

City of Sumner

**PLANNING COMMISSION
MINUTES**

Regular Meeting

August 07, 2003

CALL TO ORDER

MYERS called the meeting to order at 7:01 p.m.

ROLL CALL

Members Present: Bush, Myers, Nalder, Richardson, Walter and Ganz

Members Absent: Powers (Notified)

Also Present: Ryan Windish, Senior Planner

APPROVAL OF MINUTES

GANZ noted with regard to the July 10, 2003 Regular Meeting Minutes that when discussing warning systems "Qwest automatic calling" should have been noted as an option. WALTER noted that "Noah" should be changed to NOAA.

RICHARDSON motioned to approve the July 10, 2003 Regular Meeting Minutes as corrected. GANZ seconded the motion and it passed unanimously.

PUBLIC COMMENT

There was no public comment.

UNFINISHED BUSINESS

1) Amendments to the Critical Areas Regulations.

MYERS asked for discussion with regard to the Draft Critical Areas Regulations (PLN2003-00037).

WINDISH stated that he wished to discuss, after questions and comments by the Commissioners, the request by CTI to go to a 30-foot buffer instead of a 50-foot buffer in the mineral resource areas.

WINDISH further stated that Staff is still completing the Aquifer Recharge Map and the Seismic Hazard Area Map.

NALDER had a question with regard to page 41 of the draft ordinance, Chapter 16.52 Seismic Hazard Area. He noted reference to a map and asked if there is a map at this time.

WINDISH indicated that there is not a map at this time.

NALDER asked if the map would be of the entire valley?

WINDISH stated that there is a map for Liquefaction and/or Dynamic Settlement Hazard Areas that is of the entire valley. There is no map for the Fault Rupture Hazard areas at this time.

BUSH noted her continued concern with regard to the reasonable use exception and the justification for the City determining use of people's private property. It is a contradiction to the Fifth Amendment wherein private property shall not be taken for public use. Section 16.40.120 mentions the public use in that the public right to navigation and use of the critical area will not be adversely affected by granting the variance. It appears that to bypass this constitutional limitation, that we are providing the variance procedure. The smaller property owner will take the brunt of the limitation. It should either be public use or not public use. If it is public use, the property owner should be compensated. BUSH stated that she would like to see protection of the buffers accomplished in another way, other than at the cost of the private property owner.

WINDISH explained that a variance is the tool that is used to prevent the taking of property through regulations. Specifically, in a situation that would preclude a person from reasonable use of their property. The criteria is intended to put some parameters on how much property is inhibited by this regulation. In the case of a buffer, setback or wetland on property, hardship can be argued. The statements about public interest are the balance to ensure the public interest is being served as well as private property rights be preserved, as noted in criteria "B" and "D(5)".

BUSH commented with regard to 16.40.120(D)(5)(a), that it is not just the buffer area but the public's right to it. It is an overlap of public and private use. Anybody could come on to the buffer areas without being consider trespassing. It should be either private property or not.

WINDISH stated that the language was taken from the Shoreline Master Program. The Shorelines of the state and the rivers fall into a different category than a wetland. Just because you have a wetland on your property does not mean that people can go on your property and do whatever they want. It is not open to the public just because it is a wetland – it is still private property.

BUSH suggested that that be specified.

WINDISH stated that they could modify criteria No. 5(a). Fundamental property rights verses public interest questions are inherent in zoning.

BUSH expressed concern about the cost to the property owner to seek a variance.

RICHARDSON commented that the variance process is necessary to allow the property owner that venue without taking. If it is, however, decided that the property is not to be used, then the State should share the burden in owning and protecting it.

BUSH stated that it is something that she in good conscience cannot go along with, when a taking has to be 90% of a person's property before it is considered a taking. It is a fundamental objection.

MYERS suggested that Bush write a minority opinion.

NALDER had a question on page 9(5) & (7). Does the City Council make those decisions, or is it the Hearings Examiner?

WINDISH responded that the Hearings Examiner makes the decisions associated with 16.41.020, however, in the case of residential development it goes to City Council.

DISCUSSION was had with regard to “takings” and “wetlands”.

MYERS asked if this Ordinance has to be approved by the State?

WINDISH stated that it does not. It will probably go to the Growth Management division for review, however, their powers are only advisory.

BUSH asked if the variance procedure makes it harder for the property owner to gain use of their property?

WINDISH stated that it go through the Hearings Examiner, which would require notice. It is a more legally analyzed approach.

MYERS commented that it may be a little harder, but it is a more judicial decision. It is an unbiased opinion.

NALDER had a question regarding page 10(3)(c) and (D)(3)(c). Reference is made to height and blocking shoreline and mountain views. Any form of construction block views?

