

Approved

CITY OF BREMERTON

PLANNING COMMISSION MINUTES OF REGULAR MEETING February 16, 2016

CALL TO ORDER:

Chair Wofford called the regular meeting of the Bremerton Planning Commission to order at 5:30 p.m.

ROLL CALL

Commissioners Present

Chair Wofford
Vice Chair Nethery
Commissioner Goodnow
Commissioner Nerf
Commissioner Tift

Staff Present

Andrea Spencer, Director, Department of Community Development
Allison Satter, Senior Planner, Department of Community Development
Kristin Moerler, Senior Planner, Department of Community Development

Others Present

Lisa Greuter, Berk Consulting

Commissioners Absent

Commissioner Strube (excused)

Quorum Certified

APPROVAL OF AGENDA

COMMISSIONER TIFT MOVED TO APPROVE THE AGENDA AS PRESENTED. VICE CHAIR NETHERY SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

APPROVAL OF MINUTES

VICE CHAIR NETHERY MOVED TO APPROVE THE MINUTES OF JANUARY 19, 2016 AS PRESENTED. COMMISSIONER TIFT SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

PUBLIC MEETING

Call to the Public (public comments on any item not on the agenda)

Chair Wofford asked if there were any comments from citizens. Seeing none, he closed the public portion of the meeting.

Workshop: Zoning Code Amendments Related to the 2016 Comprehensive Plan Periodic Update

Ms. Satter reminded the Commission that the Growth Management Act (GMA) requires the City to complete a major update of its Comprehensive Plan and development regulations by June 30, 2016. She reviewed that the Comprehensive Plan is a 20-year vision for how Bremerton should grow and specifically addresses existing conditions and evaluates growth potential. Zoning is the way governments control the physical development of land and the kinds of uses allowed. The Comprehensive Plan provides goals and policies that guide the Zoning Code.

Bremerton Municipal Code (BMC) 20.04 State Environmental Policy Act (SEPA)

Lisa Greuter, Berk Consulting, reviewed that the State Environmental Policy Act (SEPA) is an informational process to solicit agency and public comments before an action is taken. It ensures there is information about potential environmental effects, both of project permits (physical development applications) and non-project actions (comprehensive plan or code updates). Environmental review of project permits requires detailed information, and the mitigation/conditions applied are usually very specific. Environmental review of non-project actions often looks at the cumulative effects of growth area or city-wide. Mitigation is often the policies or codes in place so that as development comes along consistent with the plan, the impacts would be mitigated.

Ms. Greuter provided a flow chart to illustrate a typical SEPA review process. She explained that when an application is submitted, the Director or his/her designee reviews it to determine if the activity is exempt. Very small activities such as interior tenant improvements in buildings and other small procedural items in the code are exempt from SEPA. If not exempt, some form of environmental review would be required; and most often, it's a Determination of Non-Significance (DNS), which means the proposal is unlikely to have moderate or significant adverse effects, or the effects can be mitigated via the code or conditions applied to the project. Because the codes have evolved over time to be more specific, there is less need to do Environmental Impact Statements (EIS), except for larger projects. However, non-project EISs are more common to provide upfront review to facilitate growth.

Ms. Greuter said the SEPA documents most often include comment periods. For a DNS involving GMA actions or certain types of development, the comment period is about two weeks. If an EIS is required, there would be a 21-day scoping period, followed by a 30-day comment period before the Draft EIS is issued. She emphasized that the intent is to solicit public comments while the decision-making process is happening.

Ms. Greuter explained that it is optional to have administrative appeals (at the City level), and there is also the option of judicial appeals. The City of Bremerton has allowed administrative appeals to the Hearing Examiner. Appeals can be either procedural (DNS, DS or Final EIS) or substantive (conditions, denial). However, SEPA appeals must be consolidated with the appeal of the underlying action so that the body hearing the appeal is also hearing the substantive portion of the action that is being proposed. It is awkward when the Hearing Examiner is the appeal authority on a legislative item because the City Council is the ultimate decision maker. The SEPA appeal should address the underlying action, which is not possible if the decision maker is the City Council and the appeal goes to the Hearing Examiner.

Ms. Greuter reviewed that most of the recommended amendments in BMC 20.04 and 20.02 (Attachment I) are editorial/housekeeping measures to ensure accurate cross references to State law and rules or to clarify procedures the City already has in place. As proposed, administrative project permit SEPA appeals would continue to go to the Hearing Examiner, administrative SEPA appeals for legislative items would not. SEPA appeals on legislative items could occur after City Council action to the Growth Management Hearings Board. The Hearings Board would not only hear appeals of the proposal, but appeals of the SEPA document, as well.

