



TREE & LOW IMPACT DEVELOPMENT
AD HOC COMMITTEE
MEETING NOTES
FEBRUARY, 15, 2017
3:00 – 4:30 PM
COUNCIL CONFERENCE ROOM
280 MADISON AVE N
BAINBRIDGE ISLAND, WA 98110

Members in Attendance: Sarah Blossom, Mack Pearl, Kol Medina, and Ron Peltier

Staff and Officials: Jennifer Sutton, Gary Christensen, City Manager Doug Schulze

Public: Kelsey Laughlin, Charles Schmid. **From the Monte Vista Neighborhood:** Jeff Williams, Julia Williams, and Craig Goodman.

1. Approved meeting notes from the February 1, 2017 meeting.
2. Amended meeting agenda at the request of Ron Peltier to include discussion of Celebrate Trees! Resolution, then approved minutes as revised.

3. Public Comment:

Monte Vista Neighbors: Jeff, Julia, and Craig described the clearing of a wooded lot next to their houses, sharing concerns, questions, observations, and suggestions:

- The subject property is located next to these neighbors, is on a fairly steep slope. The clearing of the site has been very distressful to them, radically altering the aesthetics of their neighborhood. Craig's wife was too upset to attend the meeting.
- Neighbors were disappointed by failure of the City to notify them. No clearing sign was posted. Later a stop work was posted and later removed.
- The original clearing permit was violated, with most of the trees being removed. Neighbors suspect that the clearing permit will be revised to allow the developer to obtain an After the Fact Permit and minimal signs.
- Developer and excavator "knew what they could get away with". Large trees were sold and hauled away.
- City Staff did not visit site to verify that trees allowed to be cut were properly marked.
- Craig expressed his confusion regarding what the City's code allows and concerns over a lack of information from the City. City needs better neighborhood outreach so that neighbors 1) know what is happening to properties near them; 2) understand the process, why certain practices are allowed, and 3) have input, perhaps a neighborhood meeting with developer.
- Previous geotech reports have called for tree and vegetation retention on the slope but a more recent study did not. The most recent study was done by a consultant who never visited the site.
- Neighbors said it seems the problem at the City isn't so much a lack of good regulations but rather a failure to enforce them.
- Julia said developers knew what they could get away with and had "free reign" to remove trees.
- Craig said he thought there were inconsistencies in the code, with rules for single family lots allowing developers to violate their clearing permits. He also expressed a belief that the code is enforced selectively by city staff, using "loopholes, to allow what's happened to the property next to him. Now the once forested slope next to him is a muddy hillside.

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Charles Schmid: Expressed concern over the Grow Development being allowed to reduce its vegetative buffer along Shepard Lane from 20' to 5' by, in part, using a loophole in the code that allows bike paths to be deducted from the 20' buffer.

Kelsey Laughlin: Said more inspections are needed per clearing and other permits.

Regular Meeting

Tree Protections, Paradigm Shift, and Low Impact Development

Kol: started out the discussion by describing how the Tree Committee had been looking for a “paradigm” shift to find some way to create a legitimate nexus between the rights of property owners to develop their land and the ability of the City to require retention of natural landscapes as a matter of a legitimate public interest. When Low Impact Development regulations came along, in the form of a State mandated requirement, that seemed to be a way to create that “paradigm shift”. (Note: LID was advocated for by the former Forestry Commission, along with other progressive tree and land use regulations. I’ve been told by former Commission members that the entire Forestry Commission resigned when it became clear that their recommendations weren’t going to be implemented.).

Last Fall, Barry Loveless, made a presentation to the Ad Hoc Tree Committee that described a scenario that started out with a comprehensive assessment of the site, including its topography, natural features, and hydrology. From there the required goal, through LID, would be to develop the site in a way that preserved the site’s hydrological function. “Great, that was exactly what we’re looking for!” Tree Committee then worked with staff and consultant to integrate LID into the code.

Along comes January, after the minimum State mandated LID requirements had been adopted into our code, and we find out that site assessments are only being required for single family homes: not subdivisions. We’ve been told that sub-divisions already go through a site assessment. (**note:** like the one the Wyatt development went through? Obviously not working the way LID was described in Barry’s presentation to the Committee last Fall).

