COMMENTS FROM AD HOC COMMITTEE ON DRAFT SHORELINE INVENTORY AND ANALYSIS

Comments from Frank Sutton

From: Frank Sutton [fsutton4@comcast.net]
Sent: Sunday, July 06, 2008 10:59 AM
To: Rosemary Curran; Richard Hart
Subject: Comments on the Draft Shoreline Analysis Report for the City of Covington, Grant No. G0800106
General Comments:

1. The impact of environmental rules on private property owners should be minimized. If the shoreline rules trump the wetland rules, then there is no need to apply the wetland rules. The buffer sizes and other aspects of these rules are somewhat arbitrary and not based on rigorous scientific analysis. As such there is no justification for applying both. The application of both sets of rules would be confusing and lead for additional work and probably expense for a private property owner attempting to do something with his property. In my case I had to pay a wetland biologist $1800 to do a survey simply because I wanted to build a small shop in my backyard and King County's aerial survey indicated that much of my property might be a wetland.

2. Per WAC 173-26 Guidelines, page 12, "Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights." Per the Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property December 2006 STATE OF WASHINGTON OFFICE OF THE ATTORNEY, Page 15, Part Three Warning Signals, Para. 5, there is a distinct possibility that the various pressures on the private properties along Wax Rd have a severe impact on the landowner's economic interest. These pressures include wetland and/or shoreline buffers, taking 20 feet off the landowners' properties for the Wax Rd expansion, and the zoning of the other side of the street commercial.

Specific Comments

1. Para. 3.7.2, Page 17 & 18 seem to imply something that I don't believe ever happened. As far as I can tell the storms of Nov. and Feb 1996 caused no extensive flooding in urban areas of Covington. While Jenkins Creek did overflow its banks, nobody that I talked to with properties on the NW side on SE Wax Rd. had any flood damage. In my back yard on the creek, the water came up about 50 feet. At its deepest it was about 10 inches. Other than that I very seldom see Jenkins Creek over flow its banks on the NW side. This section should be modified to reflect reality. There are no flood prone areas in Covington as demonstrated by the lack of flooding in the 100 year storm of February 1996.

2. Para. 3.7.3, Page 18. Where is the record of the field inventory mentioned in this paragraph? When was it conduct? How was it conducted? Who conducted it? Without a written record, everything that follows is heresay and/or supposition.

3. Para. 3.7.3, Page 18 The King County wetlands inventory was based on aerial photos per Para. 4.2.6, page 30, and can be grossly in error. On my property for instance, the wetlands inventory showed that the edge of the wetland extended at least 300 feet from the edge of Jenkins Creek. A

biologist's survey showed that the edge of the wetland was no more than 25 feet from Jenkins Creek. The potential error in this inventory should be emphasized.

4. Para 3.8.1, Page 20 Empirical data has demonstrated there was no significant flooding during the last 100 year storm in February 1996 and thus no significant floodplain along the southern reaches of Jenkins Creek.

5. Para 7.1.1, Page 61. The correct designation for the DN7B area adjoining Jenkins Creek is "Shoreline Residential" per guidance in the WAC Shoreline Master Program Guidelines page 43. The planning Commission has already recommended more intensive development including mixed-use housing. There is one small area of Wax Rd. that is designated for a future park, but it is not in DN7b. It is in DN7A. As far as I know there are no plans for recreational improvements for this area except for the possible Jenkins Creek Trail which has no schedule for implementation. The eventual implementation for a trail is presently being provided for by new development. New development is required to provide an easement for the Jenkins Creek Trail. There are no plans to purchase easements from existing land owners.

6. Para 7.1.2, Page 62. As previously stated empirical data has shown that there are no flood hazards along Jenkins Creek.

7. Para 7.1.2, Page 64. <u>Low Impact Development and "Green Building" Practices</u> The properties along Jenkins Creek are presently serviced by septic systems which provide a potential hazard for the water quality of Jenkins Creek via their overflow. New development, especially large-scale new development such as mixed-use will likely be required to connect to a sewer system, thus mitigating the hazard of biological waste flowing into Jenkins Creek.

