

Lisa Clausen

From: Public Council Inbox
To: Deniece Bleha
Subject: RE: Letter to Council from Peter Eglick on behalf of the Lake Burien Shore Club

Your message to the City Council will be included in the Correspondence for the Record for the upcoming City Council meeting.

Thank you-

L. Clausen
City Manager's Office

From: Deniece Bleha [mailto:bleha@ekwlaw.com]
Sent: Tuesday, August 24, 2010 10:08 AM
To: Joan McGilton; Rose Clark; Brian Bennett; Jack Block Jr.; Kathy Keene; Lucy Krakowiak; Gordon Shaw; Public Council Inbox
Cc: Peter Eglick
Subject: Letter to Council from Peter Eglick on behalf of the Lake Burien Shore Club

Greetings:

Please include the attached letter in the public record AND the packet that is created Wednesday afternoons by city staff for council consideration over the days prior to and in the Monday 30 August council meeting.

Thank you.



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CFTR: 08/30/10



Peter J. Eglick
eglick@ekwlaw.com

August 24, 2010

Via Email (council@burienwa.gov)

City Council
City of Burien
400 SW 152nd Street, Suite 300
Burien, WA 98166

Re: Proposed SMP Language Concerning Physical Public Access to Lake Burien

Dear Council members:

The Lake Burien Shore Club (LBSC) has followed the Council's deliberations on the SMP with interest and with appreciation for the time you have spent in considering the matter. There are of course decisions yet to be made. A key one concerns adoption of the language suggested by LBSC addressing physical public access to Lake Burien. LBSC's proposed addition to language already in the proposed SMP would read as follows (added sentence in red and italics) :

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.*¹

The actual SMP Record supports this outcome, which only applies to physical public access. Therefore, as the Council makes its final decisions, LBSC offers below, in summary form, a response to several of the myths that have characterized the opposition to our proposal:

1. *Myth: DOE requires physical public access so LBSC's proposed language would be "DOA at DOE,"² and would result in DOE sending the SMP back to the City.*

¹ Conforming changes would be made in parallel portions of the SMP.

² Dead on arrival ("DOA") at the Department of Ecology ("DOE").

Fact: DOE was asked to clarify its position. In response, DOE reassured that LBSC's proposed language would not be DOA. And, DOE reaffirmed the advice offered by the agency's representative (B. Fritzen) at the March 9, 2010 Planning Commission meeting:

Public access can be visual, it can be physical, and it may be inappropriate in some situations. The other thing to keep in mind is public access and protection of the environment are not always compatible so you have to bring that into consideration when you're doing your planning for public access.

2. *Myth: Lake Burien and its homeowners have benefitted from taxpayer dollars so the public is entitled to use its investment.*

Fact: Lake Burien has been the subject of governmental indifference for a century. The lake shore itself and much of its bedlands are held privately, having been sold off by the State many years ago. General environmental regulations, such as those concerning storm water, apply to the area, but neither the City nor the State have invested in facilities for Lake Burien, according to their own responses on this very question. Lake Burien is essentially the same as it was when the Washington Supreme Court described it in 1930 in Turtle v. Fitchett,³ a very small lake with no means of water purification or change. As a result the Supreme Court upheld:

the proposition that Lake Burien, due to its comparatively small size and lack of drainage, is too small a body of water to be used for public bathing by such a large number of people....

The reasons why physical public access is inadvisable have not changed and if anything have become more compelling over the last 80 years.

3. *Myth: There are already risks of invasives and algae blooms from physical public access by homeowners, so generalized physical public access won't make any difference and if it does, mitigation can be applied.*

Fact: Environmental pressure on the lake would be amplified by orders of magnitude if 10,000's instead of 100's had physical access to the lake. (The advocates for generalized physical public access have themselves literally referred to the "thousands" to whom Lake Burien should be open, including for swimming, fishing, and non-motorized boating.) Nutrient loading and risk of invasives increase exponentially with such use. The environmental problems they cause are insoluble. Submerged invasive species are only effectively "mitigated" by dosing the water body with poison (herbicides) killing all

³ 156 Wash. 328, 287 Pac. 7 (1930)

vegetation. This leads to massive nutrient release and more toxic algal blooms (caused by cyano-bacteria). For public health reasons, “mitigation” for toxic algal blooms is to bar use of the lake until it is cleansed of toxic residue. For Lake Burien, the necessary water outflow never starts until November and ends in April or May.

4. *Myth: The Council is being asked to accept a proposal for SMP language that would foreclose a park for picnicking along Lake Burien.*

Fact: No such proposal has been made. Here again is LBSC’s proposed language which addresses only physical public access to Lake Burien, not visual access: “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.”

5. *Myth: Priority for physical public access should be given to the shoreline reaches that currently have none.*

Fact: Environmental considerations are paramount under the Shoreline Act and its regulations. The carrying capacity of all shoreline reaches is not the same (for example, the Sound’s capacity is infinitely greater than Lake Burien’s). Giving priority to physical public access on a shoreline where there is a likelihood of environmental loss is not consistent with the Act.

6. *Myth: Limited City financial resources are consistent with priority for physical public access on shoreline reaches that currently have none.*

Fact: Despite the best intentions, the City of Burien is not able to keep pace with expenses associated with its existing parks. Hard choices such as recent closure of some city park restrooms, which were built at significant public expense, have real consequences for the environment and surrounding properties. They call into question the feasibility of providing and maintaining facilities and “mitigation” funds necessary for protection of Lake Burien. And, they raise the question of cost-benefit as the City considers what public access is appropriate on which of its shorelines. The folk wisdom inherent in “Don’t bite off more than you can chew” and “You break it you bought it” (when impacts occur) both apply. The expensive burden the City of SeaTac bears for Angle Lake Park maintenance and policing are a cautionary tale for Burien.

LBSC’s proposal, conveying a City determination not to seek physical public access, should not be controversial in light of the SMP Record before you. The proposed language would leave open whether City resources should be devoted to pursuing visual public access on Lake Burien.

EGLICK KIKER WHITED PLLC

August 24, 2010

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On the Record before the Council, in light of the standards that apply, and in the interest of going forward with an SMP without detour, the LBSC therefore respectfully requests that the Council adopt the proposal.⁴

Sincerely,

EGLICK KIKER WHITED PLLC

A handwritten signature in black ink, appearing to read 'P. Eglick', written in a cursive style.

Peter J. Eglick

cc: Client

⁴ For the Record, the LBSC reserves all rights in this regard, including with regard to the absence of a SEPA EIS that addresses the impacts of physical public access on Lake Burien and alternatives to it.