



MINUTES

PLANNING POLICY COMMISSION 6:30 p.m. - Thursday, March 24, 2022

Alternate Meeting Format: On March 6, 2020 the Mayor declared a civil emergency due to the outbreak of novel coronavirus (COVID-19). On March 24, 2020 the Governor issued Proclamation 20-28 relating to the COVID-19 emergency and open public meetings. The proclamation has been extended. Due to these factors, the meeting was held using a remote meeting platform.

1. Call to Order

The meeting was called to order at 6:30 p.m. by Chair Faul.

Commissioners Present: Chair Faul, Vice Chair Voiss, Commissioners Bader (excused late), Lewis, Milligan, and Zaragoza

Absence: Commissioner Monahan (Unexcused)

Staff Present: Millie Dhaliwal, Director, CP&D
Christen Leeson, Senior Planner, CP&D
Stephen Padua, Public Works
Gary Schimek, Environmental Program Manager
Lucy Sloman, Current Planning Manager, CP&D
Julie Wartes, Program Administrator, E&R
Doug Yormick, Associate Planner, CP&D

2. Approval of Minutes

CHAIR FAUL asked if there were any comments or changes to the March 9, 2022 meeting minutes and there were none. The minutes were approved.

CHAIR FAUL asked if there were any comments or changes to the March 10, 2022 meeting minutes and there were none. The minutes were approved.

3. Public Comments (General)

There were no requests to speak.

4. Regular Business

a) Proposed Amendments to Title 18 Natural Environment (D)

- Shoreline Setbacks
- Outdoor Lighting
- Wetlands, Streams
- Fish and Wildlife
- Conservation Areas
- Critical Area Recharge Areas (CARA)
- Geological Hazard Areas

Presented by Lucy Sloman, Current Planning Manager, CP&D

(00:03) Sloman stated that deliberations would occur after each presentation. Staff asked that the Commission come to a consensus regarding all issues. Public Comment would not be taken on topics.

(00:04) Jim Johnson with Golder Associates presented Geological Hazard Areas clarifying changes and peer review requirements.

(00:16) CHAIR FAUL opened Commissioner questions to question number one regarding steep slope buffers.

COMMISSIONER LEWIS stated uncertainty regarding the geological flexibility of buffers in code and asked how appropriate and consistent variances of buffer size can be ensured with relinquished footage over time. Johnson replied that having consistency is good. In the past, applicants had a natural tendency to believe that if a report were written, a reduction to the minimum buffer would be granted. There is the possibility of a mathematical code which would restrict the minimum size of a buffer reduction based on slope height, but the maximum size not restricted. Not all slopes are the same, so one project may receive a buffer reduction while the next project has different slopes. COMMISSIONER LEWIS asked for an argument regarding having less of a variance. Johnson replied that construction would be encumbered by the steep slopes but could still be accomplished. COMMISSIONER LEWIS asked what the variance has been, and Johnson replied 10-feet in one area and 20-feet in another, not to the minimum everywhere.

VICE CHAIR VOISS stated liking flexibility as all slopes are different and asked if all situations would receive a peer review. Johnson replied correct. VICE CHAIR VOISS asked for clarification that experts are already looking at each application and site independently and Johnson replied correct.

COMMISSIONER ZARAGOZA stated liking a formula idea and asked if a formula results in less flexibility including peer review. Johnson replied that there is not a formulaic methodology at this time. If incorporated, the reduction aspect could be restrained with more flexibility to increase buffer size. Current code allows flexibility in the application of buffer reductions and the peer review process will prevent granting uniform buffer reductions for all slopes, rather being specific to a slope. VICE CHAIR VOISS asked if property owners would be able to better estimate the sensitivity of property area with a formula that is specific to a slope rather than a

consistent number. Johnson replied that the benefit of a consistent number is ease. A survey would calculate how a formula would be applied to a property. As the height of the slope changes, buffers will change, more complex to draw on a page, but still possible.

COMMISSIONER MILLIGAN asked if there could be a reduction from a 50-foot buffer if the slope height is shorter. Johnson replied that the code proposed applies a 50-foot buffer to any slope over 20-feet in height to the maximum, regardless of the height of the slope. The reduction to 10-feet would be granted based on the application and critical areas code. Landslide hazard areas are considered also. COMMISSIONER MILLIGAN asked if there would be no 50-foot buffer if the slope is less than 20 feet and Johnson replied correct, a 40% slope is exempt. COMMISSIONER MILLIGAN asked if the buffer would remain 50-feet whether the steep slope is 20 feet or 200 feet, and Johnson replied correct. COMMISSIONER MILLIGAN asked if a height not 40% would not be considered a steep slope and if there are steep slopes more than 40%. Johnson replied yes, 40% and greater. COMMISSIONER MILLIGAN asked if a steep slope can be more than 40% but treated the same and Johnson replied yes.

