



**CITY OF BAINBRIDGE ISLAND
REGULAR PLANNING COMMISSION MEETING
THURSDAY, March 24, 2016
6:00 p.m.-7:45 p.m.
CITY COUNCIL CHAMBER
280 MADISON AVE N
BAINBRIDGE ISLAND, WASHINGTON**

CALL TO ORDER - Call to Order, Agenda Review, Conflict Disclosure
REVIEW AND APPROVAL OF MINUTES – December 17, 2015 Planning Commission Meetings
PUBLIC COMMENT - Accept public comment on off agenda items
GENERAL LTD. SHORELINE MASTER PROGRAM AMENDMENT - Study Session
AQUACULTURE LTD. SHORELINE MASTER PROGRAM AMENDMENT - Study Session
NEW/OLD BUSINESS
ADJOURN

CALL TO ORDER - Call to Order, Agenda Review, Conflict Disclosure

Chair Mack Pearl called the meeting to order at 6:07 PM. Planning Commissioners in attendance were Michael Lewars, Maradel Gale, Jon Quitslund, William Chester and Lisa Macchio. Michael Killion was absent and excused. City Staff present were Planning Manager Joshua Machen, Senior Planner Christy Carr and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

The agenda was reviewed. Commissioner Macchio stated she would recuse herself from the Aquaculture portion of the meeting.

REVIEW AND APPROVAL OF MINUTES – December 17, 2015 Planning Commission Meetings

**Motion: I move approval of the minutes as distributed.
Quitslund/Lewars: Approved Unanimously 6-0**

PUBLIC COMMENT - Accept public comment on off agenda items
None.

GENERAL LTD. SHORELINE MASTER PROGRAM AMENDMENT - Study Session

Senior Planner Christy Carr gave an overview of the limited amendment including what exactly a limited amendment was and was not explaining the amendment was to clarify the meaning behind the Shoreline Master Program (SMP) as well as making it an easier document for the Planners to use and better reflect the intent of “No net loss.” Chair Pearl opened the discussion by asking about

the change of the wording “lawn and garden” to “existing landscaping.” Ms. Carr stated that “lawn and garden” excluded other types of vegetation. Using the words “existing landscaping” is inclusive of all vegetation. Commissioner Macchio felt the subject was going to be challenging and the Commission would probably need another study session to make it through the material. In response to further questions about policy changes in the limited amendment, Ms. Carr reiterated this was a general limited amendment to clean-up grammar, punctuation, etc., and there were NOT any policy changes in this section. Commissioner Gale asked how the Commissioners could be sure these changes would not result in a diminution of protection to the shoreline. Ms. Carr replied she could come back and walk the Planning Commission through the changes. Commissioner Gale stated she had trust in Ms. Carr that there were not changes that would modify the intent of the SMP, but that perhaps a chart of changes would be helpful instead of walking through all the changes. Commissioner Macchio agreed while Commissioner Lewars cautioned the rest of the Commissioners to be careful about asking for too much because they were already six months behind in the Comprehensive Plan update process. He felt they should trust Ms. Carr to bring forward any potential policy or substantive changes. Commissioner Macchio disagreed saying she felt they needed to give due process to both tasks in order to do a good job on both the SMP and Comprehensive Plan.

PUBLIC COMMENT

Dick Haugen, Citizen – Heard one of the Commissioners say was that “manageable chunks bring all this together,” but it was really hard to figure out the whole SMP and tonight was indicative of that. There was one little section that was really hard to get. He wanted to know if it would make sense to find out when they would be able to get the whole piece all together so they could take a look at it. Many sections of the SMP were back and forth, once section refers to another section, it was not all neat and tidy. He went on to say that the business of putting together what he would call a summary would be good because it took hours to go through the SMP the way it came out. Mr. Haugen stated if there was a way to do that by what people have suggested, he encouraged that to be done.

Elise Wright, Citizen – Was on the Vegetation Sub-committee on Vegetation Management, had given the SMP versions a close reading side by side and complimented Ms. Carr on a great job making it more intuitive in the way she had ordered from the general to the specific in that particular section. She went on to say there was one area she thought might have dropped out that she would mention to Ms. Carr privately. She did say she noticed it looked like the Single Family Residence Mitigation Manual was now the default for deciding mitigation and it was unclear to her whether the existing properties were protected as well as the new development.

