City of Burien

BURIEN PLANNING COMMISSION MEETING
February 9, 2010
7:00 p.m.
Third Floor Lobby, Burien City Hall
MINUTES

Planning Commission Members Present:
Joe Fitzgibbon, Janet Shull, Jim Clingan, Rebecca McInteer, Rachel Pizarro

Absent:
Stacie Grage

Others Present:
David Johanson, senior planner

Roll Call

Chair Fitzgibbon called the meeting to order at 7:10 p.m. Upon the call of the roll all Commissioners were present with the exception of Stacie Grage.

Agenda Confirmation

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

Public Comment

Chair Fitzgibbon asked the speakers to limit their comments to issues not previously addressed by the Commission. He noted that the Commission had previously held a public hearing on the Shoreline Master Program topic and that the City Council would be conducting its own public hearing after the Commission has completed its work. In addition, there will be a public hearing held by the state Department of Ecology before they issue their final approval, which is required under the Shoreline Management Act.

Chair Fitzgibbon said the Commission would not be taking any action at the meeting relative to approving or not approving the Shoreline Master Program. At least one or two more meetings will be required before the Commission will be prepared to act.

Ms. Margi Berendzen, 3160 SW 172nd Street, said she attended the first shoreline advisory committee meeting on March 12, 2008. During that meeting Andy Kleitsch was elected chair of the committee, but within two weeks word was received that he was no longer the chair and that neither she nor Mr. Kleitsch would be part of the committee. Several things about the meeting were unusual: it was scheduled at 4 p.m. on a workday, making it very difficult for the public to participate; only five who attended were residents of the city, but two of them were let go; only one person appointed to the

committee actually owns shoreline property; the minutes of the meeting did not include the question asked of the shoreline management people about whether or not the act would lead to the City being able to change the use of shoreline properties, to which the answer given was that the existing rights and privileges of landowners would not be affected, and the phrase "grandfathered in" was used. Clearly the answer given was not true. Over the past decade the overall ecologic health of the beach has improved substantially. What the commission and the City is proposing is wrong. It is sneaky and it is mean-spirited. The state has opened the door to allowing access to private properties. It is wrong to go to someone else's property and take things.

Mr. Larry Berendzen, 3160 SW 172nd Street, said the beach fronting his property is one of the best in the city; it has low banks, is sandy, and has easy access. For that reason there have been numerous attempts by both the City and the county to gain control of the beach properties. Last time around the collection of property owners spent more than $130,000 of their own money to fight the City. The county uncovered two acts that would require significant costs. In 1977 the state declared that the property owners along SW 172nd Street had second-class tidelands, which would affect the development of any park. The tidelands would have to be purchased as a right-of-way for the abutting property owners. The King County prosecutor drafted a memo in 1978 that stated that if the county should subsequently need for road purposes the strip being encroached upon SW 172nd Street, it can at that time remove or have removed the encroaching structures. He continued by saying that there is a possibility that because the property owners have been paying taxes on the encroaching improvements, and because the county has knowingly allowed the encroachments to exist for some time, and because the value of the encroaching structures is substantial, the county would have to pay damages to the abutting property owners. If the City intends to take possession through whatever means is available to it, there should be reimbursement paid at fair market value.

Mr. William Clogston, 15227 28th Ave. SW, said his home structure is old and needs a lot of repair. He said the proposed action by the City will make even more difficult effecting the repairs needed to make the home saleable. There is a sewer line running down the beach that has been there for 30 or 40 years; how long that line will last, and how it could be repaired if necessary, should be a major concern for the City. Global warming is making the tides higher, and that could impact the line as well.

Ms. Denise Burdette, 15631 Maplewild Ave. SW, addressed the proposed coordinated system of connected pathways. She said it is clear that most of the waterfront property owners own to the low tide line, something that was of particular interest to her in purchasing her property, and something that cost a considerable sum of money. She said she also pays a considerable amount in taxes because she has that right. If the City is considering through the Shoreline Master Program making private beach rights public, what is really being talked about is eminent domain. The City should share its increased revenue calculations based on such an action alongside a risk analysis to the community at large should things not go as planned. In using its powers of eminent domain, the City must provide proof that the action will provide increased revenue and that the particular change or development will benefit the public at large. The City should open a serious

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discussion with shoreline property owners regarding fair market value and openly discuss compensation for the decrease in value to the overall property due to the action. In addition, the City should negotiate a decline in property taxes in line with the decreased value of the affected properties. The City should consider the risks involved should the action be met with disfavor by those who will be most affected. There is virtually no waterfront property owner willing to give up their property rights without a fight. By using its powers of eminent domain to make private property public in Burien, the City will be opened to a class action lawsuit that it can be assured of losing, and the lawsuit will ultimately damage Burien's budding brand and stagnate home values for years until there is a resolution. Such an action would affect the City as a whole, not just the waterfront property owners. The City should rethink such risky and irresponsible actions.

