

## **POULSBO CITY COUNCIL WORKSHOP OF MAY 24, 2017**

### **MINUTES**

**PRESENT:** Mayor Erickson; Councilmembers Lord, McGinty, Musgrove, Stern, Thomas.

Staff: Deputy City Clerk Diehl, Planning Director Boughton.

**ABSENT:** Councilmembers Henry, Nystul.

### **MAJOR BUSINESS ITEMS**

\* \* \* Critical Areas Ordinance Update

#### **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Erickson called the meeting to order in the Council Chambers at 7:00 PM and led the Pledge of Allegiance.

#### **2. COMMENTS FROM CITIZENS**

Molly Lee commented she would like to see additional language added to the critical areas ordinance. Sections in which Lee feels language should be added include:

Page 61 - 16.20.320 Item G1 should include "or other land dedicated for trail by property owners".

Page 7 - Item I should state "shall be provided as much as possible at specific points instead rather than parallel to the buffer. Parallel trails are necessary only after exhausting all the requirements of section 16.20.320 items G1, G2, G3, G4. They shall be located in only the outer 25 percent of the buffer".

Page 43 – Item G4 should state "Where trails are permitted within buffers after exhausting items G1, G2, G3, G4 they should be allowed in the outer 25 percent of the buffer. Lee feels this would be consistent with wording in item G5.

Lee noted the City did not supply a definition of "corridor". Lee feels they should use the definition provided in the City Council Minutes of October 13, 2010. Corridor uses the same definition as open space and does not change original intent of the comprehensive plan.

Lee stated the City's table 16.20.230.C on page 38 identifies pet and human disturbances as impacts to wetlands. Lee feels placing public trails into open space or corridor buffers creates a negative impact, which is minimized by eliminating pets and humans and

having robust vegetation in buffers. Lee feels government comprehensive plans employ language such as "open space" or "corridors," which makes it simple to use eminent domain or take private property. Lee is not interested in her property being taken to provide a public trail system. Lee noted placing public trails in buffers are counter-intuitive to environmental protections, are unconstitutional, and would ultimately harm the public.

Rita Hagwell noted the importance of salmon in Johnson creek and she was willing to offer 150ft of land on both sides of the creek but never received a response to her offer. Hagwell feels her land would be considered eminent domain with all the developers around using it as open space for their projects. Hagwell would like it in writing if she chooses to give her land.

Jan Wold commented on the critical area ordinance which will be discussed tonight, comments included:

She owns acreage in the City, which includes the critical area buffer; research has shown a 300ft buffer on each side of the creek is optimal for salmon streams; trails are going to be placed in the outer 25 percent of the buffer, but she believes trails should not be in the buffers at all; the ability to offer variances should be removed or limited to 10 percent; all public, not just ones in the surrounding area, should be noticed when a variance is issued to reduce a buffer.

### **3. COUNCIL WORKSHOP**

#### **a. Critical Areas Ordinance Update**

Planning Director Boughton gave a presentation which included:

##### ***Summary of Changes:***

Incorporating new best available science by resource agencies (such as WA Department of Fish and Wildlife, Department of Ecology, Army Corps of Engineers); recommendations by City's Consultant Critical Areas Biologists; amending corrections or conflicts; assisting with ease of administration.

##### ***Critical Areas are regulated or defined by:***

Wetlands; Fish and Wildlife Habitat Conservation Areas; Geologically Hazardous Areas; Areas of Critical Recharging Effect on Aquifers; Frequently Flooded Areas.

##### ***What is required:***

- Best Available Science must be included when developing policies and development regulations to protect the function and values of critical areas.

- Special Consideration must be made to conserve or protect or enhance "anadromous fisheries".
- Cities may use information that local state or federal natural resources agencies have determined represents best available science.
- Consultation with state and federal natural resource agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations.
- Jurisdictions may compile scientific information through its own efforts, as long as it meets the criteria set out in WAC 365-194-900 to -925.
- Jurisdictions need to demonstrate how best available science was included in the development of critical areas policies and regulations.
- Any nonscientific information that is used as a basis for policies or regulations that depart from best available science, shall be identified, supported, and rationale provided in the record.
- In addition to best available science, special consideration for conservation or protection of anadromous fisheries is also required.
- Must demonstrate special consideration has been made, the record should be developed.
- Examples of conservation and protection measures are related to: stream flows, water quality and temperature, spawning substrates, estuary and nearshore marine habitat quality, and maintenance of salmon prey species.

Best Available Science does not include: anecdotal information - one or more observations which are not part of an organized scientific effort; Nonexpert opinion; Hearsay.

