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JUN - 7 2010

CITY OF BURIEN

June 7, 2010

Honorable Mayor and Council Members

Our names are Robert and Robbie Howell
We live at 15240 20th Ave SW
Burien, WA. 98166

The Purpose For This Letter

As citizens we were not given an adequate opportunity for input to the adoption of the Critical Areas Ordinance. We do not want that to happen again in the adoption of the Shoreline Master Plan.

Critical Areas Ordinance Review

As I wanted to clarify in my own mind the events that led up to 2010 SMP I decided to research the city records pertaining to the Critical Areas Ordinance (CAO) and review what had taken place. I would like to share with you the results of my inquiry. Statements taken directly from the City records are shown in "quotes" our comments are shown in *(italics)*.

When the city staff was defining the Critical Areas Ordinance No 394 in 2003, they held 5 public hearings. *This appears very good in print, as the hearings are all listed on the first page of Ordinance No 394. Yet when I looked into the records, I discovered the public did not attend the hearings. This was probably because they didn't see the notice or understand the implication of the Ordinance being considered.*

Let us review the following events.

The first public notice was published in the Seattle Times on February 24, 2003 for a Planning Commission hearing March 11, 2003 at 7:00 p.m. at Burien City Hall.

It was intended "to receive public comments on" the proposed "Amendments to Burien Municipal Code Chapter 19:40-Critical Aquifer Recharge Areas."

"The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical aquifer recharge areas."

Note: Other than the general public notice, citizens living in the affected areas were not contacted. The notice was published in the Seattle Times. At that time Burien Residents were still expecting public notices in the Highline Times. Only recently were we told at a city council meeting that public notices are now being published in the Seattle Times

March 11, 2003, Burien Planning Commission Meeting

CFTR: 06/21/10

“A. PUBLIC HEARING: AMENDMENT TO THE CRITICAL AQUIFER RECHARGE AREA ORDINANCE”

Besides the Planning Commission members, Pat Smith, planner, Ann Root and Amy Dearborn of Adolfson Associates, Jon Sondergaard of Associated Earth Sciences along with Gerry Lindsay, recording secretary were present.

The Meeting Minutes State: “Mr. Smith noted that the proposed critical aquifer recharge areas ordinance had been revised in accordance with direction given by the Planning Commission, and to show which aquifers are recommended along with an explanation of why.” And “Mr. Smith said the ordinance was revised to make the hydrogeologic assessment report optional for applicants. The report would be required only where an applicant disagreed with the location of a critical aquifer recharge area, or if they have a use that is otherwise not permitted, that they believe can be planned for the site to be compatible with the recharge area. The ordinance also was revised with regard to radioactive substances used for minor medical purposes.”

(There was considerable discussion about aquifers.)

To which Mr. Sondergaard added; “when it comes to creating protective regulations, some of the unknown is removed by choosing to protect the areas that appear to be the most sensitive based on geology and hydrogeology.”

“Commissioner Robison asked if existing businesses within one of the critical areas would be required to do anything special. Mr. Smith said they would not unless seeking to expand or using lots of hazardous materials.”

They opened the public hearing and there were no comments. The Commission felt the prudent approach would be to continue the public hearing to the next meeting on March 25, 2003.

(There was another public hearing that night which was not covered by the hearing notice.)

B. PUBLIC HEARING: AMENDMENT TO THE WETLAND ORDINANCE

“Mr. Smith, planner, said it is important to protect both the wetlands themselves and the buffers surrounding them. The buffers are a crucial part of the wetlands systems by providing the initial filtering of sediments and other pollutants in run off water. He explained that the major changes to the existing ordinance are focused on the buffer widths.” More discussion about buffers followed.

When a question was posed concerning the Category of the area around a lake, Ms Root of Adolfson Associates said; “A lake shoreline could be a Category 1 wetland, and it might not be. Lakeshores are regulated under the Shoreline Management Act.”

There was some informative conversation about Category 3 wetlands having a 50' buffer. "Commissioner Robison asked if a buffer with minimal vegetative cover would indicate a less valuable wetland. Ms. Dearborn said that could be the case in certain instances. Ms. Root said increasing the buffer where there is minimal vegetative cover is necessary in order to increase the function of the wetland buffer."