Ms. Nancy Tosta, 15931 Maplewild Ave. SW, submitted to the commission written comments in support of her testimony at the public hearing. She encouraged the commission to identify ways to engage property owners in the process and work in partnership with them. Waterfront property owners are, in fact, the front line when it comes to protecting Puget Sound. The commission should give strong consideration to clarifying the criteria being used for the best available science; there is a lot of discretion inherent in the way the current Shoreline Master Program is written.

Mr. Robert Howell, 15240 20th Ave. SW, referred to a letter addressed to the commission that was written by his wife, Robbie, regarding the Shoreline Master Program advisory committee draft. He noted that the City requires the use of the best available science for protecting critical areas within the community pursuant to the Growth Management Act. Conservation policy 27, item (b), refers to priority species and habitats in the adopted King County Comprehensive Plan dated November 1994, data that is 16 years old. The item should be changed to read "Priority species and habitats, candidate species and habitats, and King County species of local importance and habitats, as noted and adopted in the King County Comprehensive Plan, October 2008." Ten of the birds listed in Section E-487 of that document are commonly found visiting Lake Burien. He said his property borders Lake Burien and noted that he is particularly concerned about the possibility of contamination by Eurasian water milfoil and Brazilian aodea, which would destroy the ecology of the lake. All of the lakes in King County with public access are infested with one or both of the noxious weeds. Section 20.30.035, public access Part II regulations, 9(e), states that public access to shoreline areas shall not be required where safety, security or other limitations are applicable. Section 20.30.085, recreation development Part II, line (h) states that should public access be allowed on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public access area. That should be deleted and replaced with "Public boating and swimming shall be prohibited on Lake Burien until such time as the City has defined and implemented a series of controls to assure 1) no invasive species will ever be introduced into the lake, and 2) patrols funded by the City monitor the lake assuring no trespass of lands. The City should follow the three goals outlined in the last paragraph on page 4-55 in which the Washington biodiversity conservation strategy plan is referenced.

Ms. Carol Jacobson, 3324 SW 172nd St., referenced the issue of reconstruction and the existing wording about damage totaling more than 50 percent of the assessed value and the effect the constraints could have on a property owner's ability to get financing and insurance.

Mr. Steve Lemons, 16215 Maplewild Ave. SW, called attention to section 20.35.045, nonconforming structures, and section 20.30.070, bulkheads. He strongly recommended that the City grandfather in all existing homes, allowing them to be rebuilt in case of disaster. Nearly every house along the beach is nonconforming because few of them have less than a 65-foot setback. A person who underwrites for Fannie Mae, Freddie Mac and FHA said he would not approve a loan with the current wording in place, because it provides no assurance that a house can be rebuilt in cases where damage exceeds 50 percent of the assessed value. Nothing is said in the section about who would determine the extent of the damage. The value of waterfront homes will fall dramatically if loans cannot be had to refinance or purchase.

Mr. Keith Robinson, 15219 28th Avenue SW, said he agreed with the previous speakers.

Mr. Randy Coplen, 16713 Maplewild Ave. SW, shared with the commissioners a photo of his beachfront home. He said he had a geotechnical study done as part of putting in a tram to provide access to the house. The slope of the bank was calculated to be 50 percent, and it appears from the proposed language that structures with slopes of 50 percent or more will not be allowed to rebuild. He also commented that it would not be possible to rebuild the home for 50 percent of the assessed value.

Ms. Ann Stout, 16425 Maplewild Ave. SW, said she had not previously heard anything about the study being done by the City regarding waterfront properties and as such was not able to weigh in earlier in the process. She said she was deeply upset by the commission acting in what appears to be a clandestine way. If the plan is to make the beaches public, it will be necessary to deal with the issue of parking; there is hardly enough room for the local property owners. She said her property was one that lost its bulkhead during the big 1990 storm. All who live on the steep properties are tethered together, so if one is not able to replace a bulkhead and one home slides on the hill, all of the surrounding homes will be in jeopardy as well. While laudable to seek beach access for all citizens, the proposed approach is not the way to go about it. Seahurst Park offers excellent beach access for the public, though the parking there is so difficult few use the park. City resources should be spent on making more usable the beaches already designated for access by the public, and on making the schools better.

