

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Hearing
March 23, 2023, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5 pm, led the pledge of allegiance and conducted roll call. Commissioners were all present except for commissioner Mayulianos. She had notified commissioner Hudson that she was running late.
- b) Approval of or Additions to Agenda
 - i) Commissioner Hudson made a motion to move the Public Hearing right after the EWU presentation (section 5a), seconded by commissioner Jorgenson, carried 4-0.
 - ii) Motion to approve agenda as amended made by commissioner Munson, seconded by commissioner Jorgenson, carried 4-0.
- c) Excused Absences – Motion made by commissioner Hudson to temporarily excuse commissioner Mayulianos, seconded by commissioner Munson, carried 4-0.
 - i) Commissioner Mayulianos arrived at 5:10 pm.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson Medical Lake resident – shared comments regarding the recent passing of the Critical Areas Ordinance (CAO) by City Council. See attached.

3) APPROVAL OF MINUTES

- a) **February 23, 2023**, Regular Meeting minutes
 - i) Motion to approve made by commissioner Jorgenson, seconded by commissioner Munson, carried 4-0.

4) STAFF REPORTS

- a) Sonny Weathers, City Administrator – gave an update on the Critical Areas Ordinance process. Addressed some of the comments/concerns brought forth by resident Tammy Roberson. See attached.
- b) Elisa Rodriguez, City Planner - shared with the commission that she will be attending a conference and will be unable to attend the April 27, 2023, meeting. Asked if the commission would like to move the meeting date or cancel. The commission decided to keep the meeting on the 27th and just conduct it without Mrs. Rodriguez.

5) SCHEDULED ITEMS

- a) EWU Planning Presentation – Master of Urban and Regional Planning (MURP) students gave a presentation on the Medical Lake Parks and Trails study they recently completed.
 - i) Questions and discussion held.

6) PUBLIC HEARING – Application LU 2022-004 TA, Proposal to amend MLMC Section 17.42.030 to allow shipping containers under certain circumstances.

- a) Commissioner Hudson called the public hearing to order at 5:47 pm.
- b) Appearance of Fairness doctrine discussion – Commissioners Mayulianos and Jorgenson have units at Monark Storage, the applicant’s business, but felt they could be objective.
- c) Staff Report – Elisa Rodriguez gave a presentation and staff report on the proposed amendment.
- d) Presentation by applicants’ representatives (Nolan Davis, Medical Lake Realtor and Brett Lucas, Senior Planner with the City of Cheney)
 - i) Questions and discussion from commission.
- e) Public Testimony –
 - (1) Darin Teichmer, owner of Tommy G’s – shared that he has a shipping container for storage at his place of business and never received a complaint. Stated he was unaware there was a problem with it and asked for clarification on what the issue is. Mrs. Rodriguez explained why this issue has come forward; there

was a complaint made about the shipping containers located at Monark storage, Medical Lake Code Enforcement went out to inspect that location and others around the city then sent letters to all property owners where containers were located. Mr. Teichmer reported that he never received a letter and he's had the container for two years and hopes to keep it.

- (2) Nolan Davis (Medical Lake Realtor) – shared personal thoughts on the topic in favor of the amendment.
- (3) Jennifer Speirs Medical Lake resident – shared comments and dissenting opinion on the proposed amendment.

- f) Commissioner Mayulianos commented that she agrees with Mrs. Speirs that businesses should check code first before bringing in containers. Stated that it creates a trust issue.
 - i) Nolan Davis offered a rebuttal to commissioner Mayulianos' statement.
- g) Commissioner Hudson closed the public comments at 6:21 pm.
- h) Commissioners discussed the options before them. Dissenting opinions were shared by commissioners Mayulianos, Jorgenson, and Munson. Clarification given that the Medical Lake School District does fall under city code requirements and is responsible for the shipping containers on their property.
- i) Motion made by commissioner Mark to recommend full denial of the proposal, seconded by commissioner Mayulianos, carried 5-0.

SECTION 5 SCHEDULED ITEMS CONTINUED

- b) Education Packet for New Commission Members - Motion to table until next meeting made by commissioner Hudson, seconded by commissioner Jorgenson, carried 5-0.
- c) Planning Commission Rules of Procedure - Motion to table until next meeting made by commissioner Hudson, seconded by commissioner Mark, carried 5-0.