Kol continued, expressing our collective desire for all development to go through a process of looking at environmental function first, before doing anything else: just like Barry described LID last Fall. “Maybe the LID process, after all, doesn’t really do what we thought it would. We want the process, amongst other things, to dictate where buildings can be located. Staff, however, is telling us they can’t legally make that a requirement.” That’s why Kol invited Gary, the City’s Planning Director, and Doug, the City Manager, to this meeting: to help us work with staff to implement the committee’s identified goals and policies. Vegetation Management 16.22 and Land Clearing 16.18 chapters need to be revised to meet our goals. “Sound right?”

Clearing and Vegetation Management, LID, etc.

Mack: Single family lots still a major issue (no tree retention requirements)

Ron: Would really like for us to address loopholes created by After the Fact Permits.

Kol: We need a 2-track approach. We need to lay out a bigger process, with buy in from staff (and Council?) while at the same time working on things we can do quickly.

Doug Schulze: Said he like's "Ron's approach", of identifying the committee's objectives and taking those to the entire Council for approval. Loopholes in the Code are a result of a piecemeal approach. Original purposes get lost. This is partially because Council members come but there is continuity with Staff.

Kol: Jennifer has been very helpful to the Committee but it's hard to "turn the boat".

Gary Christensen: This is a good thing and an opportunity. We're at the end of a 3-1/2-year Comprehensive Plan update process with some initial actions to happen and more to follow. We have an opportunity, now, to define the City's future, with ultimate direction by the City Council. Encouraged by what lies ahead. Staff is here to help the Committee. We're about to make changes as a result of the Comprehensive Plan, etc., etc.

Ron's note: while listening to Gary I couldn't help but reflect on our past Comprehensive Plans, going back to 1992; how much importance they placed on environmental protection, and on the value of trees to the community; and how much damage the City's regulatory process has allowed to take place.

Doug Schulze: Agree that an environmental assessment should come first. Suggested that the Committee make a list of policy directives to be approved by the City Council that will then direct Staff.

Mack: I'm tired of reiterating policies and not getting anywhere.

Doug: You need to focus on high level policy, not ordinance level detail.

Ron Note: I believe we need just enough detail in our proposed actions so that Council approval is specific enough to result in action.

Kol: At the beginning of last year we had a list of policy questions: too much detail for the Council?

Craig Goodman: Sounds like the Committee wants to reduce clear-cutting. Our situation is a perfect example. So how could the City prevent what happened next door to us?

Kol: The Comp Plan clearly contains plenty of policies to support what we want to do.

Gary: Yes, for example the policy you approved at the last Council meeting.

Ron note: here's what Kol proposed for inclusion in the Comp Plan: **New Policy, LU 4-10:** "To the greatest degree possible, prohibit clear-cutting and grading of natural spaces." This policy was watered down, through proposed changes by Council members out of concern for how it might impact development, and then approved. I don't remember exactly how the final version was worded.

Gary: the committee could review propose a directive to review the regulation for consistency with policies. Committee might want to spend time going through the Comp Plan's policies to identify those in need of being implemented in the code.

Sarah Blossom: The Wyatt development (near Lovell) is a good example of what we don't want to happen. Regarding approved direction for the City Council: they did direct us last year to propose regulations that would prevent large clear-cuts.

Ron note: perhaps our web page needs to include a list of Council approved directives.

Kol: "I think we really want to focus on changing 16.18 and 16.22" (clearing and vegetation chapters)

Mack: Can't we just make policy statements that change the paradigm? -that discourage the "do it now and ask for forgiveness later" approach by developers?

Ron: Itching to get in a few words, said the time for patience is over. Our Comp Plan has had good policies in it for years, supporting the protection of trees and the Island's ecology.

Jennifer's Policy Questions

Sarah: We need to focus on our Policy List.

Ron note: Here's our policy list, created and provided for us by Jennifer Sutton last year:

Policy Questions to Consider for Amending MBIMC Chapter 16.22 Vegetation Management

1. Right now, 16.22 is triggered general when someone needs a Class 4 DNR Forest Practices Permit – clearing more than 5,000 board feet of timber). Keep this threshold? NOTE: Clearing permit required to remove 6 significant trees (1 sig. tree in Mixed Use Town Center) up to 5,000 board feet in a 12-month period.
2. Do we want to apply (pre-plan) subdivision open space/buffer requirements to properties proposed for clearing that will eventually subdivide?
3. What standards should be applied to undeveloped property that is not big enough to subdivide?
4. What standards should be applied to lots developed with a single-family home, but are not further sub-dividable?
5. What standards should be applied to property being cleared to expand existing agriculture or for the creating new agriculture?
6. Do we want to combine 16.22 with 16.18 Land Clearing? Rename resultant chapter?