Ms. Barbara Trenary, 16215 Maplewild Ave. SW, said for the past seven years she has served as a beach naturalist volunteer at Seahurst Park. She said even on the busiest weekends the park is not overused. Beach goers often collect eel grass to sell to fish stores, even though the activity is illegal. Kids also collect sand crabs, which also is illegal. If more areas of the shoreline are opened to public access, there will be even

more harm caused to the environment. Additionally, the issue of liability should be established.

Mr. Lance Puckett, 15819 Maplewild Ave. SW, said he did not receive notice of any of the previous meetings. He suggested the city should do a better job of letting people know so they can offer timely comments.

Mr. Jason Parks, 2323 SW 172nd St., said he also had not received notice about the meetings. He suggested that if the City wants to have a true public hearing process, it will need to do a better job. Everyone attending the meetings should fully read all of the materials beforehand. He said his property includes a nonconforming structure. He said 65 feet behind his home is someone else's home, so if his home were to burn down he would not be able to rebuild; that restriction should be removed from the Shoreline Master Program.

Ms. Kathi Skarbo, 1621 SW 152nd St., noted that she spoke previously to the commission about section 20.30.035.2.d and said she was surprised to see the issue not included on the matrix of public comments that was provided to the commission. She said she did not want to see the issue allowed to fall through the cracks. The Ruth Dykeman Children's Center is located on the shoreline of Lake Burien and all of those served by the facility have been abused in some way. It would appear that no one has really paid much attention to the effect public access will have on those children; public access to the lake will only erode the protections those children need.

Mr. Fred Hazeltine, 12909 Standring Lane SW, alerted the commission to the fact that the erosion that occurs on the beach where he lives is due at least in part to the effects of what is going on at Seahurst Park. He said he constructed his home 50 years ago and can show places on his seawall where the beach has dropped five feet. He said he twice went through eight government agencies in order to get a permit to repair his seawall; the permits were issued and the repairs were made. While the bulkhead is stable currently, the erosion problems continue. The erosion began after King County acquired the Seahurst Park property and installed a couple of groyns at the north end extending from the steep bank out into the Sound; the well-intended purpose was to conserve the beach. The sand level on the south side of the groyns is at least three feet higher than the north side, but the overall result has been the loss of the beach. The City should think very carefully before considering the construction of such structures.

Mr. John Upthegrove, 1808 SW 156th St., said he has been following the Shoreline Master Program process for the past 14 months. The only true public hearing was held in November 2008; it was the only public hearing to which everyone from the public was invited. The advisory committee met nine times in all. At its second meeting a motion was made and passed that called for the City to give its highest priority to public access to all reaches of water that do not currently have public access, including Lake Burien and the north reach. From that point on, nearly all of the meetings of the advisory committee focused on public access rather than protecting the environment. The advisor from the state Department of Ecology explained to the committee that the policy of the

state is like a three-legged stool focused on protecting the environment, protecting public property, and providing public access. The action of the committee has lengthened one of the three legs at the expense of the other two. The commission should give serious thought before taking any action. Every detail should be carefully considered.

Ms. Linda Plein Boscarine, 1600 SW 156th St., said the Shoreline Management Act has as its first priority the protection of water and the natural environment. Unfortunately, the draft proposal has no provision for baseline studies to determine the present quality of the water, nor are there requirements for inventories of fish, birds, rare turtles, frogs and other wildlife populations. Without such studies it will not be possible to monitor the effects increased human encroachment will have on Lake Burien or on Three Tree Point. There is no mention of the fact that Lake Burien has no milfoil, whereas all of the lakes with human encroachment have the invasive weed. Studies should be required to establish baselines against which the City can take immediate action to reduce impacts when ecological damage is observed.

Mr. John Ball, 1602 SW 156th St., said it is an outrage that the City has not provided citizens with information in a timely manner. Furthermore, when citizens do address the commission, the commissioners need to listen very carefully to what they are saying.

Ms. Sally Ball, 1602 SW 156th St., complained that people in the back of the room were not able to hear what was being said by the commissioners and those offering testimony.