7) COMMISSION MEMBERS' COMMENTS OR CONCERNS

- a) Commissioner Mayulianos apologized for being late. Asked legal counsel Sean King (present on Zoom) to address the two questions from the last meeting. Mr. King stated there is no statutory requirement for interested citizens to state their address. He also stated that if there is a conflict of interest, the best practice is to recuse yourself from a decision, rather than asking the other commissioners decide if you should participate. Mr. King had also responded with these answers to the City Administrator via email. See attached.
- b) Carl Munson submitted a memo regarding "Medical Lake Makeover" to add to the next meeting agenda. See attached.

8) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson Medical Lake resident – addressed Mr. Weathers' presentation on the CAO process from earlier in the meeting. Discussion was held. See attached.
- b) Motion to extend Ms. Roberson and additional 5 minutes of speaking time made by commissioner Mayulianos, seconded by commissioner Jorgenson, discussion held, commissioner Mayulianos amended her motion to give an additional 3 minutes, seconded by commissioner Munson, carried 5-0.

9) CONCLUSION

- a) Motion to conclude made by commissioner Munson, seconded by commissioner Mayulianos. Motion carried 5-0 and meeting concluded at 6:40 pm.

Date: April 27, 2023

Roxanne Wright

Roxanne Wright, Administrative Assistant

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March 21, 2023

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RE: UNRESOLVED PROBLEMS WITH THE 2023 REVISION TO THE MEDICAL
CRITICAL AREAS ORDINANCE

February 2, 2023

Dear Members of the City Council:

My name is Trevor Matthews, and I represent Tammy M. Roberson, a citizen of Medical Lake. I am, yet again, writing on her behalf about the City's ordinance updating the Medical Lake Critical Areas Ordinance ("CAO"). As you may recall, I sent comments on February 3, 2023 and February 17, 2023 making suggestions for amendments to the proposal. Ultimately, the Council—in a divided vote—approved the ordinance without amendment. Which, in Ms. Roberson's well-considered judgment, was a mistake.

In the days since the Council voted on the ordinance troubling facts have come to light. In Ms. Roberson's opinion, these facts call into question the text of the updated Critical Areas Ordinance, as well as the process that enshrined it into law.

The City Failed to Carefully Consider Salient Comments from State Agencies

The process of amending the ordinance began many months prior to the City voting to adopt the updated CAO. As part of that process, The City sent a draft version of the ordinance to state agencies for comment. Tricia Sears from the Washington State Department of Natural Resources was one such official who commented on the draft ordinance. On an email dated Friday, September 23, 2022 Ms. Sears wrote to City Planner Elisa Rodriguez:

In keeping with the interagency correspondence principles, I am providing you with draft comments on the City of Medical Lake's proposed update to its Comprehensive Plan (Commerce ID# 2022-S-4342). I looked at the entire proposal but did not do a detailed review of areas outside our purview. There is no language regarding geologically hazardous areas.

This means that the City had notice of a defect in the Critical Areas Ordinance nearly five months before the ordinance came up for a vote. I echoed these same concerns to the City on Ms. Roberson's behalf in my second letter in February. I suspect, but have not confirmed that other agencies made similar comments. I personally spoke with an official from the Department of Commerce who confirmed that the same problem exists in the updated CAO for aquifer recharge areas. The problem was not and has not been addressed or fixed.

City and State Law Require Protections for All Types of Critical Areas

State law explicitly requires Medical Lake to regulate critical areas under the growth Management Act. RCW 36.70A.170(1)(d) requires "each county and each city" to designate critical areas, which RCW 36.70A.030(6) defines as "(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas." In turn, RCW 36.70A.060(2) explains, "[e]ach county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170."

The Medical Lake Comprehensive Plan acknowledges this duty. It states:

The State of Washington identifies five primary types of critical areas requiring consideration and protection including:

- o aquifer recharge areas
- o fish and wildlife habitat areas
- o frequently flooded areas
- o geologically hazardous areas
- o wetlands

[. . .] Medical Lake's location on the West Plains places it in a unique situation because of the multiple critical areas found within its city boundaries and influence area. The community's topography and surface waters increase public environmental awareness of these areas in the community. It is important to identify and recognize those critical areas so that they may be preserved and protected.

