



PLANNING COMMISSION MINUTES

7:30 PM May 10, 2018
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Gerald, Blair, Diane, Lynn

Absent: Tim Faber, Brett Kok

Staff Present: Heidi Gudde, Dave Timmer

3. APPROVAL OF MINUTES

A. March 8, 2018

- Motion to approve - Lynn
- Correction: page 4 of 4 the day should read May 10th rather than May 2nd.
- Motion to approve with correction
- Passed

4. PUBLIC HEARING

A. Proposed amendment to Chapter 16.16 of the LMC, Critical Areas Code

- No public present
- Questions related to conflict of interest and ex parte conversation posed by the Chair– all answered in the negative.
- Topic introduced by Dave Timmer, an issue which was workshopped in October of 2017. Summary given related to the reason for the change and the most significant changes as well as the topics which were discussed at the workshop: stream classification, buffer widths, hazard trees, effect of the CAO on existing developed properties along Fishtrap Creek, no changes to the mapping of critical areas, the use of buffers as stormwater facilities.
- Review of Section One – no comments
- Review of Section Two

- Chair: asked about the Civil fines discussed and clarification related to the flexibility of assessing a one time fine of \$500 or a daily fine of \$500. As currently written, the code is unclear to include “or”.
- BS - questioned the maximum fine as a very steep penalty. Staff responded with a couple of examples where a daily fine may be warranted such as raw sewage spill or a developer who may be willing to pay a one time fine to get, for example, trees cut down to get a view.
- GV – asked about public awareness of the rules and regulations regarding the protection of the critical areas, specifically the Fishtrap Creek. For example, can residents dump lawn clippings, can they remove branches from the creek?
- Timmer – noted that most people know there are regulations related to critical areas but probably not the details. Many homes have active spaces, like lawns, within the buffer area. Staff is able to work with them regarding the removal of debris or danger trees. However, native vegetation should remain in place and downed and damaged trees are part of the natural system. Also suggested that a brochure could be distributed which was supported by GV and DV.
- Review of Section Three – summary by Timmer
- Review of Section Four
- DV – requested more information related to the section on Mitigation Banking
- Timmer – explained that off-site mitigation is available through banking. Most notably this is the wetland bank available through the Lumi Nation. A section of code was also added so that provided for a City established in-lieu fee program. Admin is costly and difficult in seeing up these programs.
- Gudde – noted that the advantages of doing off-site mitigation but yet within the City limits is a very visible improvement, potentially even providing for the development and the wetland mitigation to be occurring within the same watershed basin. Noted that admin costs can be prohibitive to setting up these programs.
- BS – noted that this could be useful in the Pepin Creek sub-area development.
- GV – asked about existing wetlands potentially in the Kamm Road area.
- Timmer – noted that there are existing wetlands that we are aware of along the City’s outskirts including some low areas in the Kamm Creek watershed and near Birch Bay Lynden Road.
- Section Five – no comments
- Section Six – no comments
- Section Seven
- DV – noted that a section was added related to dual-purpose storm water facilities.

- LT – noted that staff had put a lot of work into the document.
- DV – asked about the next steps.
- Timmer – noted that the document will then be reviewed by the DOE and the DFW. If questions or comments arise from these agencies it will likely be requirements
- BS – asked if the code could be approved with the changes discussed tonight including the discussion of the penalties and the dramatic buffer changes.
- Gudde – to clarify, the motion to recommend can include the clarification on the penalties of having a minimum fine OR a maximum fine. Also, there may be some confusion about buffers. The reviewing agencies will applaud these larger buffer widths. The Commission may want to consider how dramatic these changes are compared to the existing code.
- Timmer – related that after some additional review of these buffer areas he may suggest buffer changes that include: (fill in suggestions)
- GV – asked for examples of what different intensities of use may include.
- Timmer – related some examples of high intensity use such as commercial / retail use, residential use at densities greater than 1 DU per acre, new high intensity ag, high intensity rec such as golf course – the is most development.
- Gudde – noted that the risk of proposing smaller buffers is that the DOE may not approve of the buffers and recommend larger buffers.
- Timmer – noted that he is comfortable with the revised buffers proposed.
- GV – noted that the GMA regulations call for higher density development to occur within City limits and larger buffers make this difficult.
- Timmer – the relatively of developing in urban
- Blair – moved to close public portion
- GV – 2nd
- Passed
- BS – move to recommend approval of the CAO with the following conditions; a revision to section 16.16.140(B) to include an “or” after the “and”, and adjusting the buffer tables Section 16.16.310(A), (B), (C) as corrected and presented by D.Timmer.
- GV – seconded the motion
- LT – let the record show that he will support the ordinance but has never been a fan of reducing buffers. Because, 1.) the reason that Gudde mention – that the DOE or another agency may come back and require larger buffers. Also, (2.) it gives the folks in Olympia an opportunity to debate the changes or snag the process.
- BS – noted that we are increasing buffers but simply reducing the amount that we are increasing.
- DV – asked if there were certain areas that are of concern to LT

- LT – noted that he is not opposed to one area and will support the motion
- DV – noted the merit of keeping all of the buffers at least 25 feet. This was revised
- GV and BS – supported the change
- DV – called for vote, all passed

5. WORKSHOP

A. Proposed revision to the City's Appeal Processes

Heidi described the appeal process as it currently exists (planning commission, etc) and discussed changing that process to a hearing examiner. Administrative appeals (SEPA, building permit, etc. Looked at entire code and what currently exists as far as allowed to appeal. Heidi developed a matrix that identifies the current process.

Suggest a hearing examiner process for many reasons. Take the burden off volunteer board to look at very detailed technical/legal issues. Expedite the process, perhaps keep specious appeals from occurring, cost savings. Keep the political potential out of it, etc. A third party hearing examiner may help this process. There are some that should be considered in the context of the community (Short plat, conditional use).

Traffic impact fee example – should be looked at technically, etc.

SEPA, fill and grade would go to hearing examiner.

Would still go to PC: Short Plat, Conditional Use, others.

CDC suggested that hearing examiner would recommend a decision and council would need to approve. Still some discussion occurring regarding the process.

Diane – don't necessarily want to suck things out of the community. But think the technical issues would fit well for the hearing examiner. Any appeal that has an influence on the shape and look of the community should stay in the community (PC or Council).

Lynn – a benefit of a hearing examiner is to make sure there is an independent look.

Gerald – a hearing examiner understands the law. That is a benefit.

Blair – was happy that the appeal process went through them. Even as painful as it was.

Diane – there are processes that PC can be experts in...planning, etc. Thinks the matrix is logical and agrees with it. But doesn't think the hearing examiner should just be a recommender to council. Perhaps could be the next level of appeals – an appellant could appeal a hearing examiner decision to the council?

CDC has asked that PC offer suggestions and bring those ideas back.

Heidi – motion to dismiss? That be included as well. A hearing examiner could do so.

- Board of Appeals – we don't have one. Board of Adjustments – would go away.
- Staffing boards is difficult

Appeals don't happen very often. 10 in the last 10 yrs – 8 for the Preferred Freezer project.

Diane suggest possibility of meeting with CDC on some of these things for the discussion process.

6. COMMISSIONERS CORNER

A. Pepin Creek Planning Update

Survey result highlights.

Land use concepts

Moratorium / downstream

Flood intercept ditch / flood protection

Financial feasibility – assessment. What is the tipping point?

7. ADJOURNMENT

10:00pm