CHAIR FAUL asked how an existing property on Newport Way and Northwest Juniper Street would be affected by the proposed change. Johnson replied that the property would not be affected much differently. The property could apply to reduce the buffer but also perform a critical area study and demonstrate that the reduction would provide the same level of protection as the 50-foot buffer had. CHAIR FAUL asked if the unit would not have been able to be built on the property, the steep slope more than 20-feet tall and more than 40%, and Johnson replied that if a buffer reduction were granted, building would occur within the reduced area. CHAIR FAUL asked who would be liable in the event of slippage, the city or developer, Dhaliwal replied to the prior question that city regulations cannot create a zero economic value for a property, a legal concern. Cities are required to offer reasonable use exceptions as a due process for every property owner if value is reduced to zero. Reasonable use is determined on a case-by-case basis, the minimum development potential to receive economic use of the site. Minimum impact is factored in. The process is a Public Hearing in code currently. Dhaliwal replied to the last question regarding liability that the point of the rules and regulations are to prevent the possibility of safety impact, but in the event of an accident or nature, specific cause would be considered. There is an indemnification form that property owners sign as part of any development on a critical area removing liability from the city, not part of proposed changes. CHAIR FAUL asked if the city would have been liable in the event of a slide on the property mentioned prior if the developer had filed bankruptcy. Dhaliwal replied that litigation is not part of the Planning Policy Commission discussion, only if code is protecting and meeting regulations. CHAIR FAUL asked for clarification regarding the stated question hypothetically. Dhaliwal replied that the regulations are in place to assure public safety.

VICE CHAIR VOISS asked approximately how many situations have occurred in the last 20 years of landslides caused by steep slopes. Johnson replied that most landslides since the 1990s have not been on steep slopes, rather slopes less than 40%, in example Talus parcel nine, foothills, Goodie Place and the westside reservoir. VICE CHAIR VOISS asked for an opinion of current regulations and Johnson replied that the code regarding buffer has been adequate but defining the roles of professionals involved in analysis of critical areas, rigor in critical areas reports and in the peer review process are needed. There should be better guidance in code of expectations.

(00:42) CHAIR FAUL opened deliberation on question one.

COMMISSIONER MILLIGAN stated that there is already a floor that a steep slope is not a hazard until over 20-feet and agreed that there should be a more variable approach based on circumstances. A steeper slope with a shorter run should have less of a buffer reduction than a 40% slope with a shorter run. As a former Land Use Commissioner, the rigor of peer review was not always convincing and COMMISSIONER MILLIGAN stated appreciation that the issue is being addressed.

VICE CHAIR VOISS stated agreement with Johnson and COMMISSIONER MILLIGAN regarding tightening peer reviews, a better definition of who qualifies as an expert, and more flexibility towards science. The less amount of building allowed will create less affordability in Issaquah. Unique ways and flexibility are needed.

COMMISSIONER LEWIS stated that restrictions need to be tightened but not being a proponent of making any situation ineligible, relying on experts and staff, and agreement with COMMISSIONER MILLIGAN regarding lack of confidence in peer review results. The best interest of the property and community rather than an applicant from an economic and not necessarily safety standpoint should be considered.

COMMISSIONER ZARAGOZA stated agreement with VICE CHAIR VOISS that increasing the quality of reviews will allow the flexibility to make correct choices based on science.

- CHAIR FAUL asked if there is consensus that the Commission desires more educated reports and analysis done on steep slopes and more emphasis on qualified peer review to allow development in buffer zones of steep slopes. VICE CHAIR VOISS stated that a better definition of a qualified expert and heavily weighted reports could be relied on more than arbitrary standards. CHAIR FAUL asked if the question had been answered for staff, and Dhaliwal replied that there are tightened restrictions and definitions within in the draft as well as what critical area studies should include, a robust re-write of requirements. The set back was left at 50-feet but there are additional criteria added for when granted. The question from staff was if the changes were enough or if the 50-foot number should be changed to a sliding scale. A math formula could be developed in the future. COMMISSIONER MILLIGAN stated that staff is talking to other Boards, Commissions and the public and that staff will be weighing more than only Planning Policy Commission opinions. All Commissioners do not agree but also do not have to. Dhaliwal replied that the Commission would be making a recommendation to Council and the different opinions would be captured.