The City's Has Wrongfully Repealed Protections for Geologically Hazardous Areas

Lest the Council think that this problem is a mere oversight, I would like to devote a moment to explaining significance of the error. The problem is not that the City has failed to *update* a passage of the law. In passing the new Critical Areas Ordinance, the City has *repealed without replacing* critical areas protections that existed in the previous law. The present version of the CAO contains protections for Geologically Hazardous Areas at § 17.10.130. The new law removes §17.10.130 without adding another section on the subject. In addition, the previous version of the CAO fails to address aquifer recharge areas. The new CAO does not address them either.

The City's Failure to Address Agency and Citizen Comments Makes It Vulnerable to Appeal

Pursuant to RCW 36.70A.280 and .290, interested parties may file a petition for review to the Growth Management Hearings Board requesting an order finding that the City is not in compliance with the Growth Management Act. Because the City's version of the Critical Areas ordinance is not in compliance with the law, an appeal is likely to succeed. The law contains potential sanctions for governmental bodies found to be in noncompliance with State law at RCW 36.70A.340.

The City's Failure to Address Comments Calls the CAO Update Process into Question

In sum, the Growth Management Act clearly requires the City—as an agency engaged in comprehensive planning—to address five types of critical areas through local ordinances. The previous CAO addressed three of those types of areas, but the new CAO *repeals* protections for geologically hazardous areas. Worse yet, the City has been repeatedly warned of this problem since at least September of 2022. Despite this fact, City Administration failed to address these comments at any time. As a result, the City Council passed a CAO “update” which fails to address required subject matter and exposes to the City to a risk of appeals before the Growth Management Hearings Board and the potential sanctions that could ensue from such an appeal.

In Ms. Roberson's view, these oversights paint a damning picture of the process that sent this version of the code to the Council for a vote. The City *knew or should have known* that the draft CAO update does not fulfill its obligations under the Growth Management Act. The City knew or should have known that the code was incomplete, but made no effort to correct errors that commenters raised on multiple occasions.

These facts suggest that City Administration failed to adequately consider and amend the ordinance before putting it before the Council for a vote. Council Members and Planning Commission members likely had frequent assurances that the draft CAO is well-written and carefully considered in light of Growth Management Act requirements. Experience is showing that any such reassurances were potentially misleading. For example, during debate on the ordinance, it is my understanding that the Mayor told council members that the CAO complied with the requirements of state law and covered all required subjects. Ms. Roberson believes that the Mayor knew or should have known that assertion was false because State agencies had submitted comments to the contrary. Ms. Roberson suspects the Council and Planning Commission were misled on other occasions as well.

The City Should Repeal the CAO Pending Further Update, including the Eight Amendments Proposed by Ms. Roberson.

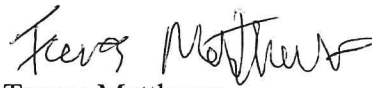
It may be tempting to the Council and City Administration to rush and make corrections to the CAO to attempt to bring it into compliance with the law and conceal any deficiencies in the adoption process. This, in Ms. Roberson's view, would be a grievous error. The City's sloppy work in drafting the updated CAO and responding to comments on its text is precisely what has created the present debacle. The City would be better served to withdraw the law and take the time to make necessary corrections and amendments to it.

The interests of Medical Lake and its citizenry are better served by careful deliberate government than by a rush to hide errors. Ms. Roberson and other interested parties will no doubt have

comments on any proposed changes to the law. This would also give the City Council time to properly consider, debate and—hopefully, adopt—Ms. Roberson’s proposed amendments to the law. Ms. Roberson continues to believe that her proposed amendments are essential to protecting Medical Lake’s environmental resources and guarding against past mistakes made by the City in administering the CAO.

Ms. Roberson thanks the Council for their active attention to this important matter and encourages them to act quickly to protect the City’s environmental resources.

Sincerely,

A handwritten signature in cursive script that reads "Trevor Matthews".

Trevor Matthews
Phillabaum, Ledlin, Matthews & Sheldon, PLLC
Attorneys for Tammy M. Roberson

March 23, 2023 Planning Commission Meeting (1st Interested Citizens Comments)
(As Of: 23 Mar 2023)

Dear Planning Commissioners and City Officials,

I am here regarding Medical Lake's Critical Areas Ordinance (CAO) update process. I understand that the Commission will be taking up proposals to add additional sections (geologically hazardous and aquifer recharge areas) to the CAO as required by the Growth Management Act.

