

Debbie Beadle

From: Evan Maxim
Sent: Wednesday, May 02, 2012 12:59 PM
To: Reid Brockway; ECA
Subject: RE: Testimony for 5/3 PC meeting

Thank you Reid,

We will post this on the web and transmit it to the Planning Commission.

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

From: Reid Brockway [<mailto:waterat@comcast.net>]
Sent: Wednesday, May 02, 2012 11:43 AM
To: ECA
Subject: Testimony for 5/3 PC meeting

Attached please find written testimony I wish to submit to the 5/3 meeting of the Planning Commission.

Thanks,
Reid

EXHIBIT NO. 105A.

Testimony to 5/3/2012 Planning Commission meeting

From: Reid Brockway

Subject: Recommended solutions for ECA issues related to streams

Abstract

My previous testimony identified six significant issues that exist in the current ECA code and related sections, and with its administration. The focus was on streams, but the majority of these issues pertain to other ECA's as well (e.g., wetlands). This submittal proposes solutions to those problems. The problems and solutions are summarized as follows:

1. Problem: Stream buffers imposed as fixed width number by stream Type are inappropriate for many urban settings.
Solution: Allow as an alternative the delineation of buffers by qualified professionals based on actual range of influence.

2. Problem: Insufficient distinction is made between developed and undeveloped land as to the constraints on activities in the vicinity of a watercourse.
Solution: Add definitions of "development" and "maintenance" and use presently empty paragraph 21A.50.080 to address maintenance of developed properties.
3. Problem: Flow rate is ignored as a criterion in defining stream buffer requirements, resulting in restrictions on small creeks and other drainages that are excessive for the environmental value they represent.
Solution: Incorporate flow rate thresholds into the sizing of stream buffers based on BAS.
4. Problem: Grandfathering provisions are inadequate when it comes to landscaping in the vicinity of a stream, as reflected in an assessment submitted as an appendix to the prior testimony.
Solution: Consolidate and clarify grandfathering provisions in the new section on maintenance of developed properties (see #2 above).
5. Problem: The code contains many "magic numbers" that appear arbitrary and not directed at explicit environmental objectives.
Solution: Allow buffer delineation (see #1 above) as a compromise solution in lieu of the large task of replacing these numbers by science-based target objectives.
6. Problem: There is currently no independent recourse available to the resident or developer when an issue of code interpretation arises short of a lawsuit or a formal hearing.
Solution: Add an ombudsman function.

These solutions should be implemented now, not in some future code update, so that they do not continue to create inequities for citizens and developers for years to come.

For more extensive descriptions of these problems see my testimony to the 4/19/2012 meeting.

I would be happy to supply recommended text for these changes.

Stream buffer widths – Our current one-size fits-all buffers by stream Type produce 130, 180, or 330 foot swaths of restricted land use through developed neighborhoods. They can burden multiple properties and reduce their value without significant environmental benefit. The inequities presented by this crude approach are exemplified in the dramatization recited at the previous PC meeting.

While simple to specify and control, this scheme is arbitrary and inflexible and has no science behind it specific to urban areas. And provisions like buffer averaging do not correct those problems; you take a buffer that is way oversized for the setting and allow its boundary to be manipulated while preserving its total area, and you are still burdening that same total area for little or no environmental gain.

Buffer delineation is not just a work-around, it is a superior approach that achieves balance between environmental and human concerns.

- It is a practical alternative
- It is supported by science
- It is what some other enlightened jurisdictions are doing because they recognize it makes sense
- It is something our consultant endorses, indirectly if not directly. At the last meeting Clive Stewart told us, ***“Every site is unique, and every buffer is site-specific.”***

Other jurisdictions recognize in their code that not just roads but buildings and other structures can constitute de facto boundaries to buffers because what is done on the other side of those may have no effect whatsoever on the wetland or stream or other feature they are concerned about protecting. Examples are Bellevue, Aberdeen, and Mount Vernon.

Buffer delineation is not expensive. The city of Aberdeen had this done recently for all their wetlands at a cost of \$50K.

As to this matter of cost... Since buffers are provided for the public benefit in the interest of environmental protection, in principle the cost should be borne by the general public. Our city should perform comprehensive buffer delineation as part of the overlay scheme. Realistically, however, this may be a resource issue in today’s tight budget context. The cost to perform this for individual lots is not great – a few thousand dollars at most. This is especially true when reduced property value due to an oversized buffer is taken into account. Therefore, as a compromise, allowing the resident or developer to conduct site-specific buffer delineation at their own expense is an acceptable alternative.

I believe the text necessary to add this option is minimal – for streams, about two lines added to section 21A.50.330, item 6, Buffer Reduction. In addition a definition of “buffer delineation” (or some other terminology if preferred) should be added to section 21A.15.

I am prepared to supply recommended text for both locations.

Undeveloped versus developed land – This is the problem in the current code of the predominant focus on “development” throughout the streams sections of 21A.50, and the ambiguity that poses for uses and activities normally allowed within established neighborhoods. It is partially solved by defining “development” and “maintenance” as recommended above. Beyond this, a straightforward solution is to use the presently empty paragraph 21A.50.080, entitled “Modification or waiver of sensitive area requirements – Urban lots”. This paragraph can be used to address maintenance and minor improvements to yards, residences, and outbuildings, which activities are substantially different from clearing and grading and installation of infrastructure as takes place for new development.