(00:56) COMMISSIONER BADER had arrived at the meeting.

COMMISSIONER ZARAGOZA stated that 50-feet is adequate with an increase in the quality of reports. CHAIR FAUL stated agreement with COMMISSIONER MILLIGAN and that the ultimate answer would be arrived at through the input from other sources.

(00:57) CHAIR FAUL opened Commissioner questions and comments to question number two regarding additional protections and peat.

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COMMISSIONER LEWIS stated hoping for staff to be able describe more regarding the steps toward additional protections. Peat is important and requires more research and detail in code.

COMMISSIONER ZARAGOZA stated agreement with COMMISSIONER LEWIS, that knowledge is power.

VICE CHAIR VOISS stated agreement with COMMISSIONER LEWIS and COMMISSIONER ZARAGOZA but also hoped to see analysis regarding costs, in example to remove and dispose of peat.

CHAIR FAUL stated agreement with COMMISSIONER LEWIS and asked what the environmental impact is of removing versus leaving peat, and not being able to answer question number two without expertise. More research and information are needed to make decisions.

Johnson stated that comments to question number two had provided needed direction.

(01:01) CHAIR FAUL stated that the next question was regarding if additional changes are desired.

COMMISSIONER LEWIS stated that goal one is to protect forested hillsides and has been addressed in the topic.

COMMISSIONER MILLIGAN stated that the direction is an improvement and thanked staff for addressing residential density with sites containing critical areas.

(01:04) Schimek presented a slideshow explaining changes to Critical Area Recharge Areas (CARA).

(01:11) CHAIR FAUL opened Commissioner questions and comments.

VICE CHAIR VOISS stated believing that goals and outcomes are met but hoped to learn more of possible negative and positive impacts from classifying entire regions.

COMMISSIONER LEWIS asked how asphalt and buffer reductions will affect aquifers. Schimek replied that there is a large recharge area outside of the city, but not having localized infiltration will hurt in volume and flooding. COMMISSIONER LEWIS stated that how changes to infiltration should be discussed more and encouraged the city to investigate how to better protect the aquifer, being able to explain why better protections are needed. Schimek stated that one time funding will be sought for climate change analysis on water supply. One run will be covering the city limits as impermeable.

CHAIR FAUL asked how much area in a location not identified for the audio recording is peat, and if removing peat would impact the aquifer. Schimek replied that an answer will be worked on with Johnson. Wartes agreed.

- CHAIR FAUL asked if there is consensus that the Commission believes proposed changes meet the goals and outcomes for the update, and the Commissioners unanimously agreed.

(01:18) Yormick presented changes to Wetlands.

CHAIR FAUL opened Commissioner questions and comments to the next question regarding whether changes meet the goals for the update.

VICE CHAIR VOISS stated that exemptions should be made so that roads do not fall into disrepair out of a fear by a private road property owners to trigger burden.

COMMISSIONER LEWIS asked for a hypothetical response to page 35, number two, being curious about proposed mitigation. Yormick replied there would be mitigation for the square footage of impacts. There would still be a permit review, but buffer impacts would not occur associated with normal maintenance and repair, not allowing for expansion. COMMISSIONER LEWIS asked if there would be less oversight. Yormick replied that there would still be a review and permits required to meet development standards from other chapters. COMMISSIONER LEWIS asked if the city position is that impacts should not be mitigated. Yormick replied to align private roads similar to the exemption for public roads.

COMMISSIONER MILLIGAN asked how draft code has evolved in response to comments regarding off-site mitigation and pay-in-lieu. Yormick replied that if a wetland is directly impacted, there are other permits from State and Federal agencies which would need to be obtained, one from the U.S. Corps of Army Engineers. Incentives are being researched for on-site mitigation as well. COMMISSIONER MILLIGAN asked if, in new draft code, everything has been done possible to limit the distance of mitigation to a wetland, whether with money or off-site, or if more could be done. Yormick replied that based on the current circumstances, the city is doing what is possible.

- CHAIR FAUL asked if there is consensus that the Commission believes proposed changes meet the goals and outcomes for the update.

