CITY OF ELLENSBURG, WASHINGTON

Minutes of Council Meeting, Special Session

Date of Meeting April 22, 2002
Time of Meeting 6:30 p.m.
Place of Meeting Council Chambers, 102 North Pearl Street

Councilmembers Present: Barry, Collins, Lillquist, Perrie, Savidge, Sowards and Mayor Bassett

Others present were City Manager Barkley; Community Development Director Witkowski; Senior Planner Caspar; Deputy Clerk Keno; and 16 members of the audience including members of the Environmental Commission.

The purpose of the special session is to review draft revisions to the Critical Areas Chapter of the City Code, receive public comments on those revisions, and obtain Council direction.

CRITICAL AREAS CHAPTER REVISION

Senior Planner Caspar summarized the agenda report. Cyndy Kuebel, Environmental Commission Vice Chairperson, gave a synopsis of the Commission’s work on the critical areas ordinance; the Commission’s Critical Areas draft utilizing 50 foot buffers is the version currently accepted by the Commission. Also available for Council review was an overhead showing buffer setbacks required by other county and municipal governments in Washington State as well as a letter from Marie Smith, Board Member, on behalf of the Kittitas County Association of Realtors.

Major changes to the Critical Areas District chapter as drafted by the Environmental Commission include:

• Increased setback distances from all open waterways (creeks, ponds, lakes and ditches)

New variance section

New enforcement section

New allowable uses and general exemptions section

New regulated uses and activities section

New references to the use of best available science

Elimination of the term sensitive areas (all are proposed as critical areas).

Some sections of the critical areas ordinance, such as geological hazardous areas, aquifer recharge area, and frequently flooded areas, are not proposed for revision at this time. The City will also need to adopt a shoreline master plan, which is not included in this revision.
Several audience members commented on the draft revisions as follows:

Gerald Allphin, P.O. Box 844, Kittitas, WA 98934, requested to be put on the mailing list. Mr. Allphin asked how many people on the Environmental Commission own property in the City or own property in an area adjacent to a creek.

Doug Mitchell questioned whether the Environmental Commission is proposing defined setbacks or a case by case review. He feels allowing houses to be built below the flood plain is a bad idea; this could lead to land takings. The revisions are detrimental to landowners and open the City to lawsuits. The ordinance should be written in black and white terms and not open to subjective decisions. Mr. Mitchell questioned the “reasonable use” exemption.

Dorian Dexter, P. O. Box 165, Prosser, WA, stated there have been numerous changes in the flood plain as a result of flooding in 1981 and 1984. The reasoning behind the flooding needs to be examined.

Jack Piper, 300 E. Helena, Ellensburg, WA, relayed his past experience with King County’s critical areas ordinance. Mr. Piper feels the draft revisions are flawed since input was limited to a select group. Input was not solicited from the Department of Ecology (DOE), Fish and Wildlife, the Indian Tribes, attorneys or environmental engineers. One section of the draft includes irrigation ditches while another section exempts them. The standards the City is looking at exceed those of King County. The draft ordinance should be written on an environmental basis--not an enforcement basis and appears to be an unequal application of the law.

Steve Lathrop, Attorney at Law, Ellensburg, WA, suggested Council retain the services of an experienced land use attorney to review the revisions. The revisions need to be reviewed in connection with the legal concepts of Nexis and Rational Proportionality. The City needs to know what the Growth Management Act (GMA) requires; the City does not have to adopt any policies on critical areas. If the City does decide to adopt policies there are very specific things it needs to do. The City needs to decide what it is trying to accomplish by this ordinance, find out if it is necessary and whether it is something the City wants to do. To go through the ordinance at this time line by line is a waste of time because bigger decisions need to be made.

Tom Wellock, Environmental Commission member, stated other cities in the State have larger setbacks. He does not agree with audience member contentions that the draft revisions are extreme.

In answer to Council inquiry, no research has been done on how these revisions would affect Ellensburg. While many of the issues are addressed in other areas of the Code, the SEPA process solicits consistent comments from government and tribal agencies that the City’ s setbacks are inadequate.

Mayor Bassett thanked the Environmental Commission for their three years of work on the critical
Community Development Director Witkowski advised Council the revisions to the Shoreline Management Act were declared unconstitutional and the Act adopted in 1977 is still in place. While the City is no longer required to have revised requirements in place by September 1, 2002 (the deadline has been extended to 2006) staff feels these types of land use issues should be addressed proactively due to the amount of time needed to meet State legislature requirements.

Council requested more definition on the terms “reasonable use” and “passive recreation”. Council wants a legal review of any revisions early on before a draft final ordinance is presented and would like to see a process identified for administering the ordinance requirements.

In answer to Council inquiry, the Environmental Commission did consider establishing different stream classes with setback requirements for each class. However, Ellensburg does not have the large category of streams that are prevalent in Yakima County. Landscaping requirements for the buffer areas are not included in this draft of the ordinance.

Council discussed the feasibility of surveying the critical areas and establishing buffer zones. Administration and public notification of the ordinance requirements were discussed. Staff’s goal is to present a revised ordinance with alternatives to Council before the end of the summer. One councilmember requested staff provide a map of the streams and parcels in the City and urban growth area that would be affected by this ordinance.

Council consensus was to refer the draft ordinance back to the Environmental Commission and staff for additional work. When the revised draft comes before Council again, Council would like to see the following items: 1) a physical map showing the areas under discussion; 2) a review of exactly what the City is required to do with critical areas under the GMA and when; 3) a summary of the ordinance components, what the policy options are in each of those components, and an analysis of each; and 4) a legal review of how the revised draft ordinance interacts with the requirements of the Endangered Species Act (ESA). Another issue to consider is how the buffer property would be protected, preserved or restored.

**ADJOURN** Adjourn at 8:35 p.m. Sowards

Affirmed

Mayor

ATTEST:

City Clerk