Mike Juneau, Arborist – Had been contacting Ms. Carr and other City Planners to get clarification on what the SMP requirements were and that was when they realized it was pretty challenging for everyone to understand the SMP regulations. Mr. Juneau stated he did a lot of tree preservation which was along the same lines of trying to preserve trees on the shorelines, trees that would otherwise have to be removed. He said one of the big restrictions was not being able to remove the terminal growth on a conifer, a multi-headed tree. He mentioned that a lot of times they could shorten and cable those trees, but if they could not do that, they were going to lose that great wildlife habitat. He reiterated Commissioner Pearl’s issue of views referencing page 18 of the SMP, saying it looked they were able to maintain them but in reality could not because of new trees growing up into the view. He remarked that he was on the receiving end of the SMP and the only reason it was not a problem at this minute was because it was not being enforced very well or very

efficiently. He stated that even though these issues had not really come up yet, they were huge issues and the main thing that people on the shorelines, the first level houses effected by the SMP, then critical slope buffers can affect several levels of residents, not just the ones that the SMP applied to. As an idealist, he wanted to be able to call Planning and check out a certain property and find out what the restrictions were and still be able to do his job of preserving trees on the shoreline rather than condemning them as hazard trees and having them removed. He wasn't sure if the proposed revision could address that but thought he should speak up and mention that it was going to be a big deal to ALL the people along the shorelines: second house back, third house back, fourth house back, whomever had a view and a tree to manage on a critical slope.

Commissioner Gale recused herself from the discussion on Aquaculture regulations. "I am one of the people who filed an appeal with the City before the Growth Management Hearings Board to have the City re-examine the aquaculture regulations that were implemented under duress in July of 2014. When I hear people talk about a conflict of interest I always think, 'Well, that's kind of smarmy thing, you've got some, you're pocketing some money some place or having some involvement that is less than savory.' I want to point out that my involvement in this is that I did file, I am one of the people who filed an appeal and my economic involvement is I have spent my own money to cover the legal cost to bring this appeal before the Growth Management Hearings Board. I don't think that's smarmy. It's an ethical issue for me to protect our shorelines."

Commissioner Macchio also recused herself from the discussion on Aquaculture regulations saying, "I wasn't part of filing the appeal although I am a member of Bainbridge Alliance to Protect Puget Sound (BAPPS), so I just thought that because I am a member of that organization, I didn't want folks to think I had undue influence on the Planning Commission even though I don't have a conflict of interest but I am stepping down in case there is any perception by the public that I have had undue influence as a BAPS member at a Planning Commission seat. I am happy to step down and participate as a public person and not a Planning Commission member."

AQUACULTURE LTD. SMP AMENDMENT - Study Session

Ms. Carr gave an overview of why there was a limited amendment specific to aquaculture stating because they were given direction from City Council to do so and because they were resolving some of the issues of an appeal through a limited amendment. The Department of Ecology had also identified an error in our existing code that they asked the City to correct. She stated the product they had before them was the result of significant conversations and discussions with the settlement group and it addressed the consistency issues Ecology had, a number of issues the Appellant had and a number of issues the Intervenor (Pacific Coast Shellfish Growers Association) had. Ms. Carr went on to describe what the City wanted as a limited amendment to its Aquaculture Regulations that it could locally adopt, approved by Ecology and not be appealed.

Highlights of the proposed revisions were listed as:

- Prohibit new fin fish net pens
- Proposed cap on total area permitted aquaculture operations
- Prohibited aquaculture operations on City owned tidelands
- Changes to use table
- Improved eelgrass protections
- Introduction of proposed potential permit conditions
- Upland structure regulations
- New advisory map of prohibited or limited areas (not available at that time)

Commissioner Lewars asked about the change in philosophy the Department of Ecology (DOE) had undergone since City Council had approved the SMP. Ms. Carr stated that DOE was taking a little more seriously working in partnership with local communities to define local conditions and what the local community wants and why they may want to prohibit aquaculture in certain areas. Commissioner Quitslund stated he felt the work had been done carefully but some areas raised questions for him like how would conditional use be either granted or rejected in response to an application; what would the process be? Ms. Carr stated the intent was to have a public process.

