

January 15, 2009

The Hon. George Malina,  
The Hon. Chuck Parrish  
The Hon. Bill Arthur,  
The Hon. Lynn Peterson  
The Hon. Margaret Bratcher,  
The Hon. Allan Ekberg  
The Hon. Brooke Alford  
Tukwila Planning Commission  
6300 Southcenter Blvd., #100  
Tukwila, WA 98188

**Re: Tukwila Planning Commission's January 15, 2009 Work Session**

Dear Commissioners:

I am here on behalf of the Harnish Group and NC Machinery. We join the other landowners in the comments and concerns they have expressed today. Also, we reaffirm for the record all of our earlier comments given in public testimony October 9, 2008 and submitted by HGI and its attorneys in letters dated October 16, 2008 and December 10, 2008.

Given the constraints on these presentations, we would like to emphasize the following few issues for the Planning Commission's consideration.

- First, we note that the comment matrix has not been updated to include all comments received to date and the City's responses. It would be helpful to the City Council and the public to see whether and how our comments are being incorporated into the revisions of the SMP. We disagree with many of Staff's matrix characterizations of whether and the extent to which they have addressed comments, but regardless of those disagreements, we find the matrix helpful to the discussion.
- We would also like to make three comments on the new language in Attachment G to the matrix relating to nonconforming uses and structures.
- First, as we read the new language in Section 14.5(B) regarding structures, we believe the intent is to allow all legally constructed structures to remain allowed – as opposed to non-conforming – structures. We support that change. BUT, the new language should be clarified by changing the second part of the first sentence of Section 14.5(B) to read: "it

may be continued *as an allowed, legal structure* so long as the structure remains otherwise lawful, subject to the following provisions:"

- Second, the creation and treatment of existing uses in the expanded shoreline zone as nonconforming uses in Section 14.5(A) still creates unnecessary constitutional conflicts with private property rights. In order to eliminate those concerns and prevent severe economic hardship for shoreline property owners, we recommend changing the first sentence of Section 14.5(A) to read as follows, to match the treatment of the existing structures: "any preexisting lawful use of land made nonconforming under the terms of this SMP may be continued *as an allowed, legal use*, so long as that use remains *otherwise* lawful, subject to the following . . . ." We would like to stress that this approach is consistent with the approach recommended by the Washington State Department of Ecology in its letter to Jack Pace, dated April 15, 2008, addressed in our prior comments, which would be to treat existing structures and uses as allowed - rather than non-conforming – uses and structures. Further, this approach has been used successfully by a number of other jurisdictions, including the City of Bellevue in its Bel-Red Subarea Plan.
- Finally, subsection 14.5(A)(4) should be deleted. That subsection deals with structures, not uses. Including it in Section 14.5(A) only creates confusion.

Thank you for the opportunity to comment. I am submitting a copy of these remarks to the Planning Commission for inclusion in the record.

Very truly yours,

John F. Storm  
Facilities Project Manager

cc: Jack Pace  
Carol Lumb  
John J. Harnish  
Rick Bellin  
R. Gerard Lutz

## Attachment G Planning Commission Action

**PLANNING COMMISSION ACTION 12/11/08:** THE PLANNING COMMISSION APPROVED THE STAFF RECOMMENDED REVISIONS TO SECTION 14.5 AND CHANGED SECTION 14.5 B.4 TO REQUIRE APPROVAL OF AN EXTENSION BY THE CITY COUNCIL.

### **NONCONFORMING USES, STRUCTURES, PARKING LOTS AND LANDSCAPE AREAS**

In order to address comments about treatment of non-conformities created by the new SMP development standards, staff proposes to add a new nonconforming section specific to shorelines rather than referencing the existing Zoning Code standards. Section 14.5 is proposed to be revised as follows:

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### **14.5 Nonconforming Development**

~~A. A nonconforming use or development is a shoreline use or development that was lawfully constructed or established prior to the effective date of the SMP but that does not conform to present regulations or standards of the program.~~

~~B. The provisions of TMC 18.70, Nonconforming Lots, Structures and Uses shall apply to the shoreline jurisdiction.~~

#### **A. Nonconforming Uses**

~~Any preexisting lawful use of land made nonconforming under the terms of this SMP may be continued as an allowed, legal use, a nonconforming use, defined in TMC Chapter 18.06, or as hereafter amended, so long as that use remains otherwise lawful, subject to the following:~~

