

Debbie Beadle

From: James Osgood <jim@Officefinder.onmicrosoft.com>
Sent: Monday, June 3, 2013 1:15 PM
To: City Council
Cc: ECA
Subject: Stormwater volume limits
Attachments: Pilot Program Manual Conveyance Support.doc

EXHIBIT NO. CC080

I have heard some questions related to limiting stormwater volume on new developments in the overlay and want to elaborate on it a bit more for your benefit.

First of all, I'd like to remind you that the overlay was put in place to protect Lake Sammamish from erosion during development. The risk of erosion is significantly reduced and a non-issue after development. Lake Sammamish is designated as a "receiving" body so that means that there are no needs for limitations on adding water to the lake. The stormwater issue has been an add-on issue that, I believe, is totally inappropriate so long as we meet the King County Storm Water manual requirements. In actuality, the hoops that are proposed for us should not be required. Sammamish should do as its neighbors do regarding erosive soils and follow the King Count Storm Water Manual which has portions that deals with this. It is my opinion that this add-on is a means for those generally opposed to development in our city to restrict it further, not a true environmental concern.

The volume limitations idea originally came about because of unfounded fears that the manual conveyances, not erosion during development, would be at risk from an increase in the volume of storm water. Through expert testimony (PCC 276), as well as Eric LaFrance's City Council testimony, we have demonstrated in general that a ditch will have less strain on it and less risk with the proposed Flow 3 release control than it currently has and stormwater will be much cleaner with a 60% phosphorus removal. We further demonstrated this for our particular property, at the expense of providing a KCSWM level 1 analysis, CC27, all the way to the lake that verified this. In our case, it showed that there are no areas of concern and it only has an 8% average grade to the stormwater pipe, which currently exists. Keep in mind that by definition erosion risk does not occur until a slope is over 15%. For that matter, our property has a maximum average slope of only 17%. The department of Ecology also apparently agreed with us on this as there was no comment on using the ditch.

Infiltration, which would be the primary means to achieve matched volume release or Low Impact Development, is not possible in our area due to a very shallow hard pan. For more on this see testimony PCC 132 by Brian Beaman, Icicle Creek Engineers.

We were also told by our engineer, Triad Associates, that a matched volume release requirement would be financially infeasible for us to develop due the requirements for public roads and improvements. The roads themselves would take up much of the current volume, severely limiting the number of lots that we could develop.

For more information on this please see Rationale for Support for Development in the EHNSWB Overlay (CC3 and attached with links)

Finally, we believe that adding an additional restriction such as this is unwarranted given all of the evidence we and others have provided as to effectiveness of current technologies in controlling erosion and water quality. In this particular situation we want the same rights that anyone else who is using Lake Sammamish as a receiving body, not just in Sammamish, but anywhere. If the City places additional unnecessary restrictions on us, it would be blatant over regulation since they will be unable to demonstrate how our stormwater poses a greater risk than others outside the overlay draining into the lake. It will actually be cleaner. Once again the overlay was put in place to protect the lake from erosion during development, not to control stormwater after development.

As I said in my last CC testimony, we expect the same rights everyone else has in the city, to follow the same rules, while taking extra care to prevent erosion that could impact Lake Sammamish.

I hope this clarifies the issue for you. We are counting on your support.

Jim Osgood

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Rationale for Support for Development in the EHNSWB Overlay