### ***What is included in the Critical Areas Ordinance Update:***

#### Wetland Section

This section had the most changes proposed due to new information from both the federal and state resource agencies. The City must use the *Federal Wetland Delineation Manual* (WAC 173-22-035) and the *Department of Ecology 2014 update to the Washington State Wetland Rating Systems for Western Washington*. Wetland Buffers are set forth in Appendix 8-C, Section 8C.2.3 of the *Wetlands in Washington State – Volume 2: Guidance for Protection and Managing Wetlands*. Updates to wetland buffer averaging and wetland buffer reduction are also as set forth in Appendix 8-C. Updates to wetland mitigation and replacement ratios are from the Department of Ecology's *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance*.

#### Fish and Wildlife Habitat Conservation Areas

Changing the Stream Typing to the Alpha system identified in WAC 222-16-030. Modifying the categories of fish and wildlife habitats areas to be consistent with

WAC 365-190-130 and WDFW's Priority Habitat and Species List. The SF Dogfish Creek buffers will remain the same as established in the 2007 Update and the City of Poulsbo Report on best available science is being utilized to allow for the smaller buffers than you would see in the DNR stream typing buffers. Stream buffer reduction is allowed under an acceptable Habitat Management Plan and after consultation with the Squamish Tribe and Department of Fish and Wildlife. A reduction shall be no more than 25 percent which is consistent with the wetland buffer reduction.

#### Geologically Hazardous Areas

Limiting siting critical facilities on geologically hazardous areas. Providing guidance for tree cutting on critical slopes.

#### Critical Aquifer Reduction Areas

Revised definitions consistent with WAC 365-190-030. Revisions based on Department of Ecology's Critical Aquifer Recharge Area Guidance Document. Use table revised based upon Department of Ecology's Guidance Document.

#### Updated Maps

*Wetland Section:* Updated map with Hydric Soils from US Department of Agriculture and site specific delineated wetlands.

*Fish and Wildlife Habitat Conservation Areas:* Applied Department of Natural Resources Hydrology Water Type map using alpha identification. New figure including SF Dogfish Creek reaches.

*Aquifer Recharge Areas:* Map updated with data from 2014-2015 US Geological Survey Scientific Investigation Report.

#### ***What parts of the Critical Areas Ordinance are discretionary:***

##### Administration – Section 100

Added additional language under applicability. Added a couple of additional exemptions – all related to enhancement. Made clarifications & additions to definitions.

##### Special Reports – Section 700

Provided additional reports and details requirements for both wetlands and habitat management plans (fish and wildlife habitat conservation area).

#### ***Summary:***

The Critical Areas Ordinance is required to be updated by the Growth Management Act as a part of the periodic update of the comprehensive plan and development regulations and must be completed by June 30<sup>th</sup> of this year. The Critical Area Ordinance update primarily includes provisions related to resource agencies updates. Best Available Science is relied upon through resource agency

guidance and Fishman Environmental Services report for SF Dogfish Creek buffers which were established in the 2007 ordinance. Section 100 – Administration and Section 700 – Special Reports are City discretionary sections and there are some proposed amendments.

Mayor and Councilmember Comments/Questions included:

- *It was noted how there were very little discretionary areas of the Critical Areas Ordinance. How do we notify neighbors of buffer reductions?*

Boughton noted there are two ways people are notified of buffer reductions. One is a Land Use Permit, which would include all the notification requirements of the permitting process such as notice being published in the newspaper, sent to 300ft property owners, posted on the City Website and regular posting locations. The other way would be a Critical Area Permit which would also require the same type of noticing as a Land Use Permit.

- *Regarding the buffers, how do you reconcile natural vegetation versus public access?*

Boughton explained the Department of Ecology has provided guidance allowing trails in a buffer for a wetland which is all incorporated in the Critical Areas Ordinance. For streams buffers, no guidance was provided by the Department of Fish and Wildlife, so the City has paralleled the language for wetland buffers. A new piece has been added that states mitigation might be required to replace native vegetation removed for trail construction or enhance areas of degrading buffers. Boughton feels reconciliation of natural vegetation versus public access will need to be handled on a case by case basis and is why habitat management plans are required as part of a trail project. In the exemption section under Section I - 16.21.20, there is a provision that would exempt some pervious trails in buffers.

- *On page 32 of the Critical Areas Ordinance update, it lists Habitat Scores for Forested Wetland buffers as low impact, which appears it would allow building right down to a creek?*

Boughton stated she would look in to Forested Wetland being considered low impact, but did not believe it would require no buffer. She stated the criteria to be considered a forested wetland might not be as simple as containing trees.

Boughton discussion of the Modification Document included:

Change #1 - Added the definition of Building Setback, which is an additional distance between the required critical area buffer and the footprint or foundation of a building, structure, or other development on a site.