BMC 20.14 Critical Area Ordinance (CAO)

Ms. Satter advised that GMA requires the City to review and update its CAO periodically. She explained that the purpose of the CAO is to protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas). GMA requires the use of best available science (BAS) in developing policies and regulations to protect the functions and values of the critical areas. However, BAS must be balanced with other GMA goals and mandates (socioeconomic, cultural, legal, and political), as well as local factors (projected growth, land use, and administrative capacity).

Ms. Satter explained that the Shoreline Master Program (SMP) must include regulations for critical areas within the shoreline jurisdiction. To do this, the City's SMP that was adopted in 2013, also adopted the 2006 CAO by reference. However, the SMP incorporated the most up-to-date science, some of which is in conflict with the CAO. The consulting team has provided a Gap Analysis (Attachment III), which identifies the needed revisions within the CAO (BMC 20.14) and the SMP (SMP 7.010) to be consistent with each other and compliant with BAS and the Department of Ecology's (DOE)

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requirements. She briefly reviewed the characteristics and types of sources that were considered when identifying BAS and said the BAS used for the update was vetted by the City's consultant, The Watershed Company, and emphasized that BAS helps the City understand and consider how land use decisions affect critical areas within the City. She also reviewed that, as per the Gap Analysis (Attachment III), no changes are needed for geologically hazardous areas and critical aquifer recharge areas. However, changes are needed for frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas to comply with BAS. She reviewed the proposed changes (Attachment I) as follows:

- **Frequently Flooded Areas (BMC 20.14.500 - .530).** Frequently flooded areas are addressed in the CAO because it is appropriate. However, part of the Public Works Chapter (BMC 17.60) addresses floodplain management, and the Public Works Director is the manager of the floodplains. Although additional critical area review is required, it is important that BMC 20.14 be consistent with BMC 17.60. Suggested revisions include:
 - Amend BMC 20.14.510 (Description and Purpose) by adding “while protecting the functions and values of floodplains,” at the end of the first sentence.
 - Amend BMC 20.14.520 to designate frequently flooded areas according to BMC 17.60 (Floodplain Management)
 - Amend BMC 20.14.530 to clarify that the habitat assessment must comply with the Biological Opinion in the 2008 Federal Emergency Management Agency (FEMA).
- **Wetlands (BMC 20.14.300-.360).**
 - Amend BMC 20.14.320 to adjust the wetland rating system to be consistent with the classification system that the DOE recommended in 2014 for small cities. Also, as recommended by the DOE, a chart would be added to identify the four categories of wetlands, as well as ratios for creation/re-establishment, rehabilitation and enhancement.
 - Amend BMC 20.14.330(a) (b) and (c) to clearly identify the permitted, regulated and exempt activities that can occur in a wetland or wetland buffer.
 - Amend BMC 20.14.330(h) to clarify the buffer requirements based on the wetland's category. The current buffers are between 50 and 200 feet. As per the DOE's recommendation, proposed buffers would be increased to between 50 and 300 feet. However, a 25% buffer reduction would be allowed if certain criteria are met to minimize impacts such as noise, lights, and toxic and stormwater runoff. (See chart in SMC 20.14.330(h)(3)).
- **Fish and Wildlife Habitat Conservation Areas (BMC 20.14.70-.760)**
 - Amend Table 1 in BMC 20.14.730 to improve clarity and be consistent with the buffer standards in the SMP for freshwater conservation areas. As proposed the CAO would refer to the SMP for shoreline buffers and setbacks.
 - Amend BMC 20.14.730(a)(3) to update the rules for Bald Eagles. When the current CAO was written in 2006, Bald Eagles were endangered and a management plan was required. Although Bald Eagles are still classified as “threatened,” they are no longer considered endangered. As proposed, the Bald Eagle provision would be eliminated, and the CAO would simply require that whenever activities are proposed adjacent to habitat conservation areas where there are endangered species, applicants must comply with the state and federal regulations.

Shoreline Master Program (SMP)

Ms. Satter advised that the SMP (SMP 7.010) would also be updated through a limited amendment process. She provided a chart, which outlines the changes that need to be made to the SMP in conjunction with the CAO amendments. In addition to these changes, the SMP Map needs to be updated to be consistent with recent changes in the Comprehensive Plan Land Use Map that designated several different areas as multi-family. She reviewed two maps and specifically identified the changes needed to be consistent with the Comprehensive Plan Land Use Map.

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BMC 20.54 Nonconforming Provisions.