I believe the Commission has heard repeatedly from City Administration that the draft law they were provided was carefully drafted by expert(s) to meet all the requirements imposed by State Law. I image it is a surprise, then, that the CAO needs to be amended so soon after it was considered and passed by the Commission.

My goal today is to highlight the central problem that has plagued the CAO update process: Since this project began more than a year ago, City Administration has been eager to update the CAO quickly.

- 1) The problem with this approach is now becoming obvious that the City has failed to fully understand the Growth Management Act.
- 2) Failed to understand and seriously consider guidance from state agencies.
- 3) Has even ignored comments from State Officials warning the City that it has failed to meet the requirements of the Growth Management Act.

As a result, the CAO is back in front of you for more work before it has even become effective.

In my viewpoint, this fact should cause the Commissioners to question whether City Administration has spoken reliably about the CAO in other matters. I would argue that the answer to that question is "no".

City Administration has encouraged the Commission to ignore proposed amendments and push the updated CAO through without debate and functional amendments.

Granted, there have been minor amendments, but the City has resisted calls for more meaningful changes to the text. The result is clear. The City has not been reliable and there are significant problems with the CAO before it has even become effective.

Therefore, I am urging the Commission to reconsider its decision of not taking up but to approve all of my proposed amendments to the CAO. I believe the Commission has power to do this IAW RCW 35.63.120.

It is not too late for the Commission to consider and approve my proposed amendments to the CAO. Together, we can make a better law and help make a better future for Medical Lake.

Please be aware in order to help the Commissioners to better understand what has happened to the CAO, you all have received a copy of the letter my attorney recently sent to the City Council on my behalf. This letter helps to explain why the CAO is back in front of the Planning Commission even though we just went through an approval process. I highly encourage you to read it.

May God's grace be with all wetlands and the future of Medical Lake. With God, all things are possible.

Thank you for your attention and time.

Tammy M. Roberson, 424 W Brooks Rd

March 23, 2023 Planning Commission Meeting (2nd Interested Citizens Comments)
(As Of: 23 Mar 2023)

Dear Planning Commissioners and City Officials,

Questions for Mr. Weathers:

Please explain why the City Administration did not either call back or email DNR folks to ask questions if they did not understand DNR's general statement of "There is no language regarding geologically hazardous areas". (Answer: see 1st bullet of City Administration's presentation notes.)

Why wasn't this email given to PC? (Answer: again, see 1st bullet of City Administration's presentation notes.)

Now for some good news – The City of Medical Lake will have the pleasure of doing their periodic CAO update again in 2026 (a requirement for all Cities per the Dept of Commerce Policy Lead, Mr. Scott Kuhta). More fun times definitely coming soon...

Thank you for your attention and time.

Tammy M. Roberson
424 W Brooks Rd.

March 22, 2023

Dear Members of the Planning Commission,

I am writing you regarding the Medical Lake's Critical Areas Ordinance (CAO) update process. I understand that the Commission will be taking up proposals to add additional sections to the CAO as required by the Growth Management Act.

I believe the Commission has heard repeatedly from City Administration that the draft law they were provided was carefully drafted by expert(s) to meet all the requirements imposed by State Law. I imagine it is a surprise, then, that the CAO needs to be amended so soon after it was considered and passed by the Commission.

My goal in sending you this letter is to highlight the central problem that has plagued the CAO update process: Since this project began more than a year ago, City Administration has been eager to update the CAO quickly. The problem with this approach is now becoming obvious: 1) The City has failed to fully understand the Growth Management Act, 2) Failed to understand and seriously consider guidance from state agencies and 3) Has even ignored comments from State Officials warning the City that it has failed to meet the requirements of the Growth Management Act. As a result, the CAO is back in front of you for more work before it has even become effective.

In my view, this fact should cause the Commissioners to question whether City Administration has spoken reliably about the CAO in other matters. I would argue that the answer to that question is "no." City Administration has encouraged the Commission to ignore proposed amendments and push the updated CAO through without debate and substantive amendments. Granted, there have been minor amendments, but the City has resisted calls for more meaningful changes to the text. The result is clear. The City has not been reliable and there are significant problems with the CAO before it has even become effective.

Therefore, I am urging the Commission to reconsider its original decision and now take up and approve all of my proposed amendments to the CAO. They are laid out below. I believe the Commission has power to do this pursuant to RCW 35.63.120 which states:

Any ordinance or resolution adopting any such plan or regulations, or any part thereof, may be amended, supplemented or modified by subsequent ordinance or resolution. Proposed amendments, supplementations, or modifications shall first be heard by the commission and the decision shall be made and reported by the commission within ninety days of the time that the proposed amendments, supplementations, or modifications were made.