Mr. Bob Edgar, 12674 Shorewood Dr. SW, commented that the Burien plan to protect the shoreline is fairly comprehensive, which is mandated by the state. Many of the listed goals of the document reflect the goals the state say must be followed. The regulations identified are those that must be followed in order to meet the goals. What appears to be missing is an answer to the question of how long the City will be able to prove to the state that the regulations being followed are helping to realize the goals. The commission should close that loop by establishing a methodology to validate and verify that the goals are being met. In Chapter 2 there is an overall inclusive goal for the Shoreline Master Program, and there are eight associated policies. Key words and phrases that stand out in those policies include no net loss of shoreline ecological function and process, guided by ongoing and comprehensive science, proactive in managing activities, adaptive management, balanced private use with the greater public benefit, consider site-specific characteristics, coordinate with relevant local, state and federal programs, encourage redevelopment with accepted best management and practices. To establish a methodology to validate and verify that the City is working toward meeting the overall goal, the document should include the statement "The City of Burien will establish an interagency agreement with the University of Washington or any other such expert and scientific agency to proactively design and conduct an ongoing and comprehensive science-based approach that monitors the no-net loss of ecological functions and processes while balancing public and private interests." Each of the eight elements in Chapter 2 have their own goals and associated policies. The progress toward each of the element goals should be monitored and measured against the associated policies and the overall goal. The commission should consider requiring the inclusion of an effective

methodology as a part of the Shoreline Master Program to ensure that its implementation will move the city toward its stated goals.

Mr. George Vermef, 2745 SW 156th St., said his property included second class tidelands when he purchased it, and it still does. He said during the time he has owned the property his rights as a tideland owner have steadily been eroded. The public access issue is certainly a bone of contention with shoreline property owners and it will make it more difficult for the property owners to take care of what they have. He said over the years he has placed large rocks on the beach with an eye toward starting an oyster bed; while that has not worked well, other creatures have found refuge in the rocks. People who walk along the beach pick apart the rocks and must be asked not to; their response has been less than civil. The setback is currently 20 feet and has been that distance for many years. He said he was assured early on in the process by a commission member that if his house were to sustain significant damage he would be able to rebuild on the existing footprint, but comments made since then have taken the opposite view. If not permitted to rebuild, property owners should be compensated for their loss. The current 20-foot buffer is more than adequate. He said the bulkhead that was on the property when he bought it was more than 50 years old and deteriorating. With the blessing of the City it was removed and replaced with a large rock bulkhead; the end result was the loss of usable property. Now it appears the City would like to take even more property.

Ms. Kathy Korpela, 2685 SW 172nd St., said she wished she had been informed earlier that the study was under way. She said she only learned about the process when someone posted a notice on her mailbox. The lack of notice is giving city government a bad name. She said there is a large hill behind her home, and if something were to happen to the house and the City were to deny the right to rebuild on the same footprint, it would not be possible to rebuild at all and the investment would be lost. The threat of eminent domain is scary to many. It is just not right for property owners to be pushed out.

Ms. Chestine Edgar, 1811 SW 152nd St., called attention to item 25 on the chart of public comments that raised a concern about a push to allow physical public access to Lake Burien. The response from the City was that no new public access is being proposed. Behind closed doors, however, a councilmember met with the city manager and requested him to contact the Ruth Dykeman Center to talk about the City purchasing the property. If the City wants public trust, it must say one thing and do the same. With regard to the shoreline inventory, cumulative analysis and shoreline characteristics analysis, she said all three of the documents are supposed to be baseline documents against which the concept of no net loss is measured. In fact all three of the documents include errors. The response of staff on that point says they checked the online Lake Burien Shoreline Club newsletters and the online inventories; the fact is there are no newsletters or inventories online. The documentation also states that visits were made to the lake by scientists; if that was in fact done, their methodologies should be noted and the visits included in the bibliographies. Staff contends that Don Warren was interviewed, but in fact he was not. The three documents should be corrected.

BREAK

Approval of Minutes

Deferred to next meeting.

Old Business

A. Discussion: Shoreline Master Program Updates

Mr. Johanson informed the public that Shoreline Master Program documentation being worked on is available at City Hall, online and at the library. He explained that the shoreline advisory committee was composed of a group of volunteers appointed by the City Council to develop an initial draft. The Planning Commission is in the process of reviewing that draft and accepting public comment that will ultimately make the draft document better.

Consultant Karen Stewart with Reid Middleton, Inc. said the firm was hired by the city to assist in updating the existing Shoreline Master Program. In 2005 the state developed some additional guidelines that all shoreline jurisdictions must follow; the new guidelines are aimed at protecting ecological functions, providing public access, and providing for water-dependent uses. The shoreline advisory committee developed the draft document that is currently under review by the Planning Commission. Nothing has yet been adopted, and all public comments continue to be timely.

