relevant to Burien. Because Burien simply adopted King County's Shoreline Master Program upon incorporation, she said, there are categories that don't even apply to Burien's shoreline jurisdiction. She explained the integrating principles between the Growth Management Act (GMA) and the Shoreline Management Act (SMA), starting with the 14<sup>th</sup> goal of the GMA, "Manage shorelines wisely." The consultants began by looking at Burien's existing comprehensive plan, the zoning, critical area regulations, the current master program and the state guidelines.

Ms. Stewart noted that the key components of the Shoreline Master Program that must meet the approval of the state Department of Ecology are the goals and policies, the shoreline environment designations, a

map showing the shoreline environment designations and the criteria for applying those designations, management policies, and shoreline development regulations that will guide permitting and administrative provisions that will guide procedures.

Explaining the process of updating a shoreline master program, Ms. Stewart said it begins with establishing the shoreline jurisdiction based on state guidelines. This is the opportunity, she noted, to ensure local needs and priorities are reflected in the plan, making sure it meets the citizens of Burien's vision of what the shoreline areas should be like while creating a program that will meet the state Department of Ecology's approval.

The consultants worked with biologists to conduct the shoreline inventory. The division of the marine shoreline into "reaches" was based on physical characteristics and the extent of development. The Lake Burien shoreline is its own reach. Ms. Stewart said three shoreline environment designations are being proposed for Burien: aquatic, applying to lands that are covered by water that are within the shoreline jurisdiction; shoreline residential, encompassing Shorewood, Three Tree Point and Lake Burien; and urban conservancy, which is generally the Seahurst Park shoreline.

A permit matrix was created to clearly identify the type of shoreline permit required for specific shoreline uses and modifications. If something is not listed on the matrix, it would be subject to a conditional use permit. Some uses, such as mining, are listed as prohibited. Ms. Stewart noted that the types of permits are the shoreline substantial development permit and the shoreline conditional use permit. She then called the commissioners' attention to another crucial table in the master program, "Dimensional Standards for Shoreline Developments." The table lists marine and Lake Burien riparian buffers, a proposed vegetation conservation buffer, building setbacks from the riparian buffers, lot size, and maximum building height and coverage. The vegetation conservation buffer, Mr. Johanson noted, is one of the newer approaches for achieving no net loss in the shoreline jurisdictional area. This is similar to the vegetation management that already is required in steep slope areas. Ms. Stewart said the Department of Ecology is asking some jurisdictions to adopt a 150-foot riparian buffer for the marine shoreline, thinking that that is the most ecologically sound approach. Since that is not very workable for Burien's developed marine shoreline, staff and the consultants have been negotiating with Ecology in working out the 50-foot buffer combined with the vegetation conservation buffer as a compromise.

Ms. Stewart explained that once the Shoreline Master Program update is adopted, the goals and policies become an element of the Burien Comprehensive Plan and the dimensional standards and other regulations become part of the Burien Municipal Code. The City has the choice of integrating them into those documents or having a stand-alone Shoreline Master Program document. Also, she noted, once the Shoreline Master Program update has been approved by the state and adopted by the City, critical areas within shoreline jurisdiction are protected by the Shoreline Master Program, not the City's critical areas regulations. Mr. Johanson noted that a regulation within the Shoreline Master Program adopts the City's critical areas regulations.

Next, Ms. Stewart explained the principle of common line setback, which allows the 50-foot buffer and 15-foot setback from the ordinary high water line to be reduced to a minimum 20-foot setback under the common line setback approach. This is similar to the reasonable use provisions of the zoning code. The common line setback approach allows equity between adjacent lots. The actual common line depends on the setbacks of structures on the adjacent lots, with 20 feet being the minimum allowed. Requests for common line setbacks are reviewed using the conditional use permit process.

Moving to the next topic, bulkheads and mooring buoys, Ms. Stewart said new bulkheads are allowed to protect primary structures under the shoreline conditional use permit process. She added that regulations about mooring buoys have been added to the draft Shoreline Management Program. Mr. Johanson explained that one mooring buoy is allowed per waterfront lot for that waterfront owner. No buoys are allowed on Lake Burien.

On the topic of public access, Ms. Stewart noted that there is public access to marine shoreline at Seahurst Park, Eagle Landing Park and from some trails and street ends. There currently is no public access to Lake Burien.