It is not too late for the Commission to consider and approve my proposed amendments to the CAO. Together, we can make a better law and help make a better future for Medical Lake.

To help the Planning Commissioners understand what has happened to the CAO, I have sent you a letter that my attorney recently sent to the City Council on my behalf. That letter helps explain why the CAO is back in front of the Planning Commission even though we just went through an approval process. I highly encourage you to read it.

Thank you for your time and attention to these matters.

Best,



Tammy M. Roberson

Proposed Amendments to the Medical Lake CAO

Amendment # 1: Reintroduce Building Setback Requirement Contained in Current CAO.

Insert section 17.10.090(F)(2)(j) with the following text:

“j. Building Setback. A minimum building setback of fifteen feet is required from the edge of a wetland buffer. This building setback from the buffer shall be identified on the site plan.”

Comment:

The presently effective version of the City Code, MLMC 17.10.140(E), contains this same requirement: “Building Setback. A minimum building setback of fifteen feet is required from the edge of a wetland buffer.”

The current draft of the updated law does not contain this provision. If the Code is approved as is, The new CAO will be *less protective of the environment than the previous version*. This is totally unacceptable. The new law should be equally protective, if not more protective, of our environmental resources.

Amendment # 2: Ensure a Complete Record of Decision Making.

Amend 17.10.040(A)(12) to read:

“12. Review. The planning official must provide a single written report stating the approval criteria for the permitting decisions, information considered, issues to be decided, findings, and a recommendation to the Planning Commission prior to the hearing. The report shall be a public record of the City of Medical Lake.”

Comment:

One of the problems revealed by the Park at Medical Lake is the danger of silent discretion. When a City Official can decide things without leaving a record behind, that can hamper, or even eliminate public oversight. The goal of this comment is to make it clear that City Officials have a duty to leave a written record of the information they receive and what choices they make about the application. These small changes ensure that the public can see inside the process and participate in oversight.

Amendment # 3: Leave a Record of Any Decision to Accept “Less Information.”

Amend 17.10.050(E) to read:

“E. *Critical Areas Report – Modifications to Requirements*. Modifications to Required Contents. The applicant may consult with the planning official prior to or during preparation of the Critical Areas Report to obtain City approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential impacts to any critical areas or buffers and the required mitigation. The planning official may also initiate a modification to the required report contents by requiring either additional or less information, when determined to be necessary to the review of the proposed

activity in accordance with this Chapter. Any time a planning official permits an applicant to submit less information in a critical areas report, the City Official must clearly indicate that fact in his or her report to the Planning Commission or City Council. The notation must be written and indicate:

1. What information was eliminated from the report;
2. Why the applicant was excused from providing the information; and,
3. A record of the information supplied by the applicant to justify the request to submit less information.”

Comment:

As described in the previous comments, silent discretion is dangerous and the law should be skeptical of it. This provision allows applicants to be excused from providing information that this Code otherwise requires them to provide. If such an exception is granted, the City must be required to clearly and openly state that fact and justify the decision. As written, the law allows a City Official to excuse an applicant from informational requirements and conceal that decision from the reviewing body. The public deserves to be sure it will know when this power is exercised.

Amendment # 4: Leave a Written Record of Delineation Decisions.

Alter 17.10.090(C) to Read:

“c. Delineation. Wetland delineations are valid for five years; after such date a qualified professional must determine and inform the City on the applicant’s behalf, in writing, whether a revision or additional assessment is necessary. Thereafter, the planning official may elect to require a new delineation, an update to the report, or accept the existing report. The report described in 17.10.040(A)(12) must state the planning official’s decision on this issue and the reasons therefor. “

Comment:

As with the previous amendments, this change is focused on leaving a record of decision behind so that citizens can have oversight of the full process.

Amendment # 5: Ensure that the City Has Sufficient Enforcement Authority.

Delete Section 17.10.120(D) and replace Section 17.10.120(A) with the following text:

- “1. General. No activity requiring a critical areas permit shall be conducted without full compliance with this Chapter. Those activities not specifically authorized are prohibited. When a wetland or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop and the critical area(s) shall be restored. The City shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of this Chapter.

