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**CLARK COUNTY**  
WASHINGTON

**COMMUNITY DEVELOPMENT**

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**BOCC Public Hearing**

**Community Development Staff Report**

**Setbacks for Retaining Walls and Fences**

**September 27, 2016**





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## Planning Commission Recommendation to the Board of County Councilors

TO: Clark County Board of Councilors

FROM: The Clark County Planning Commission

DATE: September 20, 2016

SUBJECT: Retaining walls and fences setbacks

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### I. SUMMARY

Changes to CCC 40.320.010.FA regarding fence and retaining wall heights within building setbacks are proposed. The proposed amendments, if approved, will codify retaining walls and fence height combinations, and increase overall allowable heights in setbacks under specified circumstances.

### II. BACKGROUND

This existing code section addresses retaining walls and fences immediately abutting a neighboring property line. It requires retaining walls over 4 feet in height and fences over 6 feet in height to maintain the standard building setback for the zone. While not currently codified, the current interpretation is that the height of a fence on top of a retaining wall is measured from the top of the fence to the bottom of the wall.

The development community has noted a number of issues with the current code. One of their main concerns is that when a wall/fence exceeds the limits noted above, it must be set back from a property line, which can result in a “no-man’s land” that is often either maintained by the abutting property owner (which can result in a potential adverse possession claim), or an area is not maintained at all. Also, side and rear setbacks are 20 feet for multifamily developments; prohibiting walls and fence combinations greater than 6 feet tall in a 20 foot side or rear setback can have a significant impact on the design of a project.

The proposal allows for a number of exceptions, including the stepping of walls, obtaining permission from an abutting landowner, and exceptions for non-residential property.

It should be noted that the height of fences that do not require building permits has been raised to 7 feet through the Spring biannual code amendment process. As written in the proposed ordinance, Sections 40.320.010.F.3 and 4 increase allowable fence heights within easements and setbacks to 7 feet to correspond with the permit-exempt height

limit just approved under the Spring biannuals; if Sections F.3 and the relevant portion of F4 is not approved by the Board, 7 foot tall fences (which do not require building permits) will still need to meet building setbacks. Since the majority of fences are built on (or very near) property lines, staff envisions considerable confusion between the two different standards.

### **III. ANALYSIS**

Should the code changes be approved, taller retaining wall and fences will be allowed within building setbacks under certain circumstances. In urban single family Residential zones the rear and side building setback range between 5 and 10 feet; in Rural zones, the side and rear setbacks typically range between 10 and 20 feet. It needs to be re-stated that there currently are no height limits to retaining walls and fences that do meet building setbacks. According to the DEAB, they do not expect a rash of huge retaining walls as a result of allowing them closer to the property lines, as they do require engineering and are expensive to construct.

### **IV. COMMUNITY OUTREACH**

Staff had discussions with the DEAB regarding this item between August of 2015 and March of 2016.

The proposed changes were originally included as item #25 of the 2016 Spring Biannual code amendments.

A SEPA determination of non-significance of the biannuals (including item #25) was published in the "Columbian" newspaper on March 30, 2016.

A legal notice of the public hearing was published in the "Columbian" and "Reflector" newspapers on April 6, 2016.

The Planning Commission held a work session on the biannual code amendments (including this item) on April 7, 2016.

The Board of Councilors held a work session on the biannual code amendments (including this item) on May 11, 2016.

At the April 21, 2016 Biannual code amendments hearing the Planning Commission took testimony regarding this item and voted to pull this item out of the Spring Biannuals and re-visit it on its own in August of 2016.

A legal notice of the Planning Commission public hearing on retaining walls and fences was published in the "Columbian" newspaper on August 3, 2016.

The Planning Commission held a public hearing and took written testimony on retaining walls and fences on August 18, 2016. The written public testimony is included as part of this packet.

A legal notice of the Board of County Councilors public hearing on retaining walls and fences was published in the "Columbian" newspaper on September 12, 2016

#### **V. RECOMMENDATION**

The Planning Commission voted 5-1 in favor of recommending approval of the amendments.

They removed a proposed provision in Section 40.320.020.F.4 which would have allowed over-height walls and fences within setbacks if a residence on an abutting property was at least 50 feet away. That discussion occurs on pages 7 and 9 of the Planning Commission minutes. The text as proposed in the ordinance reflects the Planning Commission's removal of that provision.