The constraints on activities within established urban settings should be appropriate for the conditions and features now present, not those that would apply to a proposed new development on raw land. Further, constraints on activities in developed neighborhoods should be applied only to the extent dictated by solid science ***addressing ECA's in urban settings***, or in the absence of such science, by common sense. It makes no sense to restrict activity that has no effect whatsoever on a watercourse merely because it is within a stipulated distance from that watercourse.

For example, the replacement of an ornamental shrub in one's garden with another of the same or different species, even though it is not “indigenous to the coastal region of the Pacific Northwest” (21A.50.340 (3)) should not require a city permit, much less a “state or federal permit or approval” as currently stipulated. This new section should establish a reasonable threshold of activity below which normal residential practices are not subject to the hassle and expense of studies, plans, and permits.

Again, I would be happy to work with the PC to create the text for this section. However, as part of this the consultant should probably be asked to identify what relevant BAS exists that applies specifically to urban settings.

Definition of “Streams” – “Streams” are defined in 21A.15.1240, but that definition does not take into account flow rate. As a consequence, even a small, seasonal trickle will restrict the use of 300+ feet of property if it connects to Lake Sammamish and so could conceivably have salmonids in it. Even if no salmonids, a trickle burdens a minimum of 100+ feet of property (Type Ns buffer). There needs to be a finer determination – or scaling – of the protection required for watercourses based on the actual environmental value they represent. A sizable salmon bearing stream like Ebright Creek and a small drainage charged by rainstorms are vastly different in their environmental values, yet they are currently treated the same if they discharge into Lake Sammamish, as most watercourses on the western slope of the plateau do.

I recommend that the consultant be asked to supply science on urban settings that addresses the relative environmental value of watercourses for different flow rates (including intermittent flow), and the extent that buffering should be scaled on that basis. Then criteria should be

added to our code that take flow rate into account and achieve a balance between environmental and human concerns in this regard.

Grandfathering provisions for landscaping – As the assessment in the appendix to my previous testimony demonstrates, the grandfathering provisions in our current code are scattered around, are ambiguous, and as they pertain to landscaping of established yards, are inadequate. Presently a literal interpretation of the code requires that a permit be obtained from the city, and in the case of introducing non-native species, “a state or federal permit or approval”, for simple things like replacing a decorative shrub that may be of no consequence whatsoever to an ECA in the vicinity. According to Staff it is not the intent that the code imposes such a burden, but present grandfathering provisions do not offer relief.

I recommend that the grandfathering provisions that apply to established residences and uses be consolidated into the newly populated paragraph 21A.50.080 on maintenance as suggested above. Exceptions might be where provisions logically reside in other chapters, like 21A.70, in which case those provisions should be clearly referenced in this paragraph. In the course of doing this it should be ensured that these provisions are clear and consistent and that they do not place a burden on property owners for negligible environmental gain.

Quantitative requirements – Ideally the numerous, in many cases seemingly arbitrary “magic numbers” found in the code¹ should each be assessed for the science and law behind them and replaced where possible by meaningful criteria that derive from explicit environmental objectives. However Staff has indicated that schedule and resources will not permit this. If this is not to be done in the current code update cycle, then the need for the option of buffer delineation as addressed above is extreme. Otherwise the inequities caused by many of these arbitrary restrictions will likely exist for years to come.

My foremost recommendation is to “bite the bullet” and deal with this issue now. Have the consultant fill in the table and then replace those magic numbers that are not dictated by science or law with outcome-based requirements. But if this is truly not possible at this time, consider this a compelling argument for allowing buffer delineation.

Ombudsman – There is the need for an ombudsman to whom the resident or developer can turn when an issue of code interpretation arises. The ECA code contains significant ambiguity and opportunity for the city to impose regulatory bias. It also contains restrictions that are overly broad or extreme for a developed urban setting, where literal interpretation and enforcement places an unreasonable burden on the applicant. (Examples of both can be provided.) Presently when such difficulties arise the only recourse is for the applicant to sue or request a formal hearing, both entailing considerable expense and with uncertain results. There needs to be a less extreme alternative wherein a neutral arbitrator is brought in to help resolve an issue. This needs to be a person or group (board) who understands the ECA code,

¹ See table submitted as testimony to the 4/5 PC meeting

its context, and its intent, is flexible in its interpretation, and uses common sense to achieve a balance between environmental and human concerns.

Note that Staff has argued that the position taken by a plan reviewer or other staff can be appealed “up the chain” within the Planning Department, through the Director of Community Development, and even to the City Manager if necessary. While this may be true, there is a public perception that there can be a bias within Staff, combined with a tendency of managers to support their people, that makes this in-house process less than objective and not a reliable avenue for relief. As a minimum, the city should conduct a representative poll of members of the public who have had issues arise in their dealings with the Planning Department to see if this assertion has merit and thus an independent entity is needed.