Mr. Robinson voiced suspicions regarding Best Available Science. "He said that he would like to see a provision that would allow for some averaging of the buffer in Category 3 down to 25 feet, perhaps with a non-building exclusion for the other 25 feet."

***The public hearing was open and there were no public comments.
They extended the public hearing to March 25, 2003.***

March 25, 2003, Burien Planning Commission Meeting

PUBLIC HEARING NUMBER TWO: AMENDMENT TO THE CRITICAL AQUIFER RECHARGE AREA ORDINANCE

"Pat Smith, planner, noted that the changes to the ordinance previously recommended by the Commission had been made with the exception of the section referring to the use of radioactive substances in clinics and doctor's offices. He said with regard to the later that staff was still working on the language."

"Chair Pierce reopened the public hearing continued from March 11."

"There were no people present to offer testimony."

A motion to recommend approval of the proposed amendment was passed unanimously.

PUBLIC HEARING NUMBER TWO: AMENDMENT TO THE WETLAND ORDINANCE

"Chair Pierce declared the public hearing open."

"There were no people present to offer testimony."

"Chair Pierce continued the public hearing to the April 8 meeting of the Commission."

April 8, 2003, Burien Planning Commission Meeting

PUBLIC HEARING NUMBER THREE: AMENDMENT TO THE WETLANDS ORDINANCE

“Chair Pierce reopened the public hearing which had been continued from the March 25th meeting.”

Mr. Smith told the Commission about how the ordinance language had been revised since the last commission meeting. Among the revisions that had been made “the ordinance also was revised in the approach to wetlands associated with Lake Burien. The proposal is to treat them as type IV wetlands with a 30 foot buffer.”

(Note: Before Burien was Incorporated, King County had designated Lake Burien as a Category 2 wetland with a 50 foot buffer.)

“Mr. Smith noted that there is a sewer that rings Lake Burien that is 30’ from the lake, effectively prohibiting any type of development within that distance. In addition to the 30’ buffer a 15’ setback is recommended.”

“Mr. Smith said the rationale for classifying Lake Burien area as a Class IV wetland is based on the fact that the development around the lake has already degraded the wetland areas. Larger buffers are needed for more pristine wetlands in undeveloped areas.”

(Note: I could find no scientific evidence that development around the lake had already degraded the wetlands to a Class IV.)

After further conversation the hearing was closed and there were no public comments.

A public notice was published in the Seattle Times on April 28, 2003 for a Planning Commission hearing May 13, 2003 at 7:00 p.m. at Burien City Hall.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Streams and Wildlife Conservation Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical wetland areas.”

Note: No hearing was found in the city records for May 13, 2003 and it was not mentioned in the 2003 Critical Areas Ordinance # 394 list of public hearings.

The second Public Notice was published in the Seattle Times on July 24, 2003 for the 4th hearing to be held August 12, 2003.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical areas throughout the city.”

(Note: Again no invitations were sent to the residents that live in the critical areas. No invitations were sent to community clubs in the city. The notice was published in the Seattle Times instead of the Highline Times.)

August 12, 2003, Burien Planning Commission Meeting

There were three public hearings that night.

A. PUBLIC HEARING ON PROPOSED COMPREHENSIVE PLAN AND ZONING
Seventeen people commented at this hearing.

B. PUBLIC HEARING ON ZONING STANDARDS FOR NORTHEAST
REDEVELOPMENT AREA (SPA-4)
Only Ms Barbara Rudge, senior planner for the Port of Seattle commented. She wanted the hearing to be extended because she did not have ample time to review the Standards.

C. PUBLIC HEARING ON ALL CRITICAL AREA ZONING CODE AMENDMENTS
AND TREE RETENTION

There were no comments from the people who live around Lake Burien or along Puget Sound.

“Teresa Vanderburg of Adolfsen Associates provided the Commission with an introduction to the Fish and Wildlife Habitat conservation portion of the critical areas ordinance update. She noted that the codes of many jurisdictions in the past have not included fish and wildlife habitat conservation areas; the update is being made to bring Burien’s code into compliance with the Best Available Science.”

As there were no comments from the Public there was consensus to continue the public hearing to August 26, 2003.

August 26, 2003, Burien Planning Commission Meeting

DISCUSSION AND RECOMMENDATION ON ALL CRITICAL AREA ZONING
CODE AMENDMENTS

(Public Comment Item.)

