



PLANNING COMMISSION MEETING MINUTES

7:30 PM July 25, 2019
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Gerald Veltkamp, Blair Scott, Lynn Templeton, Tim Faber and Bryan Korthuis

Absent with notice: Diane Veltkamp, Gerald Veltkamp and Brett Kok

Staff Present: Gudde, Planning Director and Samec, City Planner and Chad Yunge with the Department of Ecology.

3. APPROVAL OF MINUTES

A. July 11, 2019

The approval of the July 11, 2019, Planning Commission Minutes were postponed.

4. JOINT PUBLIC HEARING WITH THE DEPARTMENT OF ECOLOGY

A. Lynden Shoreline Master Program – Comprehensive Update and 2020 Periodic Review

Chairperson Faber opened the public hearing.

Gudde addressed her memo dated July 19, 2019 and stated, the Planning Commission plays an important role in shoreline management within the City of Lynden as it is the deciding body on Shoreline Substantial Development permits and provides recommendations on Shoreline Conditional Uses and Variances.

The shoreline jurisdiction in Lynden includes the shorelands of the Nooksack River and Fishtrap Creek. Shoreland areas are those within 200 feet of the ordinary high-water mark, floodway and contiguous floodplain areas within 200 feet of those floodways, as well as wetlands and river deltas associated with these streams or rivers.

Most recently the City locally adopted an updated Shoreline Master Program (SMP) in 2014. However, this Program update is still pending Department Ecology (DOE) approval. Meanwhile the City is due to complete a periodic review of the Program by June 30, 2020. Because of the proximity of these approvals, DOE and City staff have agreed to combine the Program Update and the Periodic Review into one action.

The Planning Commission held a public hearing on October 24, 2014 and recommended approval of the Shoreline Master Plan Update. The changes reflected in the attached documents are those changes proposed to the 2014 document. The proposed changes are not substantive in that they do not significantly alter the way that the 2014 document regulates and protects shorelines in the City. No changes are currently being proposed to the shoreline map and its corresponding designations.

Public participation on the proposed update has included website updates, published notices, and a July 11, 2019 open house. The open house was an opportunity for interested residents to review documents and maps and speak with City staff about the proposed changes. Notice of this open house was mailed directly to all of the property owners within the City's shoreline areas. Only one letter of public comment has been received and is attached in the PC package.

If the Planning Commission recommends approval of the updated SMP document it will then move on to final DOE review and City Council approval.

Gudde addressed the summary of changes. Lynden locally adopted its Shoreline Master Program (SMP) in 2014. The proposed update to the 2014 SMP will also include the required Dept of Ecology (DOE) Periodic Review. This Periodic Review is required to be complete on or before June 30, 2020. Furthermore, this update, with DOE approval, will finish the Comprehensive Update of the 2014 locally adopted SMP.

The proposed changes to the 2014 Plan are not substantive in that they do not significantly alter the way that the 2014 document regulates and protects shorelines in the City.

- Several changes update the code to reflect state-level revisions to the Shoreline Management Act. These are reflected in the Periodic Review Checklist. Most of these updates are explanations of the Act, including language to clarify definitions, to update filing procedures, to incorporate ADA language, and reword sections that need clarification.
- The proposed changes reflect the recent update to the City's Critical Areas Ordinance and refer to that Ordinance by reference rather than by including the CAO language directly into the SMP.
- The proposal removes reference to the "Natural" SMP shoreline designation as Lynden does not have any properties with that designation.
- Finally, the update corrects minor grammatical and spelling errors.

Specific Proposed Changes:

The following are mention of the more significant proposed changes to the 2014 SMP.

Page 8-9, 1.04.02: Language is unchanged but just moved to this section. This section is a general discussion of the Act which seems like a more appropriate location than specific to the Nooksack River.

Page 35-36, 4.05: Remove the “Natural” designation language because Lynden has no properties with that designation.

Page 37-38, 4.06.02: Remove the “Natural” column from the table.

Page 38, 4.06.02: Shoreline Restoration does not require a Conditional Use permit.

Page 45-56: 5.06: Strike out Critical Area language as the Ordinance was recently updated and rather reference Chapter 16.16 to refer to the Ordinance. This allows the CAO to be updated independently without having to also update the SMP.

Page 97-98: 8.05.03: This is a Periodic Review requirement to clarify the process for filing permits with DOE. Was not in the code previously.

Page 100-104, 8.07: Periodic Review requirement regarding Nonconforming uses. The change just adapted the language to the wording suggested.