Prepared by: James Osgood 2/20/2013

Pilot Program (21A.50.225 5) 4-15f Evaluation Form

- **No other jurisdiction in the State has similar prohibitions.**¹
 - Nearby jurisdictions use the most recent King County Storm Water Manual to protect the environment.^{1,5}
- **Very limited program – 9 developments total.** (21A.50.220 5 (c))
 - Earth moving will only occur during the dry months.(221A.50.220 1)
- **Growth Management Act - GOAL HG-4: Avoid creating regulations that have an unnecessary impact on the cost or supply of housing.**
- **Sammamish is an Urban Growth Area and needs to find ways to permit growth.**
 - Failure to do so will not “permit urban densities” as required in a very large portion of the city. (RCW 36.70A.110)
- **No Development will be allowed on steep slopes.** (21A.50.225 5)
 - Much confusion between EHNSWB and Steep Slopes. They are not the same. (Minority Report 4, page 5, p 1 is an example)
 - Primary erosion concern comments are based on steep slopes. (e.g. Welch comment 128)
 - Many areas with the EHNSWB are not steep with gradual downstream slopes. (e.g. Osgood Property and it’s downstream conveyance slope at an average of 15% or less)
 - A portion of the BAS definition of Erosion Hazard Area is slopes of 15% or greater. (AMEC Matrix Response #132)
- **Erosion Control technologies are reliable per Department of Ecology (AMEC report EHNSWB Page 3).**
 - Very Low Risk of erosion after development.
- **2009 King County Surface Water Design Manual more stringent and protective than when overlay put in place (Comment 207, page 2, p 3) and since 2005 CAO implemented.**
- **Main concern should be water quality, NOT Volume.** (Rick Tomkins PE, Triad Associates)
 - Lake Sammamish is designated as a receiving body without receiving volume limits.
 - Program includes a 60% Phosphorus removal requirement.
 - Lake Sammamish is on the Department of Ecology’s 303(d) list, as a Category 5 water body for ammonia N, dissolved oxygen, and fecal coliform10, not Phosphorus (in 2012 varied between Category 1 and 2).
 - Limnologist report: Small construction sites runoff of Pilot Program would not affect the Phosphorus Level in Lake Sammamish. (Herrera Environmental Consultants, Comment 193).
- **AMEC BAS Available Science report on EHNSWB referenced No BAS³, only opinions, other jurisdiction’s actions and generalities.** (AMEC report EHNSWB Page 12).
 - Assuming BAS used in 2005 as complete and accurate is contrary to the reason the City Council established the Sunset Clause; to fix inequities.
 - BAS available science used in 2005 related to landslide, stream bed erosion shoreline or maps.⁶
 - Consultants did not evaluate any technologies that may be used to mitigate risk.

- **Property Rights are constitutionally protected and should not have unreasonable or unfounded regulations attached to them.** ²
 - Need to balance the government's intended purpose in a regulation with the means used to accomplish it and the financial impact on the landowner
 - BAS (peer reviewed) needs to show that harm **would** be done
 - The absence of BAS is NOT a good reason for regulation.
 - City Attorney prepared a response not released to public (Verbal Public Comment/Question and Answer – follow up: #4). We assumed there were issues of over regulation.

Open Channel Manual Conveyance (21A.50.220 5 (c) iii) 4-15F Evaluation Form

- **Comprehensive conveyance analysis required.** (221A.50.220 5 (c) (iii) D)
 - Repair or upgrade, as necessary, is required to support that water flow and volume will ensure that conveyance will handle the additional storm water that will be produced as a result of subdivision development during and after a large storm or similar event (Minority Report 1 Concern) and protect downstream properties (Minority Report 2 #5 concern).
 - Third party peer review is required.
 - Result is significantly more protection than required in the 2009 King County Surface Water Design Manual.
- **Peak Water Flows will be less than the current flows.** (Rick Tomkins PE, Triad Associates Comment 276)
 - Flow 3 control will balance release to lower volume levels than currently exist
 - More overall volume, but less burden on the manmade conveyance (ditch)
 - Less risk of catastrophic event
- **Only site areas of less than 5 acres can qualify for the Pilot Program.** (221A.50.220 5 (c) (iii) A)
- **Hard Pan Soil at short depth does not allow Infiltration for Low Impact Development.** ⁴
- **Many Low Impact Development techniques are included:** (221A.50.220 5 (c) (iii) F-J)
 - Require level 3 flow control on all projects (current requirement is level 2)
 - Minimum of 15% open space (in addition to required recreation space)
 - Limit individual site impervious surface to 50%
 - Revegetation of all open space
 - 15% of each lot shall contain drought resistant/tolerant plantings
 - Rainwater Harvesting
 - These techniques reduce overall water volume by 30% or more. (Rick Tomkins PE, Triad Associates)

Footnotes

¹ EHNSWB Comparison table 11-30-12 Prepared by Evan Maxim, Sam Rodabaugh Verbal Public Comment/Question and Answer – #30, Carson Comment 222

² Washington State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property 2006

³ Best Available Science defined by WAC 365-195-905

⁴ Public Comment 132 6/13/2012 Icicle Creek Engineers, Inc. (Brian Beaman)

⁵ City Council Tab 1 - (E) Lipinsky Minority Report #3 - 2-1-13

⁶ Comment 160 2005 Best Available Science Resource List