“Mr. Gary Hoffman, South King County manager, Master Builders Associations, called attention to the section of the proposed critical areas ordinance that allows a 100 percent increase in the wetland buffer. He provided the commissioners with copies of a letter in which he outlines alternatives that have been implemented in Snohomish County.” (See attached letter.)

D. Discussion and Recommendation on all Critical Area Zoning Code Amendments

“Mr. Smith commented that over the past year the focus has been on moving some of the sensitive area sections of the ordinance from Chapter 18 to 19. That process has included the incorporation of the Best Available Science. Over the past year there have been five public hearings: three on wetlands, one on critical aquifer recharge areas, and one on the full package. Two planning firms have been retained by the City to ensure that the Best Available Science Principles are being incorporated.”

“Commissioner Williams asked what sources are being documented as being the basis for the Best Available Science used in revising the buffer widths. Mr. Sondergaard answered “that the literature does not give a single recommended buffer width; there is a range that varies widely depending on specific conditions and functions. All that must be balanced against other objectives, such as economics and growth management. The science is clear that the larger the buffer the more the protection, and that larger buffers are needed in more rural areas.”

The motion to recommend approval of the proposed critical areas zoning code ordinance, including the change to Section 19.40.220.2.H.ii.c, was carried unanimously.

The only public comment was from the Master Builders Assn..

The third Public Notice was published in the Seattle Times on September 1, 2003 for the City Council hearing to be held September 15, 2003.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical areas throughout the city.”

(Note: No invitations were sent to the people who live in the critical areas on Lake Burien or along the sound. No invitations were sent to the Lake Burien Shore Club.)

Note: On September 8, 2003

Adolfson Associates, Inc provided the City of Burien with a CAO Update, Wetlands, Streams, and Fish and Wildlife Habitat Conservation Areas designating Lake Burien a Category 2 wetland.

September 15, 2003, City Council Meeting

“9. BUSINESS AGENDA”

“a. Public Hearing to Receive Citizens’ Comments on Motion to Adopt Ordinance No. 394 Amending BMC Titles 18 and 19 (Zoning Code) Relating to Critical Areas.”

“Planner Pat Smith said the current regulations governing critical areas are included in Chapter 18 of the zoning code. The current update includes moving the regulations to Chapter 19. **He said the Growth Management Act requires all cities to incorporate Best Available Science when revising their critical ordinances. To ensure the incorporation of Best Available Science as required, the City contracted with two consulting firms, Adolfson, Associates, and Associated Earth Sciences.**”

“Continuing, Mr. Smith said the state defines six critical areas.

- First is geological hazard areas for which the Council has already adopted regulations.
- Second is flood areas; that ordinance will be moving in its entirety from Chapter 18 to Chapter 19.

There are current regulations for the next three critical areas.

- Wetlands, streams, and fish and wildlife-but they are proposed to be changed somewhat.
- The critical area, critical aquifer recharge areas, will be addressed by a new chapter in the zoning code; **Best Available Science has been incorporated resulting in non-substantial changes.**”

“Mr. Smith said **The Council will need to adopt the critical areas map along with the ordinance.** He said the map has been drawn as accurately as possible, but due to budget limitations **the critical areas have not been field verified; the map information was drawn from King County sources.**”

Mr. Smith continues, “Following the public hearing the Council has two discussion meetings scheduled. Adoption of the ordinance is slated for October 20, 2003. **The Planning Commission has had eleven study session meetings and five public hearings over the last year on the critical areas ordinance. Very few public comments were received during the public hearings, even though notice of the proposed changes was widely disseminated.**”

(Comment: Invitations were not sent to the residents in critical areas. The Lake Burien Shore Club was not notified. The notice was published in the Seattle Times rather than the Highline Times..)

“The Planning Commission and staff are proposing a 100 percent increase in wetland buffer size and recommending that the stream buffers remain unchanged. A sliding scale for wetland mitigation is being proposed based on wetland quality. There is also a proposal to require an environmental review for uses with a significant amount of hazardous material near critical aquifer recharge areas.”

Mayor Woo opened the public Hearing

There were two comments.