Enclosures:

Proposed ordinance with text changes

Exhibit 1, new Figure 40.320.010-8

Planning Commission Minutes of the August 18, 2016 public hearing

Public comment letter from Kevin Brown



ORDINANCE NO. 2016- -

**An Ordinance amending CCC 40.320.010.F regarding the height of retaining walls and fences**

WHEREAS, the height of retaining walls and fences along property lines are regulated to moderate the impacts to abutting properties; and

WHEREAS, the requirements to set back certain retaining walls and fences from property lines the distance equal to the setback of the zoning district can be as much as 20 feet; and

WHEREAS, the required setback can have significant impacts on the design of a project; and,

WHEREAS, the development community requested options to allow increased height of retaining walls and fences within setbacks under certain circumstances; and

WHEREAS, this matter is being considered at a duly advertised public hearing, and the Board of County Councilors finds these amendments in the public interest,

BE IT HEREBY ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY COUNCILORS, CLARK COUNTY, STATE OF WASHINGTON AS FOLLOWS:

**Section 1. Amendatory.**

Sec. 1 (Exh. A) of Ord. 2003-11-01 as most recently amended by Sec. 27 of Ord. 2014-01-08 and codified as CCC 40.320.010.F are each hereby amended as follows:

**F. Establishing Setback Standards for Retaining Walls and Fences.**

- 1. This section regulates the height of retaining walls and fences along the perimeter of sites. Building codes specify the circumstances under which retaining walls and fences require building and grading permits. Changes to stormwater runoff resulting from construction of retaining walls are subject to Chapter 40.386.
- 4.2. Construction of private retaining walls or fences within public rights-of-way is prohibited. Exceptions to this prohibition shall require approval of the Public Works director.
- 2.3. The construction of retaining walls four (4) feet or less in height and fences ~~six (6)~~ seven (7) feet or less in height may be constructed within public easements. Exceptions to these height limits may be granted when written approval has been obtained from the easement holder.
- 3.4. The construction of retaining walls in excess of four (4) feet in height and fences in excess of ~~six (6)~~ seven (7) feet in height shall meet the setback requirements of the underlying zone. The height of a fence on top of retaining walls shall be measured to the grade at the bottom of the wall. Exceptions to

1 ~~this provision are as follows:~~ Each of the following is an exception to the height  
 2 and setback requirements of Section 40.320.010.F.4:

- 3 a. ~~When an exception under subsection (F)(1) of this section has been~~  
 4 ~~granted;~~
- 5 a. Retaining walls taller than four feet may be placed within setbacks by  
 6 using a series of retaining walls four feet high or less that are separated  
 7 a minimum of four feet, provided the area between walls is maintained in  
 8 ground cover or shrubs. The total height of a series of walls within the  
 9 building setback shall not exceed eight (8) feet. Landscaping shall be  
 10 maintained consistent with CCC40.320.010.G.6. Fences are allowed on  
 11 top of such walls consistent with Section 40.320.010.F.4.h and Figure  
 12 40.320.010-8;
- 13 b. The exposed faces of retaining walls over four (4) feet in height are  
 14 directed toward the interior of the lot;
- 15 c. The retaining walls and / or fences are constructed as part of the site  
 16 improvements prior to a final plat, and located between lots within the  
 17 development. Retaining walls on the perimeter of the plat may not use  
 18 this exception, except as allowed under subsection (F)(4)(d) of this  
 19 section;
- 20 d. Retaining walls and / or fences abutting a road right-of-way or road  
 21 easement; ~~provided,~~ subject to the following:  
 22 (1) The wall or fence does not block required sight distance;  
 23 (2) Walls and / or fences over 12 feet in height will be reviewed for  
 24 potential shading and visual impacts beyond the right of way or  
 25 easement. The community development director may impose  
 26 conditions on the design and setbacks of such walls if needed to  
 27 mitigate impacts;
- 28 e. The retaining wall and / or fence is constructed between lots under the  
 29 same ownership;
- 30 f. Permission to exceed the height limits within the setback is granted in  
 31 writing from the abutting property owner;
- 32 g. The retaining wall and / or fence is abutting commercial or industrial  
 33 zoned property or legally permitted non-residential uses;
- 34 h. Non-sight-obscuring fences such as chain link or wrought iron seven (7)  
 35 feet high or less, and sight-obscuring fences forty-two (42) inches high  
 36 on top of retaining walls no greater than four feet tall are allowed within  
 37 setbacks per Figure 40.320.010-8;
- 38 4. 5. Building codes for retaining walls may require setbacks that are greater than  
 39 those required by this section 40.320.010.F.4.
- 40 6. These height and setback limitations do not apply to fences required by state  
 41 law to enclose public utilities, or to chain link fences enclosing school grounds  
 42 or public recreation areas.
- 43  
 44  
 45  
 46