Ron note: Have we actually answered any of these?

Kol: After Sarah's comment that we needed to focus on our list of policy questions Kol commented that, "the process is a fundamental question". Not sure what that meant.

Sarah: We don't have regulations for single-family lot tree retention.

Kol: Again talked about a "two-pronged approach" and said we've been waiting for Jennifer to write draft code language (to implement the general policies the committee seems to agree on?)

Jennifer: Said she needs clearer guidance from the Committee.

Kol: Wants the Site Assessment Review Permit, SARP, required for all development.

Jennifer: It's going back to Council and can be further revised.

Mack: Said what we're trying to do isn't about Low Impact Development and the SARP permit.

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Jennifer: What do you want applied to single-family lots?

Kol: Let's just say you can't just go into a forest and start cutting.

Jennifer: The SARP permit could probably say you can't remove more than 30% of the forest, using LID. Would make the most sense on fully forested larger properties.

Mack: Assessments need to be more about the property than about percentages.

Jennifer: Landmark tree regs could require retention of larger trees: 30-36" dbh.

Mack: Trees have to be considered first with lots of options for how to protect them.

Doug: Shouldn't be allowed to create hazard trees (by impacting roots, etc.) and then remove them.

Mack: We need a holistic approach that's less about formulas.

Gary Christensen: We need specific regulations in order to apply them fairly and consistently. Need to respect property rights. Owners don't want to be deprived of using their property. Can be legally challenged. Looking to be reasonable, factual, land consistent.

Kol: That's why we latched onto LID as a way to require more tree retention. Previous retention for sub-divisions was only 25% max (still is). LID science has the potential to same 65% of the natural areas on properties with trees.

Mack: LID principles aren't being considered first. We can make it happen first.

Kelcie Laughlin: We're going round and round. We already require site assessments for sub-divisions. There is already lots of review. City can already do what needs to be done.

Jennifer: We've adopted the minimum LID requirements, required by the State. Now do you want to specify more requirements that the State minimum? Seems that small sites should be treated differently from larger ones.

Kol: How do we make that happen?

Sarah: Full dispersion requires more undisturbed area.

After the Fact Permits

Mack: Enforcement is really the main problem. We need to impose major penalties.

Ron: How about a motion regarding After the Fact Permits and the current Compliance Policy (that has resulted in smaller fines and less aggressive enforcement of regulations? Typically, violations are only investigated if reported.)

Sarah: You can only get an after the fact permit if you otherwise comply with the regulations

Ron note: is that how it's being applied? Not clear it is.

Jennifer: So we should clarify the code regarding after the fact permits?

Gary: I will send Mr. (Craig) Goodman an email to clarify the situation next door.

Craig: Interested in how the Vegetation Management regs apply to situation next to his house.

Kol: How do we avoid Craig's situation in the future?

Doug: Mentioned that when he worked in Medina they spent seven years working on the general issue of tree retention. They finally decide to have flexible buffers and require cut trees to be replaced with larger sized trees, as opposed to little ones.

Gary: Said we already require replacement with larger trees and it's expensive.

Kelcie: a better process for pre-clearing inspections is needed.

Kol: Mentioned to Jennifer something about drafting possible regulations to address what was being discussed.

Mack: “What about real penalties?”

Gary: Mentioned the Clark development where a stop work order was issued after it was confirmed the land owner had exceeded his vegetation management’s clearing area.

Ron Note: In part because Staff never went out to verify that the land owner had marked off the allowable cut area.

Doug: By the time the stop work order was issued the land owner had already cleared everything he wanted to.

Wrap Up

Kol: My notes say Kol said something about the comp Plan, getting direction from Council, and a commitment from the Planning Department.

Doug: Suggested we pull policies from the Comp Plan and look for gaps, though he thought it was “pretty thorough”.

Celebrate Trees! Earth Month Resolution:

About this time, I was really hoping that I’d have maybe ten minutes for a discussion regarding the Celebrate Trees! Earth Month Resolution. At the end of our 90-minute rambling discussion we spent 5 minutes on the proposed resolution. I handed out copies of the draft resolution and asked for input from committee members. By that time in the meeting there seemed to little interest in discussing the resolution.

Note Approved: March 15, 2017