~~1. No such nonconforming use shall be enlarged, intensified, increased or extended to occupy a greater use of the land, structure or combination of the two, than was occupied at the effective date of adoption of this SMP;~~

~~2. No nonconforming use shall be moved or extended in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this SMP;~~

~~3. If any such nonconforming use ceases for any reason for a period of more than six consecutive months, or a total of 365 days in a three-year time period, whichever occurs first, any subsequent use shall conform to the regulations specified by this SMP for the shoreline environment in which such use is located;~~

~~4. No existing structure devoted to a use not permitted by this title in the zone in which it is located shall be substantially improved as defined by the Washington State Building Code, except in changing the use of the structure to a use permitted in the zone in which it is located. If any building is devoted in whole or in part to any nonconforming use as allowed under the specific shoreline environment, work may be done in any period of twelve consecutive months on ordinary maintenance and repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the current replacement value~~

~~5. If a change of use is proposed to a use determined to be nonconforming by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP or a use approved under a Conditional Use or Unclassified Use Permit process. For purposes of implementing this section, a~~

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## Attachment G Planning Commission Action

change of use constitutes a change from one Permitted, Conditional or Unclassified Use category to another such use category as listed within the zoning code.

### **B. Nonconforming Structures**

Where a lawful structure exists at the effective date of adoption of the SMP that could not be built under the terms of the SMP by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued **as an allowed, legal structure** so long as the structure remains otherwise lawful subject to the following provisions:

1. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or impacts the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a nonconforming structure is permitted, including but not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
2. Should such structure be destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP.
3. Should such structure be moved for any reason or any distance whatsoever, it shall thereafter conform to the regulations of this SMP after it is moved.
4. When a nonconforming structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council ~~Director~~ may grant an extension of time of up to 12 months beyond the 24 consecutive months. The City Council ~~Director~~ shall consider special circumstances and economic impacting the sale or lease of said structure.
5. Residential structures and uses located in any single-family or multiple-family residential zoning district and in existence at the time of adoption of this SMP shall not be deemed nonconforming in terms of height, use, or location provisions of this title. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be changed except as provided in the non-conforming uses section of this chapter.
6. Single-family structures in single- or multiple family residential zone districts, which have legally nonconforming setbacks from the OHWM per the SMP buffer, shall be allowed to expand the ground floor only along the existing building line(s), so long as the existing distance from the nearest point of the structure to the OHWM is not reduced, and the square footage of new intrusion into the buffer does not exceed 50% of the square footage of the current intrusion.
7. Within the shoreline jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced, provided that:
  - a. The new construction is within the original dimensions and location on the lot;
  - b. The new construction does not further intrude into or adversely impact the required buffer;
  - c. The new construction does not threaten the public health, safety or welfare; and

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d. The structure otherwise meets the requirements of the SMP.

8. A nonconforming use, within a nonconforming structure, shall not be allowed to expand into any other portion of the nonconforming structure.

### **C. Building Safety**

1. Nothing in this SMP shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by order of any City official charged with protecting the public safety.

2. Alterations or expansion of a nonconforming use which are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed.

### **D. Nonconforming Parking Lots**

1. Nothing contained in this SMP shall be construed to require a change in any aspect of a structure or facility covered thereunder including, without limitation, parking lot layout, loading space requirements and curb-cuts, for any structure or facility which existed on the date of adoption of this SMP.

2. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment less than 100%, the requirements of the SMP shall be complied with for the additional parking area.

3. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment greater than 100%, the requirements of the SMP shall be complied with for the entire parking area.

### **E. Nonconforming Landscape Areas**

1. Adoption of the vegetation protection and landscaping regulations contained in this SMP shall not be construed to require a change in the landscape improvements for any legal landscape area which existed on the date of adoption of this SMP, unless and until the property is redeveloped or alteration of the existing structure beyond the thresholds provided herein.

2. At such time as the property is redeveloped or the existing structure is altered beyond the thresholds provided herein and the associated premises does not comply with the vegetation protection and landscaping requirements of this SMP, a landscape plan which conforms to the requirements of this SMP shall be submitted to the Director for approval.