**Section 2. Effective Date.**

This ordinance shall take effect on midnight of the date of its adoption;

**Section 3. Instructions to Clerk.**

The Clerk of the board shall:

- 1) Transmit a copy of this ordinance to the Washington State Department of Commerce within ten (10) days of its adoption, pursuant to RCW 36.70A.106;
- 2) Record a copy of this Ordinance with the Clark County Auditor;
- 3) Cause notice of adoption of this ordinance to be published forthwith, pursuant to RCW 36.70A.290; and
- 4) Transmit a copy of the adopted ordinance to Code Publishing, Inc. forthwith to update the electronic version of the Clark County Code.

ADOPTED this 27th day of September, 2016.

Attest:

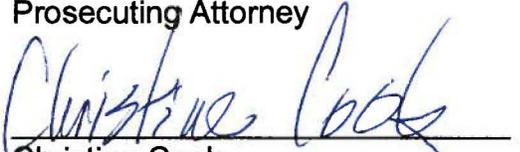
BOARD OF COUNCILORS  
FOR CLARK COUNTY

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Marc Boldt, Chair

Approved as to form only:  
ANTHONY F. GOLIK,  
Prosecuting Attorney

By: \_\_\_\_\_  
David Madore, Councilor

  
\_\_\_\_\_  
Christine Cook,  
Senior Deputy Prosecuting Attorney

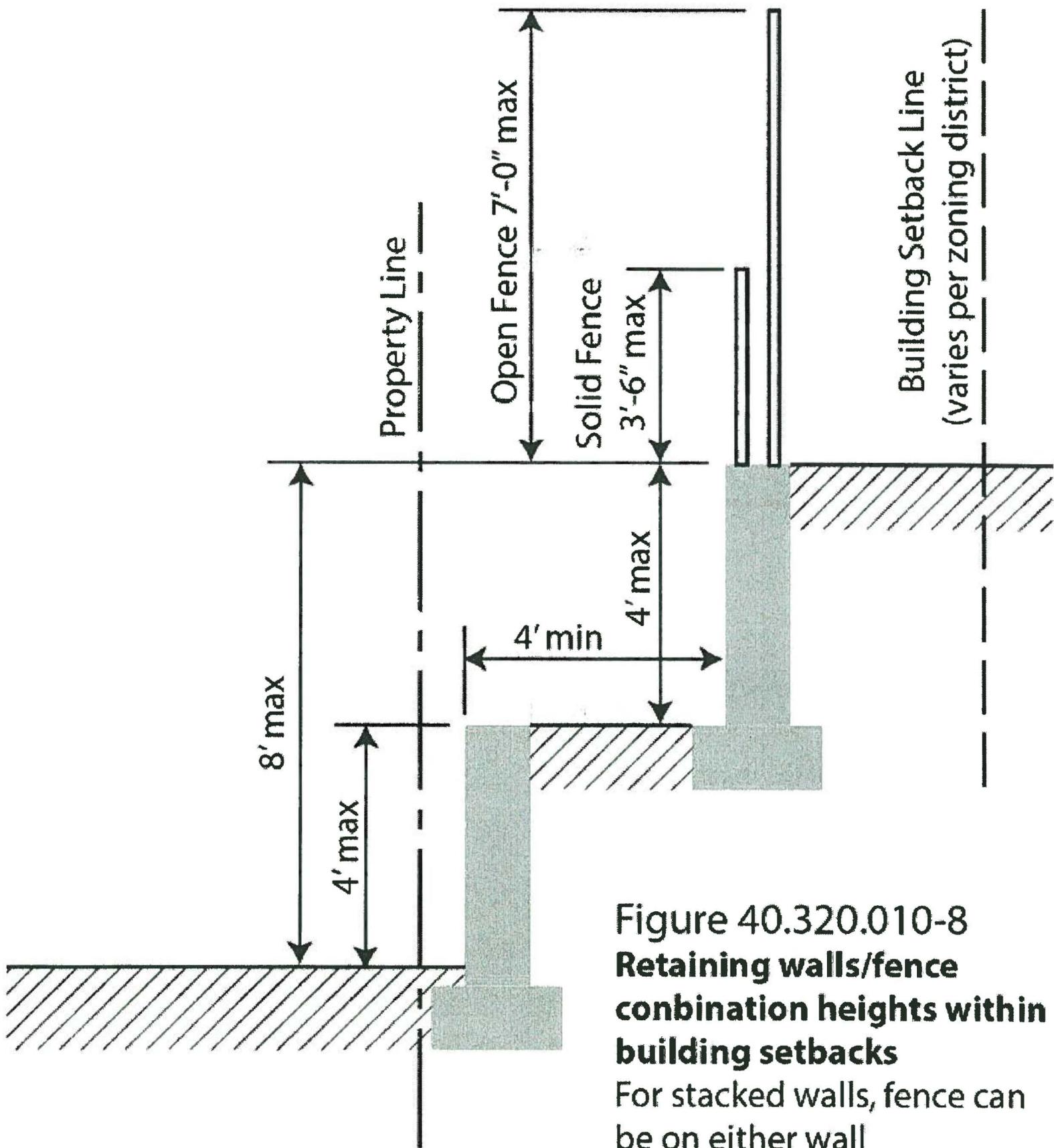
By: \_\_\_\_\_  
Tom Mielke, Councilor

By: \_\_\_\_\_  
Jeanne Stewart, Councilor

By: \_\_\_\_\_  
Julie Olson, Councilor

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**Figure 40.320.010-8**  
**Retaining walls/fence**  
**combination heights within**  
**building setbacks**  
 For stacked walls, fence can  
 be on either wall

EXHIBIT 1





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CLARK COUNTY  
WASHINGTON

## Clark County Planning Commission

Steve Morasch, Chair

Ron Barca, Vice Chair

Bill Wright

Eileen Quiring

Karl Johnson

John Blom

Richard Bender

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## PLANNING COMMISSION MINUTES THURSDAY, AUGUST 18, 2016

BOCC Hearing Room  
1300 Franklin Street, 6<sup>th</sup> Floor  
Vancouver, Washington  
6:30 p.m.

### CALL TO ORDER & ROLL CALL

MORASCH: Well, welcome to the August 18, 2016, Planning Commission hearing. Can we get a roll call, please.

BARCA: HERE  
BLOM: HERE  
JOHNSON: HERE  
MORASCH: HERE  
QUIRING: IN LATE  
WRIGHT: HERE  
BENDER: ABSENT

### GENERAL & NEW BUSINESS

#### A. Approval of Agenda for August 18, 2016

MORASCH: All right. Moving on with the agenda. Is there any issue with the agenda? If not, I'd get a motion to approve the agenda.

BLOM: So moved.

BARCA: Second.

MORASCH: All in favor.

EVERYBODY: AYE

MORASCH: Opposed? All right. Motion carries.

Sonja, I notice we don't have approval of the minutes on our agenda. Do we need to approve the minutes?

WISER: No, I never put them on because they were all the comp plan and given to the Board and approved at that time.