WINDISH stated that in 16.21.040, density transfer comes into play. If it is set back far enough from the street it should not block view.

MYERS commented that additional height would not necessarily block view of the mountain.

WINDISH noted that it is to protect view of the mountains and shorelines from public streets and parks and public property. We are trying to preserve those views.

NALDER commented that (B) only mentions height, and not coverage.

WINDISH stated that they read almost identical. There is no need to reference lot coverage. It can be taken out all together.

NALDER stated that he would like it taken out all together.

WALTER commented that if that language has been in place for a long time and there has not been a problem with it in the past, what is the issue? It should be left in as a protection.

RICHARDSON commented that if it has not been an issue, it may not need to be in the code?

NALDER motioned to remove section (C)3(c) and D3(c). Bush seconded the motion. Motion passed by majority (4 to 2) (WALTER and GANZ opposed).

NALDER had a comment with regard to Volcanic Hazard Areas on Page 43. Under the first section it refers to Mt. Rainer as a “potentially” active volcano. It is an active volcano. “Potentially” needs to be removed.

WINDISH stated that he would correct that.

NALDER asked if, on the next page, with regard to the time zone reference, could it just be stated that it is anywhere from a half-hour to an hour and a half?

WINDISH stated that he could narrow it down, as all of Sumner is Time Zone “C”.

NALDER also suggested referencing it in another section.

NALDER asked with regard to Page 45, No. 2, if “sufficient quantities of toxic or explosive substances” included gas stations with their buried underground tanks?

WINDISH stated that it did not. It only refers to above ground storage tanks.

NALDER expressed concern that Item No. 3, schools and daycares, would eliminate those buildings in Sumner.

WINDISH stated that it would eliminate any new ones.

DISCUSSION was had with regard to Item No. 3 potentially limiting the building or remodeling of new schools and like structures.

NALDER asked if the next page would prohibit the City from remodeling jails and detention facilities?

WINDISH stated that it would.

NALDER asked about the Station’s two holding cells.

WINDISH explained that it is not a jail or detention center.

NALDER commented that he is not sure how Staff is defining “detention center”.

WINDISH stated that he does not have a definition, however, holding cells would not be considered a jail.

NALDER had a question about care facilities. If the limit is 50 incapacitated people, what about places like Franklin House and Stafford Suites that have more than 50 rooms?

WINDISH explained that the figure refers to “incapacitated” people, people who cannot move under their own power. The Franklin House has 56 rooms and the Stafford Suites has 72 rooms. They are assisted living, not nursing homes. He considered raising the number.

DISCUSSION was had about what defines “incapacitated” as opposed to “physically limited”. Further discussion was had about medical facilities and whether it referred to just in-patient facilities as opposed to any facility that performs surgery, i.e. dentists office.

WINDISH stated that he would get the discussed definitions.

It was determined that “medical facilities” needed further clarification, to include hospitals and other inpatient medical facilities, and to exclude dental offices, urgent care facilities and clinics. It was suggested that “medical facilities” be eliminated and that just the term “hospitals” be used, or that it possibly read “medical facilities having surgery or emergency treatment”.

WINDISH stated that he would take the discussion from this meeting and craft something for review at the next meeting.

MYERS asked what action the Commissioners wanted to take on the “school” issue and the issue regarding structures supporting toxic and explosive chemicals?

NALDER suggested eliminating No. 3. . NALDER asked if the evacuation plan noted on the top of Page 46 is approved by the City?

WINDISH stated that it is.

GANZ motioned to table Agenda Item No. 5(1) Amendments to the Critical Areas Regulation, to the next Planning Commission Meeting Scheduled for September 4, 2003. RICHARDSON seconded the motion and it passed unanimously.

MYERS suggested that Staff talk to the City Attorney about obtaining information regarding the "taking" issue.

WINDISH stated that he would.

NEW BUSINESS

There was no new business.

CORRESPONDENCE

There was no correspondence, however, WINDISH discussed a handout about making compact development more compelling. It is a resource for looking at different types of density and housing design.

COMMISSIONER COMMENTS

GANZ stated that he would like to have a joint meeting with the Design Commission to discuss their reactions to the bus tour.

WINDISH stated that he would arrange that.

MYERS commented that he enjoyed the bus tour, but was disappointed that more of the Design Commissioners did not attend, as he was interested in knowing what they thought.

STAFF COMMENTS

There were no Staff comments.

ADJOURNMENT

GANZ motioned for meeting adjournment at 8:19 p.m. WALTER seconded the motion and it passed unanimously.

Ryan Windish
Senior Planner