



## 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 CDTV on the following web page link:  
<http://www.cvtv.org/>

*Minutes Transcribed by:  
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