MORASCH: All right. Fair enough.

**B. Communications from the Public**

MORASCH: Then that takes us to communications from the public. Is there anyone in the audience today that wants to talk to us about an issue that is not on our agenda? If not, now is the time to come and do that. Looks like nobody is coming up for communications from the public, so that brings us to our public hearing item today, retaining walls and fences within building setbacks. I will turn it over to Jan Bazala.

**PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION**

**A. RETAINING WALLS AND FENCES WITHIN BUILDING SETBACKS**

The Planning Commission will consider staff recommendations on amendments to Clark County Code Section 40.320.010.F regarding the allowable height of retaining walls and fences that are located along property lines.

**Staff Contact: Jan Bazala, 397-2375, Ext. 4499**

**Email: [jan.bazala@clark.wa.gov](mailto:jan.bazala@clark.wa.gov)**

BAZALA: Okay. Good evening. Jan Bazala, Community Development.

We're here tonight to take another look at retaining walls and fences. This item was part of the biannual code amendments that you had heard on April 21st and there were some concerns that you had with the text and you asked to see it again, so we are here tonight to take another look at it. There have been a couple relatively small changes proposed in this text that was different from the April text, but it's the same text that you had a couple of weeks ago at the work session.

So this section of code addresses setbacks for retaining walls and fences along property lines. It currently requires retaining walls over four feet in height and fences over six feet in height to maintain the standard building setback for the zone when they are constructed along an abutting property line owned by a different owner. While it's not currently codified, the current interpretation is that the height of a fence on top of a retaining wall is measured from the top of the fence to the bottom of the retaining wall.

(Commissioner Quiring entered the hearing.)

BAZALA: Now, the current code doesn't have setback requirements when walls or fences are along a right-of-way or easement or when the wall is cut in or when you're cutting into your property so you are creating the vertical wall on your own property or when the walls are internal to a new development as you would have during the development of a subdivision. If you're putting these retaining walls inside within your subdivision, these setback requirements do not apply. Also they don't apply if you own the property next door to you in which you're constructing a retaining wall.