Greg Anderson of 15451 11th Ave SW who voiced concerns over recording critical areas on title reports, *an excellent comment from this builder.*

Garrett Huffman, Master Builders Association of King and Snohomish Counties

Mr. Huffman voiced concern about the 100 percent wetland buffer area increase proposed. He said the Master Builders Association would prefer to see the buffer area requirements remain as they are currently. The Association would also like additional information for why the recommendation is to increase the wetland buffers to such a large degree. *(See attached letter dated Sept. 15, 2003 from Garrett Huffman to Mayor Woo.)*

There being no other comments, Mayor Woo closed the public hearing.

(Note: Except from Greg Anderson there were no comments from the people living around the lake or on the sound.)

The City Council then began a discussion on Ordinance No. 394 Amending BMC Titles 18 and 19 (Zoning Code) Relating to Critical Areas

Asked to respond to Public Comments Mr Smith explained to Greg Anderson about which title reports would have to record that the property was in a critical area.

Then he explained to Mr. Huffman that the 100 ft buffer is in keeping with Best Available Science. He said he would seek additional information from the consultant and have it available for the next study session.

There was considerable discussion about eagles and “Councilmember Lamphear said there are other endangered species that are not listed at all. **Mr. Greenberg noted that section 19.40.290 essentially designates any area with endangered, threatened or sensitive species listed by federal or state authorities as a fish and wildlife conservation area.** That even includes species for which there are not specific management recommendations.”

September 15, 2003

Garrett J. Huffman of the Master builders Association gave a letter to Mayor Wing Woo regarding the motion to Adopt Ordinance No. 394 Amending BMC Titles 18 and 19.

A partial excerpt is inserted here, “Specifically, the Washington State Court of Appeals has clearly held the “Best Available Science” rule in the Growth Management Act (GMA) does not require that critical area standards be based only on whatever science says may be the most protective standard.

While the City must consider 'Best Available Science,' it is required to also consider and implement the other goals of the GMA, including encouraging growth in urban areas, encouraging the availability of affordable housing, encouraging economic development and protecting private property rights. The proposed City ordinance proposes environmental protection as the primary goal of GMA, rather than one goal that must be considered and balanced against others. As a result the proposed 100% increase in wetland buffers is excessive and not necessary."

The MBA strongly urges the City Council to take a flexible approach to critical area approach to critical area zoning to help meet GMA housing targets and maintain Burien's ability to accommodate viable, quality design standards."

September 29, 2003 Two things happened

1. The City of Burien issued a "Determination of Nonsignificance (DNS), WAC 197-11-970" for the "Zoning Code Amendments: Critical Areas" which reads as follows:

"The lead agency for this proposal has determined that the proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW43.21C.030(2)(c) **This decision was made after a review of a completed environmental checklist and other information on file with the lead agency.**"

"This Determination of Nonsignificance is specifically conditioned on compliance with the applicable regulations set forth in the Burien Municipal Code."

"All information relating to this proposal is available to the public on request."

"Responsible Official: Patrick Smith, AICP"

(Note: The environmental checklist prepared by Pat Smith, city planner, shows most of the information for the questions as N/A (not available) and mentions the consultants will take care of these things. They did not talk to any of the people who live on Lake Burien or contact the Lake Burien Shore Club regarding the fish and wildlife on the lake. They decreed that the lake was dead rather than validating the Fish and wildlife that are supported in its ecosystem. At the September 15th hearing there was no hearing or discussion about the Fish and Wildlife on Lake Burien. The residents had no clue what was happening to them or the lake.)

2. ***The City of Burien sent the following letter to the Department of Ecology.***

"Department of Ecology
Environmental Review
PO Box 47703

Olympia, WA 98504-7703

To Whom it may Concern:

The City of Burien has issued a Determination of Nonsignificance for the enclosed draft critical area ordinance. Enclosed is a copy of proposed Burien Zoning Code amendments, the DNS, the environmental checklist, memorandum from Adolfson detailing how they have used Best Available Science in this process, and finally the schedule of public review. Because this is not a mitigated DNS, **I do not think a public comment period is required. However, due to the importance of the critical area regulations on the environment, staff is distributing the DNS to all parties on our SEPA mailing list.** If you have any questions or comments, please contact me at (206) 439-3152

Sincerely

Patrick Smith, AICP”

See attached DNS mailing list.

(Note: Because Lake Burien, according to the planners, had no fish and wildlife, the city told the Department of Ecology that no mitigation was necessary. Patrick graciously let the Department of Ecology know that due to the importance of the critical area regulations on the environment that staff is distributing the DNS to all parties on their mailing list.)