Page 107-113, Section 9. Updated this section to not strike out “proposed” projects that have been completed and emphasize invasive plant species control more than the 2014 language did.

Yunge concurred with Gudde and stated that the changes are minor in nature. For efficiency reasons, the DOE and the City took advantage of the opportunity to finalize the 2014 update and to combine the periodic review in one. The City will be a year ahead.

Templeton questioned the 5-year delay in the SMP approval? Gudde and Yunge replied, yes, it was a long delay caused by various reasons such as staff turnover in Planning, there was also a request by the City to delay as they researched a potential change in a surplus property designation and also time for the City to catch up with its CAO review which was done last year. With all of the delays, the document is ready to move forward now.

Faber asked about the next steps and time from for the approval. Yunge replied, after approval tonight it goes back to DOE for formal approval. Yunge expects that the approval letter will be sent to the City in a couple of weeks which will come with a 14 day time frame before it becomes effective.

Shirley Prezzler, 123 E Cedar Drive, Lynden

No comment on the structure of the rules, regulations and ordinances. However, wanted to state that the SMP and CAO is very confusing for citizens to understand and that it is hard to understand the path that the City is taking and how they are interpreting the rules they have set forth.

Fishtrap Creek is a critical area and the city is trying to follow federal mandates for infill. How to interpret the setback? Is it 150-feet from high water for development or 75-feet? The city appears to be taking a stand that only 75-feet is important and that you can still develop in that area. The city seems to think that a PRD can be established that supersedes the regulations? Where is the riparian zone, it is being eliminated? How with the existing codes can this be allowed? It seems that the City does not want to stand in front of development. Codes should protect the lands. Prezzler feels that the City is looking at the code with a limited view and is not protecting the RS-100 neighborhoods that purchased property knowing that the stream would be protected.

Gudde stated that nothing tonight changes the shoreline buffers or the CAO.

Gudde does not want to make comments regarding a specific application that is under review. The PC may see something in the future regarding property that Prezzler is talking about, and the Commission's decision should be based on the record.

Gudde agrees that codes are confusing, there are multiple layers and codes that apply and there are several departments and agencies that provide oversight.

Gudde stated that some of the numbers that the Commission is hearing relates to the 200-foot shoreline jurisdiction, 75-feet is a shoreline setback (no structures w/out a CUP or variance) and 150-feet is a buffer which comes from the CAO. All comes with the opportunity to do buffer averaging and mitigation to reduce the buffer.

Gudde addressed the following clarification to Section 5.06.01 of the Shoreline Master Program which has to do with applicability. As drafted, it may have given the impression that critical areas which were specifically addressed within the SMP are not subject to the Critical Areas Ordinance (LMC 16.16). This is not the intent. Both the SMP and LMC 16.16 apply.

Section 5.02(6) on p. 40 states that, *"Where provisions of this master program conflict, the most protective provisions reasonable under the given circumstances shall apply."*

As such, the below changes to Section 5.06.01 (deletions in strikethrough and additions underlined) more clearly captures the intent to have the CAO apply within the shoreline jurisdiction.

~~*"Where not specifically addressed within this Master Program, either directly or through reference;*~~ Regulation of critical areas within the shoreline jurisdiction shall be *pursuant to*

consistent with applicable provisions codified in Lynden Municipal Code Chapter 16.16, adopted by Ordinance No. 1560 in 2018, now or as hereafter amended; provided, that the following sections shall not apply:

DOE wants the CAO to be constantly referenced by ordinances and dates not by *now or as hereafter amendments*, therefore, they are asking that the language be removed.

The Commission agreed.

Faber stated that it all looks very straight forward. We are adopting the DOE changes and realistically we are not changing anything else.

Scott motioned to close the public hearing. Seconded by Templeton, and the motion passed 2-1.

Scott motioned to recommend approval of the Lynden Shoreline Master Program – Comprehensive Update and 2020 Periodic Review as presented, and further subject to the following condition: that the proposed “*now or as hereafter amended*” language referenced in 5.06.01 be stricken. Seconded by Templeton, and the motion passed 2-1.

5. COMMISSIONERS CORNER

August Planning Commission Meetings have been cancelled.

Next PC Meeting is on September 12, 2019.

More Pepin Creek discussions to come this fall.

6. ADJOURNMENT

Motion to adjourn by Scott / Second by Templeton. Meeting adjourned at 8:05 pm.