So Development Community has noted a number of issues with the setback requirements. One of the concerns is that when there's a setback requirement, it can result in a no man's land that is often either maintained by the adjoining property owner or is not maintained at all. If the property, adjacent property owner maintains it, the point was that they could file an adverse claim possession and eventually, you know, obtain title to that property.

Another thing is that some of these setbacks can be pretty significant. They can be 10 or 20 feet, and in the urban area, the issue is that that's a significant chunk of expensive real estate that can't be used.

So the proposal tonight adds a number of exceptions for meeting the setback requirement including the stepping of walls, which is proposed under F.4.a. Situations where a residence is at least 50 feet away from a property line, that's in F.4.f. The option to obtain permission from abutting property owner, that's under F.4.g. And then also exceptions when you're abutting nonresidential property under F.4.h.

Also added is a Section F.1 which puts this whole section in context that it's primarily a zoning section and it lets the reader know that there are other codes that retaining walls need to meet regardless of where they are. Basically building permits need to be obtained, engineering and stormwater might apply. These are things that are currently required now and it just puts people on notice that this is -- this code section isn't intended to address everything about retaining walls. So I'd like to propose a couple of late but pretty simple text changes from the text.

First, if you can look at the last proposed sentence in Section F.2, which is line item 84 on this new report that I handed you with the line items on it. So basically this new addition which says, "The Public Works Director may apply the exceptions to height and setbacks for walls and fences in 40.320.010.F.4.a through i as applicable," that text was added to sort of give the Public Works Director some guidance on when fences and walls could be within right-of-way. And upon a second look, if we add that in there, it could put the Public Works Director in a position where somebody could say, look it, I'm meeting these, so now you should approve it when we don't want to give that -- we don't want to make that -- we don't want to put the

planning, the Public Works Director in that position. So we're proposing to strike that last sentence in F.2.

The second small change is in the last sentence of F.4 which is found on Line 93, it says, "Exceptions to this provision are as follows," and it's kind of confusing as what provision it's referring to, so we'd like to amend that last section to state, "Exceptions to Section 40.320.010.F.4 are as follows," which is this exact section that we're -- that it's in. So those are the only two minor changes that we're proposing tonight.

It's -- yeah, so it should be noted that if you decide not to approve any of these changes tonight, that through the spring biannual code amendments, the height of fences that can be constructed without a building permit was raised to seven feet. So if you approve nothing else, I would like you to consider that Subsection 40.320.010.F.3 of the old numbering system now F.4 which allows fences seven feet in height, if you -- I mean, it's up to you, but if you don't approve that change, then we're going to end up with a situation where people can build seven-foot high fences without building permits and the expectation is that you can usually build a fence without a permit on a property line, and then if it's not changed to seven feet in this section, then there's going to be a conflict and we can see a lot of confusion coming about.

MORASCH: It looks like that maybe the change should be in the old F.2 and F.3, if I'm reading this right, because I see two sections that have the seven feet.

BAZALA: F.2, yes. Yes. Actually, you're correct.

MORASCH: All right. Well, thank you, Jan.

Any questions for staff from the Planning Commission before we open it up to a public hearing?

WRIGHT: We had a drawing at our work session. Is that something that might be useful to refresh our memory?

BAZALA: Yes, I've got copies of that. And, in fact --

HOLLEY: Bill, you're going to have to use your microphone.

BARCA: I'm good.

MORASCH: Any other questions?

BAZALA: So one item of note is that I think that when this actually goes to code publishing, I think we should include a diagram like we just gave you because a picture is worth a thousand words and it probably would be very helpful in explaining the intent of especially the stepped

walls.

MORASCH: This looks -- is this the one we had at our work session? I thought there was one with a fence. Ah, there we go. That one. Yeah. Okay.

BAZALA: So I guess I was advised that I should actually make a formal request that we also adopt this diagram.

MORASCH: Which one? The one that has the fence on top --

BAZALA: Yes.

MORASCH: -- or the one you just handed me? Because this isn't the one that I saw at the work session.

BAZALA: Yes, I thought I had a stack of the same thing.

MORASCH: That one, yeah.

BAZALA: Sorry about that.

MORASCH: Okay. And that's the one that you want included, the one with --

BAZALA: The one with the fence on top.

MORASCH: -- the fence on top. Okay. All right. Any other questions?