Ms. Stewart said there are key sections in the document. Chapters 4 and 5 house the regulations are have received the most attention. The inventory is intended to serve as a baseline of conditions of the shorelines throughout the state. There are over 240 jurisdictions that are having to update their Shoreline Master Programs; the state has made available funding to hire consultants to assist in updating the programs.

Over the past couple of years there have been a number of presentations made, and all of that information is readily available to the public. Mr. Johanson said he would also make available online the Power Point presentation that was shared with the Commission at the start of their involvement in the process.

Ms. Stewart voiced concern over misinformation circulating among the public, especially around the topics of nonconformity, eminent domain, and public access.

Mr. Johanson explained that every attempt is being made to assure that the draft document is consistent with the state guidelines. The state guidelines do not allow for individual jurisdictions to go in whatever direction they want with regard to protecting their shorelines.

With regard to the issue of nonconformance, Mr. Johanson agreed that the language of the draft document is not overly clear. The Commission is aware of that fact and has directed staff to provide some clarifying language. Item 52 in the matrix is a response to that direction. It clarifies that homes that are damaged or destroyed can in fact be reconstructed in their original location, provided the specific criteria spelled out in the matrix are followed.

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Chair Fitzgibbon commented that under the current rules, the owner of any home anywhere in the city that is destroyed by fire or natural event up to and beyond 50 percent of the assessed value must apply for a building permit before reconstructing the home. Under the proposed plan, any waterfront home destroyed by fire or natural cause would be permitted to rebuild on the same footprint, but expanding the size of the house beyond the original footprint would not be allowed, because that would increase the ecological impacts.

Mr. Johanson further noted that homes located within the buffer zone will be allowed to expand their footprint within certain limitations. The property owner may be required to offset the impacts of any expansion.

Chair Fitzgibbon reiterated that the Commission has not signed off on the draft document and is continuing to work toward clarifying the language.

From the audience, the question was asked why the language referring to more than 50 percent of the assessed value is included. Mr. Johanson said the criteria apply only to structures that sustain damage of more than 50 percent of the assessed value. It is intended to serve as a threshold beyond which additional requirements apply. The science dictates that the section immediately landward of the water is the most ecologically important.

Another member of the audience pointed out that the state guidelines set the threshold at 75 percent rather than 50 percent. Mr. Johanson said the issue was raised at the previous Commission meeting. The fact is all other sections of the existing city code that reference nonconformance utilize the 50 percent threshold. Having a threshold percentage included in the Shoreline Master Program is a requirement of the state, so the Commission concluded for the sake of consistency to use the 50 percent threshold. The state guideline of 75 percent is intended to apply to any jurisdiction that does not have existing nonconformance regulations.

Mr. Johanson pointed out that the threshold in the currently adopted Shoreline Master Program is based on market value. The proposal is to change that to assessed value in order to be consistent with the rest of the code. Accordingly, waterfront properties will be treated the same as any other property in the city.

From the audience, the suggestion was made that waterfront properties are not in fact the same as any other property in the city and should not be treated the same.

A member of the audience questioned why there should be such a push to get the document completed and adopted. She suggested that because so many in the public have only recently been made aware of the process, more time should be allotted to allow the public time to express their concerns and offer suggestions. Mr. Johanson pointed out that a deadline has been set by the state and the city is working toward meeting that deadline. There has been talk of extending the deadline, but that has not occurred yet.

Commissioner Clingan said the Commission wants input from the public because knowing what the public wants makes documents better in the long run. He said the original schedule had the Commission wrapping up its work on the Shoreline Master Program by the end of February, but that clearly will not happen. It is fair to say the Commission's work will not be completed until the end of March, which will allow time for the public to offer additional comment, verbally at Commission meetings and in writing. In addition, staff is more than willing to answer questions about what is in the draft document.

Mr. Johanson said notices regarding the Shoreline Master Program open house were mailed to every home within 200 feet of a shoreline. The mailing addresses are generated from the King County Assessor's database. That notice included mention of the public hearing before the Planning Commission on January 12. The city is required by law to post notice in the official city newspaper, which is the *Seattle Times*. All notices are posted to the city's website as well, and persons on the city's interested parties mailing list have had notices mailed directly to them.

Chair Fitzgibbon thanked everyone for their participation and valuable comments.

New Business – None

Planning Commission Communications – None

Director's Report – None

Adjournment

Chair Fitzgibbon adjourned the meeting at 9:24 p.m.

Approved: Feb. 23, 2010

Joe Fitzgibbon, chair
Planning Commission

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