8. Para 7.1.4, Page 66 <u>Recreation</u> The eventual implementation of a Jenkins Creek trail is presently being provided for by new development. New development is required to provide an easement for the Jenkins Creek Trail. There are no plans to purchase easements from existing land owners.

9. Para 7.1.4, Page 66 <u>Residential Development</u> The properties along Jenkins Creek are presently serviced by septic systems which provide a potential hazard for the water quality of Jenkins Creek via their overflow. New development, especially large-scale new development such as mixed-use will likely be required to connect to a sewer system, thus mitigating the hazard of biological waste flowing into Jenkins Creek.

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Consultant Response to Mr. Sutton's comments

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General Comments:

1. The impact of environmental rules on private property owners should be minimized. If the shoreline rules trump the wetland rules, then there is no need to apply the wetland rules. The buffer sizes and other aspects of these rules are somewhat arbitrary and not based on rigorous scientific analysis. As such there is no justification for applying both. The application of both sets of rules would be confusing and lead for additional work and probably expense for a private property owner attempting to do something with his property. In my case I had to pay a wetland biologist $1800 to do a survey simply because I wanted to build a small shop in my backyard and King County's aerial survey indicated that much of my property might be a wetland.

Per state law, the Critical Area regulations apply to critical areas within the Shoreline Management Area <u>only</u> until the City adopts the new Shoreline Master Program. Upon adoption of the new SMP, SMP regulations only will govern all critical areas and buffers that are within the SMA. We can talk more about this at the next meeting. We understand that regulations have financial implications. Having worked for both private and public clients on this issue (and as a property owner), I can relate to your concerns. We will strive to establish a clear nexus between our regulations and potential impacts, to achieve proportionality between regulation and impact, and to make the SMP as straightforward as possible, while complying with state law.

2. Per WAC 173-26 Guidelines, page 12, "Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights." Per the Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property December 2006 STATE OF WASHINGTON OFFICE OF THE ATTORNEY, Page 15, Part Three Warning Signals, Para. 5, there is a distinct possibility that the various pressures on the private properties along Wax Rd have a severe impact on the landowner's economic interest. These pressures include wetland and/or shoreline buffers, taking 20 feet off the landowners' properties for the Wax Rd expansion, and the zoning of the other side of the street commercial.

We are aware of state law, guidelines and case law related to "takings" and the protection of private property rights. The regulations the City ultimately adopts and implements will comply with the law. FYI – the SMP is also reviewed by the State Attorney General as well. It is important to note that a "severe economic impact" does not necessarily equal an unconstitutional takings. Per state law, the SMP will include a variance procedure.

Specific Comments

1. Para. 3.7.2, Page 17 & 18 seem to imply something that I don't believe ever happened. As far as I can tell the storms of Nov. and Feb 1996 caused no extensive flooding in urban areas of Covington. While Jenkins Creek did overflow its banks, nobody that I talked to with properties on the NW side on SE Wax Rd. had any flood damage. In my back yard on the creek, the water came up about 50 feet. At its deepest it was about 10 inches. Other than that I very seldom see Jenkins Creek over flow its banks on the NW side. This section should be modified to reflect reality. There are no flood prone areas in Covington as demonstrated by the lack of flooding in the 100 year storm of February 1996.

We will insert some limited language in the narrative reflecting your anecdotal observations. We will however retain language in the report that factually states the location of mapped and designated flood areas defined by FEMA and others, as required by the SMP Guidelines.

2. Para. 3.7.3, Page 18. Where is the record of the field inventory mentioned in this paragraph? When was it conduct? How was it conducted? Who conducted it? Without a written record, everything that follows is heresay and/or supposition.

We will insert additional language in the text that provides details on the limited field survey conducted by scientists from our subconsultant The Watershed Company in December 2007. Please note that per DOE SMP Guidelines, the SMP inventory relies primarily on the existing data sources we have collect and analyzed (see the Bibliography in Section 8.0).

3. Para. 3.7.3, Page 18 The King County wetlands inventory was based on aerial photos per Para. 4.2.6, page 30, and can be grossly in error. On my property for instance, the wetlands inventory showed that the edge of the wetland extended at least 300 feet from the edge of Jenkins Creek. A biologist's survey showed that the edge of the wetland was no more than 25 feet from Jenkins Creek. The potential error in this inventory should be emphasized.