Chair Pearl asked if non-commercial aquaculture was permitted on private beaches. Ms. Carr stated that was allowed. She went on to state that while there was no intent to limit non-commercial aquaculture, there was a proposed 500 square foot threshold in order to monitor impacts. Discussion continued about the initial ban and how DOE responded to that. Ms. Carr also spoke about the cap of 5 acres or 5% of the total linear footage of the shoreline for aquaculture production which was significantly less than the 38% of the Shoreline Residential Conservancy designation. Chair Pearl if because the ban was outright rejected by DOE, the regulations were being strengthened. Ms. Carr confirmed that was the direction received from City Council.

PUBLIC COMMENT

Lisa Macchio, Citizen – Thought this was great that the City was tackling aquaculture. She suggested the Planning Commission and Ms. Carr consider putting in a provision that before the City would even assess a permit for aquaculture, there would be a requirement for collecting baseline data like spawning beds for forage fish, etc. She stated she did not see that in the regulations and Ms. Macchio thought it was important to have in the regulations if aquaculture was going to be permitted in certain areas. She also stated that just limiting a prohibition during the time of spawning for forage fish was ridiculously inadequate. Ms. Macchio suggested the City find out where the spawning was happening and use that information to prohibit commercial aquaculture in those areas. She also suggested it might be inappropriate for individual shellfish farms to be put in those areas as well, though she did not how that would be accomplished.

Chair Pearl asked if there was research that showed digging in the bed was detrimental long term to spawning. Ms. Macchio stated that was common sense but that we came from a society that liked to allow industry to do things so a lot of times even NOAA and Fish and Wildlife, who gave permits for hydraulic projects, were being challenged left and right by an environmental group called “Sound Action” because the agencies that permit, do not exactly do things correctly all the time. She suggested the Planning Commission take the high road and put in some stronger prohibitions for those important forage fish.

Ms. Carr responded by referencing page 9, number 7, saying that in addition to the minimum application requirements, applications for commercial aquaculture were required to submit a long laundry list of submittal requirements which would be in the Administrative Manual. That list of submittal requirements was never put in the Administrative Manual but that it was being added now and it included a number of requirements for gathering data that had to be brought to the table at the time of permit application.

Mark Dawson, Citizen – Was a member of the New and Existing Development work group on the SMP update process as well as the Task Force. He wanted to emphasize the “no net loss” concept referencing page 232 of the SMP. He stated the City was required to demonstrate no net loss with

the submittal requirements for demonstrating the baseline for no net loss and he understood the requirements were in the City 's Administrative Manual but felt it was important for the Planning Commission and the community understand what those are as that was a very important component. Mr. Dawson also spoke about the aquaculture limited amendment noticing there were several places where the implementing language varied and often had to do with the "should, shall, must" language and that he and the group he was reviewing this with would pass that information along to the Planning Commission. Mr. Dawson stated he really appreciated the work the Staff was doing saying it was amazing what it took to get this complicated work done.

Wayne Daley, Citizen – Was a member of the original SMP activities and gave a brief review of the things he had seen as an expert witness in extensive geoduck culture and shoreline shellfish activities for the last nine years. Mr. Daley displayed a slide show highlighting a geoduck farm stating on a one acre site there were 43,000 5" PVC pipes at 12 inch intervals into the ground and seed them with small juvenile geoducks to grow out. He stated the pipes were covered with net to protect the juvenile geoducks from predators and left there for two years before the nets and pipes were removed to allow the geoducks to grow for another 3-5 years. When they are full grown, they are hydraulically harvested. Mr. Daley went on to describe how the aquaculture sites were prepared describing in detail the destruction of native wildlife and habitat. He also described storm events that distributed plastic pipes all over the shoreline sometimes miles away from where they had been located. He went on to say these aquaculture farms were completely disruptive to shoreline use. Mr. Daley ended by saying he appreciated the Commission's interest and sincerity in showing the rest of the public that on Bainbridge Island, they do care about what they're doing with the shoreline.

Commissioner Lewars reminded Mr. Daley, that while they were doing everything they could to protect the shoreline, in the last analysis, they had to work the issues with the DOE.