Ms. Satter explained that BMC 20.54 establishes regulations for existing lots, structures, and uses of land that were lawful at the time of their establishment but are prohibited, regulated or restricted under the existing zoning code. Currently, these nonconformities may continue to exist until such time as they are discontinued. She shared examples of structures, uses, lots, landscaping or parking that do not meet the current code requirements.

Ms. Satter said that although some cities allow nonconforming uses and structures to be rebuilt in the exact same location, as long as the same foundation is used, the City of Bremerton's nonconforming provisions are intended to encourage the removal of nonconforming situations. As per the City's current code, if a building suffers substantial destruction, it must be removed and rebuilt to code. While this is consistent with the policies contained in the Comprehensive Plan, there has been some disagreement between developers and City staff about what is meant by the term "substantial destruction." She reminded the Commission that staff worked very hard on the nonconforming provisions that were adopted as part of the SMP update to create something that is more tangible and succinct, and staff is proposing that these same provisions be incorporated into the nonconforming provisions in Title 20 of the of BMC.

Ms. Satter said the proposed amendment would add clarification to the definition of "substantial destruction," which includes accessory structures. As proposed, if a building suffers substantial destruction, it will likely have its nonconforming status terminated. Under the current code, if the substantial destruction is due to a natural cause (tornado, fire, earthquake), a property owner could rebuild in the same size and location. However, if the structure is 100% destroyed, redevelopment on the site would have to meet the current code requirements. Staff is proposing an amendment that would also allow a property owner, whose home is 100% destroyed, to rebuild the structure in the same size and location.

Ms. Satter concluded her presentation by pointing out that 78 comments have been received to date, and staff anticipates additional communication from various agencies. Public comments are encouraged, and comments received to date can be viewed at www.bremerton2035.com. She advised that at their March meeting, the Commission will review land-use designations, parking requirements, and sign requirements. She announced that the Introduction and Land Use Element of the Comprehensive Plan Update were introduced to the City Council on February 3rd. The remaining elements will be presented at future Council meetings that are televised.

Chair Wofford asked for comments from citizens.

Jack Stanfill, President of the Chico Creek Task Force, said he was present to address environmental concerns about the Kitsap Lake area, as well as the Gorst/Heins Creek Basin and to share new information the task force has obtained. **Mr. Stanfill** provided an exhibit to be entered into the record. He commended staff for keeping the Comprehensive Plan Update process honest and open to the public. He appreciates the opportunity to exchange ideas. **Mr. Stanfill** said he supports the community asking people to invest and build in Kitsap County, but they must make sure that honest environmental impact studies are done and followed through with. He voiced concern that no one currently knows where the underground water divide between Dickerson Creek and Kitsap Lake is located. He noted that in 2000 there was a three-party agreement between the City, Kitsap County and Port Blakely that called for drilling as many holes as necessary on the plateau to clearly establish the flow of water to Dickerson Creek and Kitsap Lake. This would have allowed for development without harming the critical environment. He pointed out that a portion of the Gorst/Heins Creek Basin, where Quarry B is located, has been changed into a green zone for conservation. Half of Quarry C is also in the Gorst/Heins Creek Basin. In an agreement between the City of Bremerton and Ueland Tree Farm, the City traded away Heins Creek. No SEPA review was done, and the City's forester misled the public by saying there were no fish, when Ueland's paperwork indicated differently. He said he would love to meet with City staff and the Commission to discuss the task force's concerns further.

Chair Wofford closed the public comment portion of the meeting.

Director Spencer indicated that the exhibits submitted to the commission would be posted on the website and a link would be sent to Commissioners. She noted that the letter submitted by Mr. Stanfill appears to be written in regard to an application that is currently before the Kitsap County Planning Commission and the Board of Commissioners. The proposal is to change a swath of land from Urban Reserve to Rural Industrial, both of which are County designations for areas that are not in Urban Growth Areas. The letter does not pertain to property within the City of Bremerton.

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Commissioner Tift referred to the proposed amendments to the tree removal provisions in BMC 20.14.190. He observed that trees have become an important part of the community. However, it is important to note that the provisions would apply primarily to public properties, and private property owners could still remove trees without a permit if they are so inclined. **Ms. Satter** answered that BMC 20.14.190 would only apply to tree removal within critical areas. As written, tree removal within a critical area would require a permit and replacement.

When addressing nonconforming structures, **Commissioner Nerf** asked how the City would determine whether a house was destroyed by a legitimate fire as opposed to one of questionable nature. **Ms. Satter** answered that staff would rely heavily on the Fire Marshal and legal department to make this determination.

Commissioner Tift asked if the nonconforming provisions would apply to subsequent owners. **Ms. Satter** answered affirmatively. **Director Spencer** noted that a redevelopment permit application would have to be submitted within one-year of the destruction.