All right. Well, we will open it up to the public hearing. And I don't have the sign-in sheet up here, but it looks like Kevin Brown is here. Do you want to be the first one to come and talk?

BROWN: So I submitted written testimony.

MORASCH: Yep. If you want to rely on your written testimony, that's fine; otherwise, you're welcome to come up and make an oral presentation.

BROWN: I'll rely on the written testimony.

MORASCH: On the written.

Okay. Is there anyone else in the audience that would like to come up and give us some verbal testimony at the public hearing tonight?

All right. With that, and it looks like -- is there anyone signed up on our sheet, Sonja?

WISER: No, just Kevin.

MORASCH: No. All right. Well, with that, we will close the public hearing and I will turn it back over to the Planning Commission for deliberation and/or a motion. Anyone want to start?

WRIGHT: I'd like to **propose a MOTION** that we adopt these provisions as presented by Jan with the two text changes and also inclusive of the diagram that would have been prepared more professionally for the final.

HOLLEY: Prepared what?

WRIGHT: More professionally to accompany this new change in the ordinance.

MORASCH: Is there a second?

JOHNSON: I **second**.

MORASCH: All right. It's been moved and seconded. Is there any discussion on the motion?

BARCA: I certainly have some discussion about this. Looking at Mr. Brown's submitted testimony and looking at the nature of the change, I'm a little puzzled as to the complexity that we have chosen to solve this problem with. It appears to me that when we have the need for these engineered step walls, that right now what we're saying is we're going to have a series of them and then keeping ourselves into the setback, that's where we want to put the fencing. I don't know why we're not just resolving this back with the idea of a seven-foot fence as close to the property line as required, whether there's a four-foot step that starts the process or not.

If the retaining wall needs that step, okay. And as many engineering steps as are required to safely create the development, I think I get that part too, but it seems like this is very designed and prescribed and I believe there's going to be a lot of exceptions to this. And now that we have taken the Planning Director out of it from Public Works, I think it's going to cause staff a lot of time trying to explain and work this resolution.

So if I put it in terms of asking the question, what problem are we trying to solve, I'd like to know that this was the most simple and elegant solution that we could come up with, and I -- I just don't see it at this moment, but perhaps we can have a discussion as to what problem we think we're solving with this.

MORASCH: Anyone want to respond? Jan, do you have a response?

BAZALA: Well, I would like to come up with something simple and elegant as well; however, this is -- you know, if there's limited ways to do it. I mean, if you guys have a simple and elegant idea, I would certainly be happy to do that.

The idea of the stepped walls is to avoid a really high vertical wall right at the property line. The idea is to try to get some stepping so that you can, you know, allow some more sun, whatever, to come in. So, you know -- and then the other options of getting property owners' signature, that's an elegant, a simple and elegant means to do it. But if that owner doesn't want to, then the idea was that there was some hopefully reasonable alternative which is the stepping. So, but, you know, if you think that's unreasonable, then that's your prerogative. I mean, that's why we're here.

BLOM: I think when you're trying to balance, how do you limit the impact on the neighbors while creating the most livable space for the new owners and what's going to be the development. I mean, I think there's no way to balance that without it being a little bit complicated.

The one item from the testimony that I would offer as a friendly amendment to the motion would be to remove F.4.f, the portion, Line 121 and Line 122 that allows an exception if there's not a dwelling unit within 50 feet, and my reasoning for that is that that could be a vacant lot that someone doesn't have a dwelling on now but may intend to build on at some point. So by saying it's by how it is right now, you still could be impacting the neighbors' use of their property or future use of their property. I just don't think that's a necessary section to have in there. I would offer that as a friendly amendment to strike that section from the code amendments.

BARCA: So I think just to clarify my position, I'm not opposed to the step consideration. I think the idea of designing something to try and allow for that gradual retaining wall and allow it to present whether it's a view shed or sunshine, that part makes total sense to me. I'm troubled by the fencing provision of this right now and just saying if a seven-foot fence is the appropriate height that we are allowing without a permit, then I think we should be driving that as close to the property line as possible.

Right now I believe we're talking about it in the context of making sure it's outside the setback, but outside the setback and to the property line are not the same thing and that's part of my consideration is where does that seven-foot fence end up being. If it's already got the retaining walls and you have an engineered slope like that, the purpose of the fence as a delineation of the boundaries or to prevent encroaching onto the property, it seems like we should try and get that as low on the steps as possible and not create that no man's land as you described it earlier, Jan. So I hope that helps a little bit in the discussion.

