PLANNING COMMISSION MEETING MINUTES

Monday, May 29, 2018

6:00 PM

Planning Commission Members Present: Valerie Hoy-Rhodehamel, Karen Ashley, Chris Ford, Matthew Knudsen, Shawn Van Pelt

Excused Absence: None

Staff Present: Ben Shumaker

Community Members Present: Bernard Versari, Rick May, Mary Repar, David Bennett

Guest: None

Call to Order: 6:00 p.m.

Preliminary Matters

1. **Chair Selects Public Comment Option #2**

Old Business

2. Critical Areas Ordinance Review Permit Requirements, Procedures, and Fish & Wildlife Habitat Areas Protections

Shumaker explained that there were several decisions to make tonight related to the general provisions and permitting sections of the code as well as the buffers for fish & wildlife habitat areas. Next meeting will bring more changes to the fish and wildlife habitat areas and the final review of definition section. The following areas were discussed and Commission consensus was reached on whether or not to move forward with proposed actions:

Overall page 8 (numbers on the bottom left) Violation and Penalty: Suggesting a change to align with violation and penalty of the zoning code, which makes it easier on staff and streamlines updates. Consensus to move forward.

Page 9 Liability: No recommended changes. Consensus to move forward.

Page 10-17: Shumaker suggested re-organizing things so they are not lost by public review. **Versari** stated that he can't vote on that until all the details of what has been changed are explained and he needed more information on the details before agreeing to the format. **ASHLEY** stated that it seemed logical to put them all in one place and makes it a lot easier to see what's there. **Shumaker** clarified that this recommendation just refers to moving it into one place. Consensus to move forward.

Page 10 Impact Avoidance and Minimization: Reorganization and text changes, such as "reasonable methods" which is a change from "all attempts" and is a rewrite based on state guidance. **May** asked if there are studies that have shown where aquifers are and **Shumaker** explained that there are not. **Repar** asked the group to consider what's "reasonable", as it may

change by individual perception. **Repar** suggested that “reasonable” needs a definition and needs to be based on something such as “best available science”. May noted that there is probably a simple definition that can make everyone happy. **ASHLEY** suggested using the same definition that’s used in a court of law. **Shumaker** explained that, if there’s an issue with a word like “reasonable”, one would go to common usage in the dictionary so by not defining it we default to that definition. **ASHLEY** stated that the common usage definition should then included. Consensus to move forward with “reasonable” defined.

Page 10 Exemptions: Content change suggested treat the exemption process as a full exemption and no longer include a $25 fee and review. Proposed exemptions include 7 of those already listed (recreation uses as one example). **FORD** suggested to remove hunting from the list as one is not supposed to be doing that anyway and it’s covered under other statutes. Consensus to remove hunting and move forward.

Page 12-15 Expedited Reviews: **Shumaker** suggested renaming the “written determination of exemption” process as “expedited review” and including 7 of the currently listed activities (vegetation removal as one example) in this area. **Versari** shared that leaving a tree dead in its location along the shoreline is not optimal and states it will cause more problems than anything else. **ASHLEY** explained that a down tree is still a habitat and can be good for overall habitat. **Versari** stated that it takes space from people wanting to walk on the river. **Bennett** reported that the Gorge Commission requires that it stays in place. **Versari** explained that Stevenson is one of the cities that can make those decisions outside the commission and he does not view this practice as practical. **Repar** noted that even though it’s urban designation it doesn't mean the science behind it is bad. **Shumaker** explained that part of the expedited review is that if one completes things listed then they can take down the tree but, if they want to remove it, they would need recommendation from the biologist. **Shumaker** explained further that it is not prohibited but it follows a different structure outside of this section. **May** suggested finding middle ground where the tree remains in the area but is moved off trails or user areas. **Shumaker** stated that the group can legislate the middle ground or we can say best available science can dictate. **FORD** asked if the issue was in regards to safety and **Versari** explained it was due to safety, erosion, pests, etc. **KNUDSEN** noted that is then a different process and is not expedited review. **Bennett** suggested that there is a vehicle available to deal with this issue already without having to complicate it further. **Shumaker** explained that one can build a home within a critical area but its not within this expedited sections, as an example that things are available which are not spelled out in this section. **KNUDSEN** confirmend that some content in this section will need to change to align with the Shoreline Master Program (SMP). **Shumaker** went on to suggest that Emergencies may be listed in a category of its own if the group thinks it doesn’t fit where it is. **Repar** asked how the PUD files a memoranda with the city and **Shumaker** explained that, currently, they are doing so with Public Works and then the city will reach out. **Shumaker** noted that general utility in this comment is not under emergencies. **Shumaker** asked if anything from this list should be considered for exemption from expedited permit or just a regular permit. **May** asked if “expedited” was a new word that means a new thing and Shumaker confirmed yes, as outlined on overall page 31 Permit Processing. **Shumaker** explained that there was an add to language here for expedited permits, explaining that if the city fails to act in 7 days, it can be treated as a go-ahead. **May** shared concern with ivy removal and regulations that the public should know but might oversee without reading this new document. **Shumaker** explained that by

having a catch-all, it ends up being a regulatory tool for enforcement. Those that know and comply is a great thing but it's often a reactive tool. Consensus to move forward. **Shumaker** noted with understanding that as changes are made to the SMP, some things may change here as well.