We will emphasize and strengthen statements that currently exist in the text of the report and on all shoreline maps regarding the accuracy of existing data.

4. Para 3.8.1, Page 20 Empirical data has demonstrated there was no significant flooding during the last 100 year storm in February 1996 and thus no significant floodplain along the southern reaches of Jenkins Creek.

See answer to question #1.

5. Para 7.1.1, Page 61. The correct designation for the DN7B area adjoining Jenkins Creek is "Shoreline Residential" per guidance in the WAC Shoreline Master Program Guidelines page 43. The planning Commission has already recommended more intensive development including mixed-use housing. There is one small area of Wax Rd. that is designated for a future park, but it is not in DN7b. It is in DN7A. As far as I know there are no plans for recreational improvements for this area except for the possible Jenkins Creek Trail which has no schedule for implementation. The eventual implementation for a trail is presently being provided for by new development. New development is required to provide an easement for the Jenkins Creek Trail. There are no plans to purchase easements from existing land owners.

We will discuss the complex issue of environment designation and the potential ramifications of different choices for this area at the next meeting. Per page 51 of the Guidelines, the purpose of the <u>shoreline residential environment</u> "is to accommodate residential development and appurtenant structures" that are consistent with the guidelines. An additional purpose of the shoreline residential environment to "provide public access and recreational uses". Commercial development within the shoreline residential environment "should be limited to water-oriented uses". While the shoreline residential environment is one possibility, other potential environments or the use of parallel environments (see 4(c)(ii) on page 43)could provide some additional flexibility and/or more specific guidance for management of this area. We can talk about this more at the next meeting.

6. Para 7.1.2, Page 62. As previously stated empirical data has shown that there are no flood hazards along Jenkins Creek.

See response to #1.

7. Para 7.1.2, Page 64. Low Impact Development and "Green Building" Practices The properties along Jenkins Creek are presently serviced by septic systems which provide a potential hazard for the water quality of Jenkins Creek via their overflow. New development, especially large-scale new development such as mixed-use will likely be required to connect to a sewer system, thus mitigating the hazard of biological waste flowing into Jenkins Creek.

We will modify the text to discuss likely future mitigation of this issue due to redevelopment. However, please note that existing single family uses will likely continue to rely on septic for the near term unless connection to the sewer is required, thus posing a continued risk and source of pollution, and the text will reflect this.

8. Para 7.1.4, Page 66 Recreation The eventual implementation of a Jenkins Creek trail is presently being provided for by new development. New development is required to provide an easement for the Jenkins Creek Trail. There are no plans to purchase easements from existing land owners.

Comment noted. We understand from our discussions that no plans currently exist to purchase easements from existing land owners, but that would be an option if the City desires a continuous trail corridor in the near term.

9. Para 7.1.4, Page 66 Residential Development The properties along Jenkins Creek are presently serviced by septic systems which provide a potential hazard for the water quality of Jenkins Creek via their overflow. New development, especially large-scale new development such as mixed-use will likely be required to connect to a sewer system, thus mitigating the hazard of biological waste flowing into Jenkins Creek.

See comment #7.

Soos Creek W & S Comments

On behalf of Soos Creek Water & Sewer District we would like to thank you for the opportunity to participate in the Shoreline Master Program Advisory Committee. We thought the first meeting in June was very informative. We have reviewed the Draft Covington Shoreline Inventory and Analysis Report (June 2008 – TWC Ref #: 070408) and provide the following comment for consideration:

Page 33
"4.3 PIPE LAKE
4.3.3 Wastewater and Stormwater Utilities
Wastewater Utilities
Currently 10-inch and 16-inch gravity and low pressure facilities exist along all portions of Pipe Lake and Lake Lucerne except for the western shore of Pipe Lake."

- The District requests the sentence be revised to only include a statement pertaining to Pipe Lake, which is within the City limits. The following is provided for your consideration:
  Currently 10-inch and 16-inch gravity and low pressure facilities exist along portions of Pipe Lake.

Thank you again for the opportunity to participate in the Committee. This Program will be a solid foundation for the City's future.