When you look at the list you will see that SEPA included a list of 33 entities or citizens. The Seahurst Community Club, the Shorewood Community Club and the 3 Tree Point Community Association were included but the Lake Burien Shore Club was excluded. Only 4 citizens were mailed to and none of them lived on Lake Burien. All the rest of the mailings went to government agencies or businesses.

SUMMARY

At the August 12 hearing, “Teresa Vanderburg of Adolfson Associates provided the Commission with an introduction to the Fish and Wildlife Habitat conservation portion of the critical areas ordinance update. She noted that the update is being made to bring Burien’s code into compliance with the Best Available Science.”

It seems evident the City ignored the consultants advise and declined to investigate the fish and wildlife on Lake Burien however they did validate fish and wildlife on Puget Sound. The City declined to use Best Available Science for Lake Burien. Instead they chose to follow the advise of the Master Builders Association to encourage higher density in a critical area that supports Federal and State Listed and Candidate Species.

Also on **September 8, 2003 Adolfsen Associates, Inc** provided the City of Burien with a CAO Update, Wetlands, Streams, and Fish and Wildlife Habitat Conservation Areas **designating Lake Burien a Category 2 wetland.**

Amazingly when the Burien 2003 Critical Areas Ordinance No. 394 went into law, the city planners had covertly changed Lake Burien from a Category 2 to a Category 4 Wetlands, reduced the buffer from 50' to 30' supposedly under the auspices of using Best Available Science.

CONCLUSION, We do not want this repeated in the SMP

LAKE BURIEN WILD LIFE

During the September 15, 2003, City Council Meeting
“Mr. Greenberg noted that section 19.40.290 (*of the zoning code*) essentially designates any area with endangered, threatened or sensitive species listed by federal or state authorities as a fish and wildlife conservation area.”

Had the City investigated (or inquired) they would have found the lake is a hunting ground for the Eagle, Osprey and Great Blue Heron. It is also home to numerous migrating birds and year around residents.

In 2003 Lake Burien had, and still has in 2010, Eagles, Osprey, and Great Blue Heron. The lake also has lots of migrating birds including at least 10 species of local importance: Western Grebe, Great blue Heron, Barrow's Goldeneye, Common Goldeneye, Cinnamon Teal, Osprey, Banded-tailed pigeon, Belted kingfisher, Hairy Woodpecker and Purple Finch.

Recently some of the Bird lovers living on Lake Burien talked with the Audubon Society. We had just started collectively identifying birds and taking pictures of some of them, if they weren't to fast for us. Together we have identified 87 species of birds that we see on the lake and the list is growing.

The lake is also home to fish, turtles, frogs, crawfish and bats.

The lake is classified as Category 1 for Water Quality as defined in the Coastal Atlas and is free of Eurasian Milfoil. The shore club members and waterfront owners are careful to not use toxic chemicals in their yards or boats that have been in another lake. Gasoline powered outboards are not used on the lake. The residents are taught to keep it a really “GREEN” lake.

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JUN - 7 2010

CITY OF BURIEN

Ted and Helen Fosberg
2841 SW 172nd Street
Burien, WA 98166
206-242-2560
fosberg@msn.com

June 7, 2010

✓ Mayor Joan McGilton
City of Burien
400 SW 152nd Street, Suite 300
Burien, WA 98166

Dear Mayor McGilton,

We are writing to express our overwhelming concern about the negative impact of the Shoreline Management Program (SMP), as presently drafted, on the Citizens of the City of Burien.

This Shoreline Management Program represents de facto taking of property by eminent domain by the City of Burien.

Definition: Right of Eminent Domain – The power of the City of Burien to acquire private land without the consent of the owner. The City of Burien is required by law, however, to pay the land owner the fair market value.

Our observations relative to the present draft of the SMP are as follows:

1. The 65 foot setback from mean high tide along with associated provisions will effectively, over time, cause the removal of all structures within this area of the marine shoreline in the City of Burien.
2. This will result since the value of structures will be lost due to natural disasters (storms, earthquakes, etc.), normal wear and tear, decay and fire to a point where rebuilding is not feasible or prohibited.
3. In many instances, the structures will include the primary residence of the property owners.

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