2. Inspections. The City or its authorized representative is authorized to make such inspections and take such actions as may be required to enforce the provisions of this Chapter.
3. Right of Entry.
 - a. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the City or its authorized representative has reasonable cause to believe that there exists upon any premises any condition which violated the provisions of this Chapter, the City or its authorized representative may enter such premises at all reasonable times to inspect the same or perform any duty imposed upon him/her by this Chapter, provided that:
 - i. If such premises are occupied, he/she shall first present proper credentials and demand entry; and
 - ii. If such premises are unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry. If such entry is refused, the City administrator or authorized representative shall have recourse to every remedy provided by law to secure entry.
 - b. No owner or occupant or any other person having charge, care or control of any premises shall fail or neglect, after proper demand is made as herein provided, to promptly permit entry herein by the City Administrator or authorized representative for the purpose of inspection and examination pursuant to this Chapter. Any person violating this Subsection is guilty of a misdemeanor.
4. Violation.
 - a. Penalties for violations of this Section may be imposed administratively and appealed pursuant to Section 2.80.060(2) of this code.
 - b. Notice of penalties – If the City or its authorized representative finds that a violation of this Chapter exists, he/she shall cause to be served, either personally or by certified mail, with return receipt requested, upon all persons having any interest in the property where the violative condition exists, as shown upon the records of the Spokane County Auditor's Office, and shall post in a conspicuous place on such property, a complaint stating the specifics of the violation. If the whereabouts of such persons are unknown and the same cannot be ascertained by the City or its representative in the exercise of reasonable diligence, and the City makes an affidavit to that effect, then the serving of such notice or order upon such persons may be made by publishing the same once each week for two consecutive weeks in a legal newspaper of general circulation in the City. Such complaint shall contain a notice that the violator may request a hearing before the hearing examiner within 21 days of mailing, service or

publication of the notice. All parties in interest shall be given the right to file an answer to the notice, and to appear in person, or otherwise, and to give testimony at the time of a hearing before the hearing examiner. Penalties shall become final if the time for appeal expires without action by the violator. All costs, fees and expenses in connection with enforcement of such actions may be recovered as damages against the violator.

5. Remedies Available. In the event of violation, the City or its hearing examiner shall have the authority to levy fines, order restoration, rehabilitation or creation of measures to compensate for the destroyed or degraded critical area(s). If work is not completed in a reasonable time following the order, the City may, to the extent of monies available through bonds and/or fines, implement a process to restore the affected site or create new wetlands to offset loss as a result of violation in accordance with this Code. The violator shall be liable for the cost of such action.
6. Violation—Misdemeanor. Any person, firm or corporation who violates any provisions of this Chapter or who fails, refuses or neglects to comply with the terms of a final order issued under this Section within the time provided in such final order, is guilty of a misdemeanor.”

Comment:

A law is only as strong as its enforcement provisions. Without enforcement powers, there is no law because there is no deterrent to violation. The presently effective version of the City Code, contains relatively robust, if flawed, enforcement provisions. It allows the City to stop work, levy fines and order restoration of critical areas. **By contrast, the proposed CAO is short on detail and gives the City less enforcement authority.** This proposed amendment attempts to adapt those provisions to make clear that the City has direct authority to enforce the CAO against violators. The previous enforcement provisions were somewhat cumbersome, always requiring a public hearing before any enforcement could be implemented. This revision of those provisions allows the City to act more quickly by imposing penalties administratively, but protects the rights of landowners by allowing immediate appeal of administrative enforcement to the hearing examiner.

Amendment # 6: Ensure Experts Determine Wetland Boundaries.

Amend Section 17.10.020(G) to read:

“Interpretation of Critical Area Boundaries. Determining the exact location of the boundary occurs only through a delineation process performed during the site investigation associated with the development. The planning official shall be authorized to reject, but not replace, a qualified professional’s proposed location of the mapped critical area boundary. Final designations must be based on the best available science, site conditions and other available data or information.”

Comment:

City officials should have oversight duties, but not final authority to declare the extent of a wetland boundary. Because City officials are not experts, they are not qualified to interpose their judgment for that of a qualified professional submitting a report.

Amendment # 7: Make it Clear that Buffer Averaging Must Improve Wetland Protection.

Amend 17.10.020(F)(2)(h) to include clause v. which reads:

“v. buffer averaging will result in an improvement to overall wetland protection.”