MORASCH: Well, I think the issue here is if - I'm looking at this diagram, right, the one I had before? - you could have a seven-foot fence on top of the second retaining wall, so that would actually be higher than if you loaded the seven-foot fence down at the property line which would then -- how could you make your retaining wall up behind the fence? Or are you proposing an overall seven-foot limit unless you go completely outside of the setback?

BARCA: No. I'm saying you engineer and build the retaining wall based on your structural needs. People are not forced to build more retaining wall than they need, but the idea of if you need -- let's just say in this case you needed four steps or five steps, putting a seven-foot fence up at the top of that --

MORASCH: Well, you only get two steps in the setback.

BAZALA: In the setback.

MORASCH: And once you're outside the setback, then you can build your fence 100 feet as long as you're not exceeding the overall height limit of the zone.

BAZALA: Right.

MORASCH: Right.

BARCA: And so --

MORASCH: So there's only going to be two steps in the setback. That's all that's allowed. You're not going to get four or five in the setback. After they get out of the setback, they can do whatever they want with steps or fences or anything as long as they're not exceeding the overall height limit in the zone and they get engineering.

BAZALA: Right. Yeah. And one of the other things that you may have already be clear on, but if you're having a fence on top of a wall, we have provisions that we allow a seven-foot fence if it is open, so it doesn't create this shading effect.

BARCA: Yeah.

MORASCH: Right. Yeah. But what if it's a four foot or four foot two inches or whatever it says in here?

BAZALA: Otherwise it's limited to three and a half feet and that's to -- that's a guardrail height. So if somebody were building, you know; if you're building these taller walls, you got to make sure people don't fall off of them, so that's why there's a need sometimes to have a fence on top of the retaining wall.

BARCA: So that puts us at 15 feet, then, at the top of the fence.

BAZALA: It would be open fence.

MORASCH: If you have a chain link fence, yeah.

BARCA: Four, four, seven.

MORASCH: Or 12 at the -- or 11 and a half if you're using a wall. Well, if it's a cyclone fence, it would be 7, so that would be 15. If it's a solid fence, it would be 11 and a half, yeah.

Any other discussion? Bill, there was a **request for a friendly amendment** and did you want to accept that friendly amendment or did you want to vote on your original motion as it stood?

WRIGHT: I'll **accept that**, yeah.

MORASCH: Okay. Karl, are you going to re-second?

MORASCH: The proposal was to delete the 50 feet from a dwelling.

JOHNSON: At least 50 feet from a dwelling of an abutting residential, yeah, I'm fine with that.

MORASCH: Okay. It's been **moved and seconded to approve** the staff recommendation with the chart that shows the fences on top of the wall and the two changes recommended by Jan as well as the deletion of Section 4.F.

Any further discussion on the motion?

QUIRING: I guess I just have the question about who's going to make this decision if the Public Works Director isn't? Is it just going to be various staff members whomever this developer comes to and talks to?

BAZALA: Right. There might be some confusion. The amendment that I made tonight to change to strike the Public Works Director language, that is dealing with walls or fences within public right-of-way. It's -- you know, we're working with existing code that might not -- it may not be the best place to put that section here, but we're kind of working with what we've got and so it's a different item.

When I was speaking earlier about the prior versions where the Planning Director had some ability to look at a situation even if it didn't meet these new requirements, just to approve something on his own without any public process, there was some discussion at the last hearing where that wasn't a desired outcome, so we took that section out. So if somebody wants to

deviate from even these new things, it would require a variance and not just have the Planning Director say, well, in this case we think it's okay. Does that make sense?

QUIRING: Yeah, I think so.

MORASCH: Counselor, did you want to add to that?

COOK: I did. My understanding of the deletion also of that line from new Section F.2 is that all of the -- it refers to applying the exceptions in F.4.a through i, but the Public Works Director doesn't apply those, wouldn't apply those exceptions because those exceptions apply to property on the private side of the line and the Public Works Director would only be involved and have authority over the public right-of-way. So it really wasn't -- it didn't connect with what the Public Works Director actually does.

QUIRING: Thank you.

MORASCH: All right. Any other questions or discussion?

All right. It's been moved and seconded, and I'm not going to repeat the motion because I already did that once, but we will go ahead and have the roll call now, Sonja.

**ROLL CALL VOTE**

WRIGHT: AYE  
QUIRING: AYE  
JOHNSON: AYE  
BLOM: AYE  
BARCA: NO  
MORASCH: AYE

MORASCH: All right. The motion carries. And that is the only item on our agenda today.

**OLD BUSINESS**

None.

**NEW BUSINESS**

BARCA: When are we going to do tiny houses?