Page 15 Exceptions: **Versari** noted that nonconforming use, lots of records and reasonable use allowance were all previously within different sections and he recommended removing the word "reasonable" to not confuse the three processes. **ASHLEY** stated that "reasonable" needs to stay as it is a good term for this description. **Shumaker** explained that this language was taken from the purpose and intent from the state's reasonable use of private property and was copy and pasted from this section. **Versari** stated that it can be left as is but it could be more clear on the process. **Shumaker** asked for consensus on whether the nonconforming uses change which clarifies that the application is filed within a year is acceptable and **ASHLEY** noted it is pretty standard. Consensus to move forward.

Shumaker then noted the legal lot of record process and explained that he looked into this because DOE suggested it doesn't pass best available science and Fish and Wildlife said if it doesn't apply to a lot it may be reasonable but if it does apply there will be impact. The impact is ⅔ of the critical area permits for development have been next to riparian areas and, at the time, were using the application. **Shumaker** noted the bottom of table on page 6 which indicates 9 permits were issued, of those 6 established a buffer, of those 4 were granted allowance right off the bat. **Shumaker** further explained that it is not clear whether this meets best available science when it's automatically granted and proposed changes to make sure this provision is still available but limits potential impacts. The change still grants 50% allowance but requires compliance with the buffer standards applicable to all buffers (demarcation as one example) to happen. There are changes proposed to make sure zoning variances are considered in addition to the adjustment. **Shumaker** explained that this looks at the variance process and one would have to demonstrate to the Board of Adjustments that the request is the least necessary, which could be 75% of setback, etc. **Versari** asked why 50% was removed and **Shumaker** noted concern with individuals being able to support that in front of Board of Adjustments as it places limitation of how much variance happens. **Shumaker** explained further that it requires more of an applicant but it then opens the door to greater flexibility, as the avenue is the same but removes one barrier. **FORD** asked how many cases have gone in front of Board and **Shumaker** noted that, in this case, none. **Shumaker** then noted the section on Degraded Areas and explained that they would have to be restored by qualified professional to get this. **May** asked how it is determined whether this is needed or not and **Shumaker** explained that exceptions are exceptions to the regulations but still require the general process. Consensus to move forward.

Page 16 Reasonable Use Allowance: Change noted in regards to additional text about the state's model code. Before, the owner would jump into the application process and this adds the city's ability to pick things up and pay for projects. Consensus to move forward.

Page 20-29 Critical Areas Permit: The application form has been updated and included to provide an idea of what this change means and looks like. Previously, the application had a long list of requirements describing what needed to be done for different types of critical area reports and now it is a shorter list of what's on the front page of the application and references the need to provide necessary permits later. The application form has now decreased in pages from 6 to 2,