Marcia Lagerloef, Citizen – Was a member of one of the Shoreline work groups and also worked on the 1996 plan, but she was part of the group that worked on shoreline modifications, so had not generally commented on this section of the SMP. Ms. Lagerloef wanted to compliment Ms. Carr on her efforts to tighten the regulations up saying she liked the 5 acre cap. She went on to reinforce Ms. Macchio's statements on forage fish citing studies showing their population were really plunging mentioning she was once part of the beach seining group that worked with the Suquamish Tribe to actually look at what was in the shoreline and recommended that type of monitoring keep going. Ms. Lagerloef was confused on page 7 where she read "Aquaculture shall avoid adverse impacts to..." In her mind, she wanted aquaculture to avoid those areas altogether because to be located there would constitute and adverse impact to those things, critical habitat areas, etc. Chair Pearl stated it would mean convincing the State of those things. She reiterated Ms. Macchio's statement that spawning grounds for forage fish would be impacted all year and not just in the spring because you would be modifying that habitat. Ms. Lagerloef thought it would behoove the Commission to understand what the override of WAC regulations was in terms of managing geoducks and stated she was a big advocate of monitoring data. She described a principle known as "adaptive management" where you monitor before you do something, while something is going on and then if you see there's a problem, you can actually make a change. Ms. Lagerloef thought it was not clear to her on page 8, section 6a "the City may revoke the permit if it is determined by the administrator the aquaculture operation is not consistent with the terms and conditions of the permits," stating that if you were to find there was significant impact occurring at the site to the biology whether that would constitute a term or condition of the permit that would cause the permit

to be revoked. She felt there should be a way that if you find out through monitoring there was a problem that had not been anticipated, you could pull or change the permit. Ms. Lagerloef thanked the Planning Commission for really digging into this subject because it was really important.

David Bricklin, Citizen – Was representing the appellants who challenged the SMP’s aquaculture provisions that he felt were forced on the City by DOE. Mr. Bricklin stated Staff had done a tremendous job in working this through this process and figuring out ways to keep pushing on these issues as hard as they could to come up with the strongest regulations possible. He stated they had a handful of language changes for Ms. Carr to bring back to the Commission at their next meeting. He cited the language regarding the 5 acre cap saying the language needed to be more specific so a judge could not interpret that as meaning any individual permit could be that large. He wanted the language to be very clear that was the maximum allowed acreage for the entire island. Mr. Bricklin stated there were things like that where he knew the intent of the proposal was good, there just needed to be some words in a few places to make sure things were as clear as they needed to be down the road. Mr. Bricklin brought up adaptive management and said that also rolled into the life of a permit issue. He said State regulations, thanks to the lobbying efforts of the geoduck industry, required a geoduck permit to have a perpetual lifespan and that it did not make sense because there was no way to know for the next 50-100 years about how these operations would be impacting the beach and what the beaches need, yet a permit issued tomorrow would be good forever. He went on to say that was not true of other aquaculture permits which could have a five year term placed on them and was going to encourage Ms. Carr to have the City’s program reflect that. Mr. Bricklin continued by saying adaptive management would require standards to be set and consequences to arise if the standards were not met. He felt if the program could be fleshed out a little bit more than what was in there currently, you would not only require monitoring but that the monitoring demonstrate basically that there is no adverse impact to the elements of the environment that you care about and then when monitoring results were submitted, if the standard was not being met, the permit would automatically be rescinded. Mr. Bricklin echoed other speakers about the forage fish issue asking for stronger wording to protect their habitat. He shared information new that week that the aquaculture facilities ought to be limited to areas where there was already hardening of the shoreline bulkheads because those were the beaches that had been scoured clean and good habitat would not be found for forage fish making it a more desirable place for aquaculture. He also encouraged the Commission to reduce the 500 square foot amount citing the six oyster bags in front of his own home as producing more shellfish than he could eat. He also thought the 10 foot buffer setback from adjacent property lines should be a little broader. Mr. Bricklin stated he would send the rest of his comments in and expressed his appreciation for the Commission’s work on the Aquaculture amendment and recognizing the problems being dealt with as well as the great work Staff had done.

Elise Wright, Citizen – Stated between the wonderful questions from the Commissioners, Ms. Carr’s work and comments from everyone else, it was all covered.

Commissioner Lewars stated to Ms. Carr that they did not need more persuasion, they were all onboard so he did not need another study session but would prefer to move right to a public hearing. Chair Pearl confirmed that they needed a finished document to go to the public hearing so they would be seeing the item on their agenda again before that.

NEW/OLD BUSINESS

None.

ADJOURN

Meeting was adjourned at 8:19 PM.

Accepted by:



J. Mack Pearl, Chair



Jane Rasely, Administrative Specialist