MORASCH: Not tonight. I want to -- all right. Comments from the Planning Commission? Do you want to make a comment on tiny houses or do you want to --

BARCA: No. But I would like to say I don't think I ever did really hear what problem we solved tonight and 15 feet high is really ugly. Okay.

**COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION**

None.

**ADJOURNMENT**

MORASCH: All right. Well, with that we are adjourned. Thank you very much for coming.

The record of tonight's hearing, as well as the supporting documents and presentations can be viewed on the Clark County Web Page at:  
<https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Proceedings can be viewed on CTVV on the following web page link:  
<http://www.cvtv.org/>

*Minutes Transcribed by:*  
*Cindy Holley, Court Reporter/Rider & Associates, Inc.*  
*Sonja Wisner, Administrative Assistant, Clark County Community Planning*



Proposed Amendment Hearing regarding CCC 40.320.010.F - August 18, 2016

08/15/16

Testimony of:  
Kevin Brown  
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360-573-7615

Amending the current code removes desirable protections for owners of abutting properties. The development community, in requesting these amendments, is the benefactor at the expense of the owners of abutting properties.

The following are my thoughts on some of the proposed amendments.

Proposed amendment 40.320.010.F.3.a should not be approved.

Stepped walls in excess of four (4) feet tall should not be permitted unless the second step meets the setback requirement of the underlying zoning.

This helps mitigate the visual impact of a tall retaining structure.

Stormwater runoff is more easily managed by a larger distance between steps.

As proposed, the total height of a stepped wall and fence combination could reach 15 feet in height and be 4 feet from an abutting property. (4 foot tall wall at property line, additional 4 foot step at 4 feet from property line and a 7 foot fence atop the stepped wall).

Proposed code amendment 40.320.010.F.3.g could easily be utilized by the development community if a wall taller than 4 feet or a stepped wall in excess of four (4) feet tall was desired to be placed within the setback distance.

Proposed amendment 40.320.010.F.3.f should not be approved.

Distance to a dwelling on the abutting property should not be a criteria in allowing walls taller than 4 feet within the setback distance.

An abutting property owner may suffer diminished value or enjoyment of their property due to a tall wall located along their property line regardless of the distance to a dwelling.

Proposed code amendment 40.320.010.F.3.g could easily be utilized by the development community if a wall taller than 4 feet was desired to be placed at a distance greater than 50 feet from a dwelling

Proposed amendment 40.320.010.F.3.g should be approved.

Providing a method for a developer to work with abutting property owners to determine acceptable wall heights and setbacks is an excellent option.

Proposed amendment 40.320.010.F.3.i should not be approved.

Any fence constructed on top of a retaining wall should not exceed a combined wall and fence height of seven and one half (7.5) feet.

This mitigates the visual impact of a tall retaining structure and fence on abutting property owners. As proposed, a retaining wall and fence combination as tall as eleven (11) feet could be constructed adjacent to an abutting property. This is excessive and aesthetically unpleasant. .

The proposed language in 40.320.010.F.4 “The height of a fence on top of retaining walls shall be measured to the grade at the bottom of the wall.” should be replaced with “The height of a fence on top of retaining walls shall be measured to the grade at the bottom of the wall and shall not exceed 7.5 feet.”. This change would eliminate the need for proposed amendment 40.320.010.F.3.i. It would allow for a fence 42 inches tall to be built atop a 4 foot wall. A 42 inch tall fence meets the recommendation of retaining wall system manufacturers for fall protection.

Regarding the rationale for amending this code section, the development community's use of the “no mans land” reasoning is poor at best. The potential for an un-maintained “no mans land” is the same regardless of setback distance. If such a situation occurs, the property owner of the setback area can be compelled to maintain the setback area through Home Owner Association rules, clauses, covenants, and restrictions (CC&R's) associated with the development, or applicable Clark County Code. Should the abutting property owner choose to maintain the setback area, that is their choice to make. Both property owners could decide that an un-maintained “buffer strip” works for each party. These are issues for property owners to address, not the development community. An adverse possession claim, due to maintenance of property, likewise is an issue between property owners and the courts, not the development community. If the development community desires to reduce the setback for walls or fences, in a development, proposed code amendment 40.320.010.F.3.g provides a method to attempt that.

That the DEAB has reviewed and approved the proposed language of these code amendments is not comforting to owners of properties abutting land developments. All the members of the DEAB have a vested interest in code changes and amendments that ease their jobs, or improve their profit margins on land developments. The DEAB is not concerned with negative impacts to properties abutting their projects.

Sincerely,

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