

Lisa Clausen

From: Peter Eglick [eglick@ekwlaw.com]
Sent: Wednesday, June 23, 2010 3:57 PM
To: Joan McGilton; Rose Clark; Brian Bennett; Jack Block; Kathy Keene; Lucy Krakowiak; Gordon Shaw; Public Council Inbox
Cc: Scott Greenberg; David Johanson
Subject: The Lake Burien Shore Club, by its president Don Warren, has asked that we transmit to you the Club's attached comments and suggestions for
Attachments: SMP Draft - Lake Burien Shore Club - Redline Changes 062310.pdf
Importance: High

changes to the Draft SMP received from the Planning Commission. You will be relieved to know that the attachment is only four pages. It consists of a handful of suggested changes to the draft SMP that can be moved and adopted by Council. There are also very brief explanations of the proposed language. The Shore Club -- through Mr. Warren, other Club leaders, or me (Shore Club counsel) -- would be happy to discuss these with you.

Meanwhile, the Shore Club thanks the Council as a whole in advance for the time you will spend in reviewing these (and others') comments and for the time you have already spent on this matter.

Sincerely,

Peter Eglick



Peter J. Eglick

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CFTR:07/19/10

To: Burien City Council
Cc: Scott Greenberg, Community Development Director
David Johanson, Senior Planner and City Planner's Office

From: Don Warren,
President and Lake Steward, Lake Burien Shore Club
15702 13th Ave SW

Date: Wednesday, June 23, 2010

Re: **Lake Burien Shore Club Recommended Changes to Planning Commission SMP Draft**

Dear Councilmembers:

By now, you have no doubt discovered that the Burien SMP Amendments are a plague of riches in terms of detail and data. The Record of proceedings to date is by itself voluminous. The Burien Marine Homeowners Association (BMHA) has provided you with a guide to the issues in the form of a comprehensive "redline". It calls out, page by page and line by line, areas in the Draft SMP Amendments such as vegetative cover, nonconforming status, and setbacks that clearly need further consideration.

Therefore, the Shore Club won't add to the Council's workload by offering another line by line annotation of the Draft. Instead, because our core concerns are relatively discrete and specific to Lake Burien, we have suggested below tightly worded revisions to just a few relevant passages in the SMP Draft.

The highest concern is, of course, the degradation of the lake's existing fragile balance. The risk of degradation is through the introduction of physical public access. As explained in our May 14, 2010 letter to the Council, the Shore Club went to considerable expense to commission review of the impact of physical public access for Lake Burien by a wetlands ecologist, Dr. Sarah Cooke, and a well-respected limnologist, Rob Zisette of Herrera Environmental Consultants. Their detailed written analyses were submitted while the SMP was pending before the Planning Commission and are also in the Record for Council review.

These scientists' analyses make clear that physical public access to Lake Burien is ill-advised.

Consequently, the Shore Club's first proposed changes below directly address physical public access to the lake, which, again, is at the heart of our concerns. Following those suggested changes we have set out a limited number of additional suggestions for concise modifications concerning the Lake Burien Weir's misplaced inclusion in the Flood Hazard Reduction section (20.30.030) and the Shoreline Permit Matrix (20.30.001 Figure 4).

Each of the Shore Club's limited changes can be readily moved for adoption by Councilmembers as part of decision-making on the Draft SMP. For ease of reference, these proposed changes to particular SMP sections are shown in red typeface below. We have also underlined additions and shown strike-through ~~deletions~~ in case these comments are copied or scanned in black and white.

Physical Public Access – changes requested [shown in red typeface: also underline and strike-out]

20.20.015 Shoreline Public Access Element

Pol. PA 5: The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline. However, the City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

20.30.035 Public Access

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

20.30.085 Recreational Development

2. Regulations h)

- ~~h. —Should public access occur on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public-access areas.~~

Clarifying notes: This section (20.30.085 ... 2..h ..) assumes the possibility of physical public access on Lake Burien and therefore, consistent with the noted changes immediately above (for 20.20.015 and 20.30.035), this item should be deleted in its entirety.

Adoption of each of the parallel changes shown above will, consistent with the Record, avoid the redundant public expense and private burden of rehashing the question of physical public access for Lake Burien.

Lake Burien Weir – Changes Requested [shown in red typeface: also underline and strike-out]

20.30.030 Flood Hazard Reduction

The following provisions apply to actions taken to reduce flood damage or hazard, as well as to uses, development and shoreline modifications that increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, biotechnical measures, and storm water management. Flood hazard reduction measures may also include structural measures such as ~~the weir at Lake Burien~~, floodwalls, dikes and elevation structures consistent with the Flood Insurance Program.