Comment:

This recommendation comes directly from guidance published by the Department of Ecology. It is contained in WETLAND GUIDANCE FOR CAO UPDATES, EASTERN WASHINGTON VERSION, 2016 at page 31. **Including this provision is valuable because buffer averaging is not intended to be a loophole to make projects easier.** It is designed to allow development while increasing wetland functions for the benefit of the City and its citizens.

Amendment # 8: Allow Front Yard Size to Decrease to Facilitate Buffer Size.

Amend 17.10.090(F)(2) to include a new subparagraph “j.” which reads:

“j. In order to accommodate for the required buffer zone, the City may reduce the front yard setback requirements on individual lots on a case-by-case basis. The front or rear yard shall not be reduced by more than fifty percent.”

Comment:

This provision is in the original Code but has been excluded from the new draft. The provision is good because it allows buildings to be located closer to the front of a property to allow for a larger buffer. **This provision makes it easier to protect wetlands while still allowing for development. This provision is likely to reduce the risk of takings lawsuits from landowners.**

Critical Areas Ordinance Update

RE: Unresolved problems with the 2023 revision to the Medical Lake Critical Areas Ordinance:

- On 9/23/2022 WA State DNR stated, "There is no language regarding geologically hazardous areas." This comment does not share any reference or requirement to add language and was included in materials provided for the Public Hearing held by City Council on 2/7/2023. Many counties and municipalities do not include code language related to critical areas that do not pertain within their jurisdictions.
- The 12/15/2022 Planning Commission meeting discussed and deliberated on 9 proposed changes to the CAO. Motions were brought to the floor regarding 4 of the 9 items, and 2 of the motions passed unanimously while the other two were defeated 2-3. The Planning Commission then voted unanimously to recommend approval of the CAO to City Council.
- On 1/21/2023 Councilmember Pritchard expressed a desire to include language pertaining to Critical Aquifer Recharge Areas and Geologically Hazardous Areas. Since then, city staff have been at work to better understand and define if and where these areas exist in order to know how to effectively regulate development related to such areas.
- City Council held a Public Hearing on 2/7/2023. Public comment and written comments were received and considered. As a result of those comments, City Council tabled the first read until the 2/21 meeting.
- At the 3/7 City Council meeting, the second read of the CAO took place and the ordinance was passed with a 4-2 vote.
- City staff are continuing our work with Commerce, Ecology, and DNR to clearly define if and where Critical Aquifer Recharge Areas and Geologically Hazardous Areas exist within our municipal boundaries. We have been made aware of grants and resources available to help us study and map these areas more definitively, and you can expect to see resulting language brought before the Planning Commission for consideration in the near future.
- State agencies were expressly asked if we should halt publication of the recently adopted CAO and they said that is unnecessary since we are actively pursuing added language.

From: Sean King
Sent: Wednesday, March 22, 2023 9:13 PM
To: Sonny Weathers <SWeathers@medical-lake.org>
Subject: 3/23 Planning Commission Meeting

Hi Sonny,

I am going to have to attend the PC meeting tomorrow night via Zoom. I have a deposition late tomorrow afternoon that's going to prevent me from leaving for City Hall in time to make the 5 pm meeting.

I do have answers to the questions posed at the meeting last month.

First, there is no statutory requirement in the Open Public Meetings Act that interested citizens making comments have to provide their home address in order to speak. Sean Boutz said Liberty Lake recently made this transition in that they only ask general public speakers to identify if they are residents of the City or not. That procedural amendment is completely fine if the PC desires to make it, and the CC can as well if they so desire. Clearly, some speakers the other night had already enacted this change by simply stating they were residents of the City.

Second, Commissioner Mayulianos had a question about how conflicts of interest should be handled in the event one of the commissioners reports to the PC a perceived or real conflict with something the PC is grappling with. While there would never be a vote on a reported conflict by another commissioner, it's probably best practice for the commissioner to recuse and/or abstain from any voting or discussion on a topic causing the conflict of interest at the same meeting the commissioner reports the conflict. That way, instead of waiting till the next meeting after notice of a conflict is provided, it prevents any issues from cropping up in the month-long break between meetings. This seems apparent in the context of a CC meeting, but it can't hurt to apply to and educate the PC while they are making so many changes to their procedural rules.

Let me know if you have any questions. Thanks Sonny.

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