Ms. Stewart addressed the issue of structures potentially becoming nonconforming under the Shoreline Master Program's regulations, noting it is in Chapter V of the document with wording consistent with the state guidelines.

Finally, Mr. Johanson reviewed the process used in developing the draft Shoreline Management Program, starting with the establishment of a shoreline advisory committee made up of citizens and technical professionals. Following an outreach effort to ensure a broad representation of all geographic areas of the city, the City Council decided on an inclusive approach, accepting all applications. Ultimately, the committee was made up of 10 Burien residents, four at-large representatives and six technical professionals.

Continuing, Mr. Johanson recounted the nine Shoreline Advisory Committee meetings and the two public open houses since spring 2008 making up the public involvement. The Shoreline Advisory Committee worked with the public input gathered at the first open house to devise the draft goals and policies and meld them with the state guidelines to create the regulations.

Looking forward, Mr. Johanson said the Planning Commission will conduct a public hearing on the draft master program on January 12, 2010. There still are opportunities to refine the Shoreline Master Program to ensure it is a workable document for Burien. Following the hearing the commission will deliberate and make any adjustments to the master program before making a recommendation to the City Council.

Commissioner Bennett, who chaired the Shoreline Advisory Committee, said the committee had to work through a great deal of information, and encouraged the commissioners to review the draft master program very carefully and use their expertise to make any necessary adjustments. Also, he said he believed the expectation was that public comments would be taken and considered at the Planning Commission and City Council levels. On the public access issue, Mr. Bennett said it wasn't part of the original document but was raised by citizens, not staff, during the process. It was a heated topic, and the issues, as he recalls them, he said, were environmental impacts, in particular on Lake Burien as a closed ecosystem; crime and safety issues and intrusions on private property; and the effect on waterfront property values on the negative side; and on the pro side, general community development and raised property values on the neighborhood level; bird watching and similar activities that currently are closed to people by lack of public access; "waters of the state" being closed to taxpayers; and whether a policy of exclusivity something Burien residents wish to endorse.

Referring to the language in Policy PA 5, "The City should seek opportunities to develop new public access in areas throughout the shoreline. Highest priority should be placed on reaches without existing public access" Mr. Bennett said the thinking behind that, to his recollection, was that if a choice came down to whether to add to Seahurst Park, which already has significant public access to the shoreline, or creating public access on a reach that doesn't have public access, that would allow neighborhoods to have public access, resources should be used to create new access. The language about highest priority was adopted by a vote of 9-4.

Commissioner Clingan asked how many voting members there were on the committee. Mr. Johanson responded that there were 20 committee members, but not all members attended at all times and the six technical professionals on the committee did not vote.

Commissioner McInteer, who served on the committee, said it was very helpful to have committee members with technical expertise. She said while committee members had some philosophical differences, they agreed to keep the program flexible so that it would be workable both now and in the future. She said she came to appreciate that Burien has a number of citizens who are interested in what

happens to the community, and therefore felt comfortable that the things the committee agreed upon by consensus or by vote are solid.

Chair Fitzgibbon expressed his appreciation for the extensive public involvement that has gone into the program so far, both by members of the committee and by residents who attended the open houses and provided comments. He thanked staff for amount of work put into the draft master program and said he felt the staff has done a good job of balancing public needs for protection and restoration of ecological function with the needs of the residents of the shoreline areas. He said there is still a lot of work to do to ensure those needs are being met adequately, but felt a good start has been made.

Commissioner Grage said she is concerned about comments she heard tonight about inequity in protecting the lake as opposed to the marine shoreline.

Mr. Johanson noted that several topics were not sufficiently vetted at the committee level that should be addressed at the Planning Commission level: accessory dwelling units, home occupations, the process for placing buoys, the Lake Burien weir, and motorcraft on Lake Burien. The Shoreline Master Program must be adopted by the City Council and accepted by the Department of Ecology by December 2010.

### **Planning Commission Communications**

Commissioner Bennett acknowledged that this was his last meeting as a Planning Commissioner before joining the City Council. He thanked the commissioners for their work.

Chair Fitzgibbon presented Commissioner Bennett with a certificate of appreciation for his work on the commission.

### **Director's Report**

Mr. Johanson announced that the night before, the City Council approved the Comprehensive Plan amendments as recommended by the commission, as well as the NERA zoning and the planned action ordinance.

### **Adjournment**

The meeting was adjourned at 8:48 p.m.

Approved: January 12, 2010

/s/ Joe Fitzgibbon, chair