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1. Policies

f. ~~Maintain the outlet weir at Lake Burien to provide a relatively constant lake level to minimize the potential for flooding.~~

f: The Lake Burien Shore Club has for sixty years maintained the outlet weir at Lake Burien to provide a relatively constant lake level during the late fall, winter, and early spring months. The City will be supportive of the Club in carrying out that function. ~~to minimize the potential for flooding.~~

Clarifying note: Section 20.30.030 as presently drafted, assumes in its introductory paragraph and then again in "1. Policies ... item f." that the weir at the outlet of Lake Burien is a flood control mechanism and/or poses some flood threat associated with its existence, maintenance, or failure. This assumption is incorrect: flooding is not and has never been the issue. Inclusion of reference to the weir in a "flood hazard" section is therefore mistaken. The history of the installation of the weir demonstrates this:

*The weir was built after storm water management systems were constructed in the vicinity diverting inflows **away** from the lake in the 1950's. This resulted in the Lake having no outflow for more than a year. The weir was built as a result of efforts of the lake shore property owners to ameliorate that problem. Its function was and is to restore the ordinary high water mark existing prior to the storm drain system's construction. The weir assures the lake can retain some small portion of the larger seasonal rains from November thru March, such that there is an outflow for about six months each year. There is no outflow from the lake yearly from June through October. In sum, there is no evidence or historic record of flooding associated with the outflow from Lake Burien, neither prior nor subsequent to the construction of the weir. Flooding was not the basis for installation of the weir: in fact the weir was installed to ensure that the Lake would have adequate water despite the loss of flow due to storm water diversion.*

Therefore, because the weir has no flood control function and no association with flood hazards, reference to the weir should be struck from the Flood Hazard Reduction section. If any mention of the weir is retained in the SMP, then the reference should be corrected and reworded to acknowledge that the weir has been and will be maintained by the Lake Burien Shore Club, which has done so for over half a century, for the purposes described above. Further, any such reference should be moved out of the flood hazard section, where it does not belong, and to an appropriate section.

Shoreline Permit Matrix – Section 20.30.001 Figure 4

The Shore Club requests the following modifications to the "Shoreline Permit Matrix" to ensure that incompatible uses are not introduced in the shoreline and that potentially problematic uses go through the Conditional Use permit ("CUP") process:

20.30.001 Figure 4 Shoreline Permit Matrix

Note: Only those table lines for which changes are requested are included in table excerpt below:

	Shoreline Residential	Aquatic	Urban Conservancy
Cell Towers Personal Wireless Facility	CUP X	N/A	X
Government Facility	SDP X	X	SDP

Public Park and Recreation Facilities	SDP CU	X	SDP
Recreation	SDP CU	SDP CU	SDP
Transportation Facilities and Parking	SDP X	X	SDP

Clarifying Notes:

"Personal Wireless Service Facility" should not be permitted and should therefore show as an "X" in the Shoreline Residential column. The shoreline and residences within them are unique in that they are afforded special aesthetic and view protection under the Shoreline Management Act (SMA). Wireless facilities (such as cell towers) are incompatible with and in such a shoreline environment.

"Government Facility" should not be permitted and should therefore show as an "X" in the Shoreline Residential column. Except for shoreline facilities that qualify under other use provisions (e.g. public marina), location of generic government facilities in the shoreline is not an appropriate use under the SMA.

"Public Park and Recreation Facilities" should show as "CU" in the Shoreline Residential column. Such facilities should be subject to the assurance of compatibility that the conditional use process and standards provide.

"Recreation", as referred to in the table, is not clearly defined in the SMP draft. Assuming this refers to recreational facilities, this category potentially overlaps with other potential uses that are called out and defined. Therefore, this line of the matrix may either be removed, or depending on its purpose, modified to show as "CU" in both the Shoreline Residential and Aquatic columns. Recreational use facilities should be subject to the assurance of compatibility that the conditional use process and standards provide.

"Transportation Facilities and Parking" should be prohibited and should therefore show as an "X" in the Shoreline Residential column. Point sources of oily pollution associated with all transportation and parking facilities are not supportive of "no net loss of ecological function" particularly within an enclosed small lake shoreline environment.

Summary and Thanks

We appreciate that the Council has substantial work ahead of it. We hope that this letter will be a road map to assist the Council in identifying areas where specific, discrete changes, which we have called out, can be made. The Lake Burien Shore Club will be happy to assist the Council by providing further information on the whys and wherefores of these modifications.

Best regards and sincere thanks,

Don Warren
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President and Lake Steward, Lake Burien Shore Club
 President, Burien Shorelines Defense Fund
 Board of Governors, Ruth Dykeman Children's Center