COMMISSIONER LEWIS stated having concerns regarding how goals three and four are met in the proposed draft, needing to be re-addressed with more science than simply updating to current State ecology guidelines. Yormick replied that Ecology guidance is based on best available science. Issaquah numbers reflect the latest numbers from Ecology. COMMISSIONER LEWIS stated that an overhaul has been needed and not only from updating.

COMMISSIONER MILLIGAN stated that the proposed draft is much better but not as good as desired. Improvement that the draft code will bring should not be delayed any longer. COMMISSIONER MILLIGAN asked if the improvement made to Title 18 now would be static going forward. Providing variable considerations will assure better compliance, not as tight as hoped for but an improvement. Private roads treated the same as public roads seems only fair.

COMMISSIONER BADER stated asked how processes would be updated when guidance is released regarding new best available science. Yormick replied that the code update process would be utilized. Ecology typically provides a new draft code for use in updating.

Yormick stated having sufficient information on the question.

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(01:36) Yormick continued the presentation with Streams.

Dhaliwal addressed a difference in questions asked by Yormick versus questions listed in the Commissioner packets.

(01:42) CHAIR FAUL opened Commissioner questions.

COMMISSIONER MILLIGAN asked how seasonal ditches and 50-foot buffers are different from previously, and the relation to elimination of Class Four. Yormick replied that Class Four streams are historic streams that have been altered. The classification was folded into seasonal stream. There are no buffer changes to Class Three beyond current Class Four.

COMMISSIONER LEWIS asked for clarification regarding proposed stream buffers and Type NS. Yormick replied that code was being aligned with the Washington Department of Fish and Wildlife (WDFW) stream types to eliminate confusion. An analysis has been done on neighboring jurisdictions and Issaquah falls in line. Recent Fish and Wildlife guidance regarding stream buffers will be processed shortly. COMMISSIONER LEWIS asked if staff is needing more time and resources to investigate and Yormick replied correct.

COMMISSIONER MILLIGAN asked for the definitions of *intermittent* and *ephemeral*. Yormick replied that *intermittent* indicates seasonal and *ephemeral* indicates lasting under normal conditions through the year.

CHAIR FAUL opened Commissioner comments and there were none.

CHAIR FAUL asked for answers to the question regarding developing a definition of standards for stream bank stabilization.

COMMISSIONER LEWIS stated in response to the question, yes.

VICE CHAIR VOISS asked if installing a soft bank is less expensive. Yormick replied not knowing cost differences, but the consideration being engineering and anchoring logs versus constructing a wall.

COMMISSIONER MILLIGAN stated agreement with direction by staff but still had reservations regarding the variability in defining ditches. Yormick replied that currently, the documented presence of fish is required, determined with peer review. Dhaliwal replied there are three points; fish, a connection to waters of the State, or a historical water feature in line with State definition. COMMISSIONER MILLIGAN stated that a concern is to not over-regulate small, ephemeral water without another purpose, value before a 50-foot buffer is required.

- Yormick stated having received the information needed to answer the question.

CHAIR FAUL asked for comments to the question regarding eliminating stream buffer averaging as an option.

VICE CHAIR VOISS stated leaning toward elimination of averaging but asked why averaging was originally put into code and how often used. Yormick replied that stream buffer averaging has not been used very much, difficult to maintain buffer areas with changing stream edges.

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COMMISSIONER LEWIS stated being in favor of eliminating averaging but current need for healthy streams is not being addressed in the first draft. Staff should address healthy streams with an appropriate plan, specifying what is needed. Averaging could be appropriate if there were a more accurate view of what is needed for both maintenance and protection of healthy streams. Averaging is a stopgap.

COMMISSIONER BADER asked if the buffer allows for trails or access to the stream, and if not, if averaging is a way to allow access from a point. Yormick replied that trails are allowed in stream buffers, as long as there will be no degradation of the function of the buffer. Impacts must be mitigated.

- Yormick stated having received the information needed to answer the question.
- CHAIR FAUL asked for comments to the question regarding private roads and critical area regulations. The Commissioners were at a consensus of agreement to the question.