Commissioner Tift pointed out that he does not believe a saltwater dock could be constructed for less than the \$2,500 identified in SMP 5.010(h)(8)(i). **Ms. Satter** said this provision was taken directly from the Washington Administrative Code (WAC). The language was provided for simplicity, but they typically refer to the exemptions contained in the WAC. She cautioned against making changes that are inconsistent with WAC. She explained that a saltwater dock would still be allowed, but it would be subject to more intense permits.

Vice Chair Nethery asked staff to explain the reasons for increasing the wetland buffers. **Ms. Satter** said the proposed increase is consistent with the DOE's recommendation. The only way the City could establish a lower buffer requirement would be to write an analysis to the DOE, explaining how a reduced buffer would meet the DOE's intent with no net loss. Given the opportunity for buffer reduction based on certain criteria, staff felt the proposed 25-foot increase is something developers could work with. **Director Spencer** recalled that the original buffer requirements were based on a previous State model ordinance, and the State is now recommending that the buffers be increased further. If the City chooses not to follow the recommendation, a significant amount of scientific research would be required to back up why a lesser buffer would be sufficient.

Vice Chair Nethery commented that he wished there was a way for the City to have less stringent requirements, particularly along the shoreline, to help cultivate the unique and wonderful environment. **Ms. Satter** recalled that when the SMP was adopted in 2013, the City chose to differ from the model ordinance and adopt smaller buffers than what is typical in the majority of other jurisdictions. This decision was supported by BAS. **Director Spencer** expressed her belief that the City made the correct decision to fight for smaller shoreline buffers with increased vegetation, etc. in the SMP. However, given that there are not many wetlands in the City, it is easier to adopt the State model code.

Commissioner Nerf said he moved to Bremerton 16 years ago because of the unique nature of the City and its waterfront. However, he has seen it degrade since he moved here. For example, there are significantly fewer birds, which suggests they aren't doing everything right. He cautioned against ignoring the DOE's guidance.

BUSINESS MEETING

Chair Report

Chair Wofford did not have any items to report.

Director Report

Director Spencer provided a poster that is available at the Community Development counter to illustrate downtown development activity. She advised that many of the projects have been reviewed by the Design Review Board, and a few of them will likely proceed to the permit stage in the next few months.

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Old Business

There was no old business.

New Business

Vice Chair Nethery recalled that, at their last meeting, the Commission had a brief discussion about a Development Code amendment related to recreational vehicles. He said he subsequently inquired about the basis for the proposed amendment, and staff indicated that the 30-day time period is difficult to enforce. He voiced concern that removing the 30-day time period could make the provision even more difficult to enforce and could result in more recreational vehicles in the neighborhoods. He encouraged the City and its citizens to do whatever they can to continue to beauty Bremerton in any way possible, and making it easier to park recreational vehicles in front yards could be detrimental to this goal.

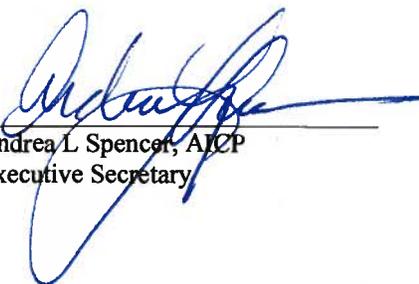
Director Spencer advised that subsequent to the Commission's last meeting, staff met with the Police Chief and the City Attorney to talk about the problems that Seattle is having with recreational vehicles. The Police Chief indicated that the City's current regulations are effective and should be retained as written. The Police Chief is currently working with the City Attorney to add provisions to address how long recreational vehicles can be parked on the street. As a result of her conversation with the Police Chief, the code amendment related to recreational vehicles that was presented at the last meeting will be dropped. However, staff will continue to work on modifications to the Development Agreement language to ensure they do not undermine the intentions of the Comprehensive Plan, but allow for development phasing.

Commissioner Nerf recalled that, at the last City Council Retreat, there was some discussion about forming a citizen patrol to do code enforcement. **Director Spencer** responded that staff will have a study session with the City Council on February 24th regarding a proposal to use the group, Citizens on Patrol to assist the Code Enforcement Officer in patrolling for weeds, garbage and miss-parked vehicles in the front yard. She explained that this group of citizens currently monitors abandoned properties in the City to make sure there are no problems, and the program has been very successful. The idea is to have proactive code enforcement rather than relying on neighbors to report code violations.

ADJOURNMENT

The meeting was adjourned at 6:34 p.m.

Respectively Submitted by:



Andrea L. Spencer, AICP
Executive Secretary



Nick Wofford, Chair
Planning Commission

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