Change #2 - Added revisions regarding trails within the critical area buffers. In the General Exemptions Section - Limiting trails to pervious natural paths that do not exceed 2000sqft of disturbance. In the Fish and Wildlife Habitat Conservation Areas Section it was suggested trails do not always have to be parallel to the buffer but instead after exhausting items G1, G2, and G3, shall be located in the outer 25 percent of the buffer as feasible.

Change #3 – changing the word article to section.

Change #4 – adding the missing word is.

Change #5 – retitling the name of the maps listed in the ordinance to be consistent with the title of the map.

Change #6 – revisions of the definitions for Critical Aquifer Recharge Areas, Development, Geologically Hazardous Areas, and Wetlands to be consistent with the WAC.

Change #7 – correcting a typo by adding a “r” to peer-review.

Change #8 – correcting formatting errors on pages 43 & 47.

Mayor and Councilmember Comments/Questions included:

- *Should Ms. Lee’s definition of the word “corridor” be the same as the definition of Open Space?*  
Boughton noted Ms. Lee’s definition of the word corridor is derived from a map in the Comprehensive Plan. Corridors or Open Spaces are not utilized in the Critical Areas Ordinance.
- *Did Boughton feel any of the few modifications recommended would be problematic with the Department of Ecology?*  
Boughton noted the only one she felt might have a problem is modification #2 regarding the trails but feels confident after consulting with Grette Associates that the Best Available Science was used on this modification and should suffice.
- *On modification #2 where it states “does not cross or alter any regulated streams or drainages, and results in less than 2000sqft of disturbance”, is that in regard to the trail?*  
Boughton explained this provision is only to be considered exempt, if parameter is exceeded you will be required to go thru the proper standards in the Critical Areas Ordinance.
- *The word “permeable” being used in section 16.20.120.I seems to cause confusion when talking about unpaved trails, could this section be reworded?*

Boughton agreed to the possible confusion and is going to check with the consultants to see about striking the word "permeable" from that section.

- It was noted Dogfish Creek has narrower buffers due to it being in a densely urbanized area.
- *On page 9 of the Critical Areas Ordinance (item D), residential structures destroyed by fire may be reconstructed up to the original size, and repair must be initiated within 2 years of the catastrophe. What constitutes the start of repair?*  
Boughton will have to look into it but thought it was any permit applied for.
- *On page 9 (item D1), it states structure can be rebuilt on an alternative location on the lot, if it is determined the alternate location will provide greater protection of the critical area. Who determines this alternative location? The property owner or city?*  
Boughton believed it would be the property owners right, but she did feel there could be clarification in this section.
- *On page 8, it states only handheld devices can be used to maintain buffers, no excavators, which is almost impossible with large blackberry bushes. Could exceptions be made?*  
Boughton stated she will take this back to the consultant and see if blackberry bushes can be added as an exception.
- *In the last UGA we took in a fair amount of unbuildable lands, how do we disperse that from our urban equation?*  
Boughton noted it would be a part of the land capacity analysis which is done every 5 to 7 years through the buildable lands reporting.

Boughton noted the next steps of the process included:

- Holding and additional workshop on May 31<sup>st</sup>, if council felt it would be necessary. Councilmembers stated they did not feel the need.
- Holding a Public Hearing at the June 7<sup>th</sup> City Council Meeting.
- Having final adoption of the Critical Areas Ordinance at the June 14<sup>th</sup> City Council Meeting.

#### **4. CONTINUED COMMENTS FROM CITIZENS**

Rita Hagwell noted she was concerned that larger tax payers would be getting more of a say than smaller tax payers on the creation of the Critical Areas Ordinance. Hagwell feels people need to respect private property when entering someone's land and the importance of putting things in writing.

**5. COUNCILMEMBER COMMENTS/BOARD/COMMISSION REPORTS**

Mayor Erickson reported on Friday, May 26<sup>th</sup> there will be a ribbon cutting at the new Starbucks on Highway 305 and a groundbreaking ceremony for Fishline's new building on June 24<sup>th</sup> will be at 1pm.

Councilmember Thomas noted he will be attending the Kitsap Veteran Homeless Symposium in Bremerton from 8:30am to 3pm on May 25<sup>th</sup>.

**6. ADJOURNMENT**

**Motion:** Move to adjourn at 8:32PM,

**Action:** Approve, **Moved by** Lord, **Seconded by** McGinty.

Motion carried unanimously.

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Rebecca Erickson, Mayor

ATTEST:

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Rhiannon Fernandez, CMC, City Clerk

*Respectfully prepared and submitted by Kati Diehl*