Dhaliwal stated that the remaining presentations could be skipped, as all information is in packets, in the interest of time if desired. COMMISSIONER LEWIS raised a Point of Order that Variances still had not been discussed at any meetings. CHAIR FAUL asked if the remainder of the agenda could become another meeting. Dhaliwal replied that the next scheduled meeting would be regarding landscaping on April 7, 2022, so an additional meeting would need to be scheduled. The items go to city Council on Tuesday, March 29, 2022. CHAIR FAUL stated that the amount of time needed would require another meeting. VICE CHAIR VOISS stated that the three remaining topics and Variances should be combined into another meeting. Dhaliwal replied that staff could arrange for another meeting. COMMISSIONER LEWIS stated a concern regarding not continuing the topics at this time as a report to Council regarding the first draft is due and suggested that if there is not a consensus that the meeting continue. COMMISSIONER MILLIGAN stated agreement with COMMISSIONER LEWIS. CHAIR FAUL stated having an early schedule to meet and asked Yormick if there is a section that could be addressed in approximately 30 minutes.

Dhaliwal stated that Fish and Wildlife had been presented, a new section in code, and organization and language was the question. COMMISSIONER LEWIS stated that separating streams and reworking of the section in language and context is needed.

- Yormick stated having received the information needed to answer the question.

Dhaliwal stated that the Shoreline Master Program questions were regarding the threshold for requirements for removing a bulkhead and dock lighting. CHAIR FAUL asked if Commissioners had enough information.

Yormick asked for clarification regarding the threshold and Dhaliwal replied that the draft has thresholds, and the question is if they are acceptable or needing work.

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CHAIR FAUL asked how much redevelopment would trigger the requirement and Dhaliwal replied 50% of the value of the home.

COMMISSIONER MILLIGAN stated that different wording of the question could produce more effective comments.

Dhaliwal asked for clarification regarding the dock threshold. Yormick replied major repairs, replacing more than 50% of pier support structure, will trigger lighting compliance.

CHAIR FAUL stated that the average life expectancy of the structural part of a dock is 30 to 40 years and suggested that lighting compliance should occur more frequently, knowing environmental impacts. Yormick replied that the threshold can be lowered to a review at minor repairs. CHAIR FAUL also suggested an incentive program.

COMMISSIONER LEWIS stated that a larger conversation regarding the Shoreline Master Program is needed, and Council should be told that staff will need more time to refine the SMP to be sure it aligns to policies at a future date. Staff has done an excellent job at achieving what Council had asked. A greater path for incentives for removing damaging bulkheads and moving lighting code into compliance is needed. Council needs to provide resources for the city to move in a quicker manner.

VICE CHAIR VOISS stated that docks have existed for years, and upgrades will be occurring. Private roads fall into disrepair without more leniency from the city. Common line setbacks along the lakeshore are of aesthetic concern. Yormick replied that most lots have sufficient depth to comply with the 50-foot setback versus common line. VICE CHAIR VOISS stated that there are certain areas that will be harder to build on.

COMMISSIONER MILLIGAN stated support for taking further steps regarding maintenance triggering bulkhead and dock lighting improvements and asked if a better incentive program and a threshold for required replacement could both exist.

CHAIR FAUL stated that educating people with property that will impact with bulkheads and docks may result in proactive decisions to change.

- Yormick stated having received the information needed to answer the questions.

(02:22) CHAIR FAUL opened Public Comments, although not on the agenda.

- Connie Marsh stated that the time when public comments would be taken should be made clear. Marsh stated having issues regarding streams and the unchanged buffers allocated. There is no time to waste waiting for appropriate buffers to be created. Buffers have been substantially eroding and fish returns have been reduced rather than larger returns created. The city has not been successful at creating appropriate habitat for endangered species. The conversations regarding peat have been appreciated.
- Susan Neville stated still being unclear regarding processes and that more clarity prior to meetings is a good idea. Neville thanked everyone for time and commitment and the

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result of staff work on the first draft should be congratulated. The public has been kept in the process. Neville agreed with Marsh that more discussion is needed regarding streams and responsible development.

CHAIR FAUL asked Yormick to consider comments from Marsh and Neville.

4. Reports

- a) **Council Update (02:28)**
Presented by Minnie Dhaliwal, Director, CP&D

Dhaliwal stated that there were no reports. Dhaliwal thanked the Commissioners for work and if another meeting is required it will be arranged. The information received will go to Council on Tuesday, March 29, 2022.

CHAIR FAUL stated a Point of Order that information in packets has been excessive at times and a re-balancing of information for reasonable meeting length should be examined. During short meetings, topics could be added as to utilize all time wisely. Dhaliwal replied that better ways going forward will be considered.

7. Adjournment

With no further business to conduct, CHAIR FAUL adjourned the meeting at 9:04 p.m.

Respectfully submitted,

Carolyn Garza, LLC
Recording Secretary