to be friendlier for applicants. Previously, the city didn't have the code online and now the qualified professional can go online to get that information. **Versari** asked why the applicant has to pay a fee numerous times and why the city does not pay for that cost and **Shumaker** noted page 21, which indicates that this is the process already in place previously. **ASHLEY** asked why the city should pay for it and **May** agreed that he has been down this road personally and he was the owner who should have paid for it. **KNUDSEN** noted that it's the city who wants a second opinion so it would be best to then provide better guidance for what the initial expert needs to provide to avoid this extra step and extra fee. **Shumaker** clarified that the first party is the applicant and their agent and the second party is the city. From city standpoint, we want applicants to make sure their chosen agent gets this right the first time and produces something that passes the test. **Shumaker** explained further that a list of qualified professionals is provided to the applicant. **VAN PELT** noted that the city, by suggesting additional review, is then provided information, paid by the applicant, that the city to use for their own interest and he suggested the parties split the cost. **Shumaker** explained that this change can be pitched to City Council if the Commission deems necessary. **May** explained that the city's ability to have questions is to protect the quality of the report. **KNUDSEN** suggested that, if this has only happen once, then there's really nothing for the city to lose if that fairness aspect is included. **Shumaker** explained the three ways to move forward: 1. As a group, decide that the third party review is the cost of applicant (current procedure); 2. The third party should be split or some other distribution; 3. Build it in with a statement that the City Council shall determine with resolution, as with fees, the ability to adjust with more fluidity if it becomes a problem. **ASHLEY** stated that the first party should do their research and due diligence in finding an agent that can get it right the first time. **KNUDSEN** suggested expanding on the definition to explain what is an expert or to go forward with cost splitting. **Shumaker** clarified that the third party review is a review of the report provided by the agent and is not a new delineation. It would go through methodology used and the information included. **FORD** expressed that the city doesn't have an obligation to the developer, major or single family home developer, and that's up to the applicant with the plan. **VAN PELT** stated that it's not a concern of paying for third party but it's the concern that the application will get all the way through process, money and time, and just because someone doesn't like the report you have to spend more money to redo what you already did. **KNUDSEN** added that it's not about putting it back on the city taxpayers but the intent is to do it right the first time or share it. **Bennett** stated that he would prefer to see a legitimate explanation of why its needs to be readdressed, noting a fair balance, as this issue could snowball into a bigger problem. **ASHLEY** clarified that it's not redoing what's already been done but it a review of what's already been done. **KNUDSEN** noted that it's still an added expense. **VAN PELT** added that there is no guarantee that third party review is the end of the process. **ASHLEY** stated that this is not the obligation of the taxpayers. **KNUDSEN** asked for a middle ground. **Shumaker** suggested adding a clause on findings which could make it an appealable decision when the city decides to go to third party and then that decision could be appealed. **Shumaker** explained further that it makes it a bigger process but could become a check and balance. Appeals under this code are dealt with by the Board of Adjustment and those appeals are free. **ASHLEY** stated that such a clause sounds reasonable. **KNUDSEN** agreed to the middle ground. **Bennett** suggested adding a declaration in the application that explains issues overlooked by the expert/agent could be an added expensive on the applicant. Then they'll work hard to get a thorough report and it takes it off the city's back. **Shumaker** to include appeals clause. Consensus to move forward with clause.

Page 30 Review and Approval: Described what was changed in the document, including a process for expedited review which says if an applicant is denied and they return with another full application, then the fee is applied to the new application. Changed “critical areas administrator” as it's a duty not a position. The City Council decision on whether to just buy a property was added as a step to the Reasonable Use Allowance process. The burden of proof was something in the model code that needed to be added here as well. Consensus to move forward.

Page 32-38 Habitat Conservation Areas: Previously, ponds had been inadvertently left out but has now been added. The table which identifies base buffer widths shows formatting changes and a change to widths to consider and a process to further reduce streams (nonfishbearing, seasonable). Fishbearing has been changed from 75 to 50 feet, which is in line with most of the functions of available science explained in the memo. The 50 foot currently required for non fish bearing/seasonable can be reduced as long as it doesn't affect stabilization. **Shumaker** explained further that, through the shoreline process, it talks about net effect, which is cumulative effect. **Repar** highlighted critical areas and the value to complete cumulative review once a baseline has been established so, in review every eight years, it can be determined whether improve or deterioration has been showed based on the baseline. **Shumaker** explained that this has a different standard and **HOY-RHODEHAMEL** explained that such a practice is not a requirement for this particular program. **May** asked why are we talking about 50 foot buffers on nonfishbearing instead of 25 or 35 and **Shumaker** explained that it’s based off of best available science, primarily the review conducted by Woodinville. The standard at 50 can be reduced up to 15 feet, based on study, which means a reduction to 35 is still in range. **May** states that there’s no reason to have it at 50 because the science we’ve reviewed shows buffers at is 35 feet and under. **May** asked if it’s necessary to require a geotech survey for every stream we know should only be at 35 and **Shumaker** noted it could be changed allow the habitat professional to make that decision if they are willing. **ASHLEY** disagreed stating that was outside of their expertise. **KNUDSEN** noted, based on best available science, that 33 to 98 is the foot range and 50 is a good middle point. **Repar** noted that the buffers serve a geological purpose and the streams in question could be running for 6-7 months out of the year. **HOY-RHODEHAMEL** stated that run off can also run pretty big. **KNUDSEN** explained that, given soil types in Stevenson, conservative might be better. More review of buffer standards will be addressed at the next meeting. Consensus to move forward up to F, with potentially reviewing E again later.

Status report: **Shumaker** explained that what still remains for review are definitions, fish and wildlife habitat areas, final discussions/decisions on bondings, as well as pages 55, 57, 59, 60, which are all sort of related and might need final action.

Adjournment 7:54 p.m. (1hr 54m)

Approved _____; Approved with revisions _____

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Name Date

Minutes by Claire Baylor