AGENDA BILL NO.: 20-14

TOTAL PAGES: 23

EXHIBITS:
1. Draft Ordinance
2. Lake Boren Subdivision Original Plat Map
3. Context Map
4. Setback Map
5. WAC 220-660-140
6. Shoreline Stabilization Continuum (Figure from WA Dept of Ecology report)

TITLE: Waterfront Development Standards

ORIGINATING DEPT.: Community Development

ACTION PROPOSED: Adopt an ordinance to amend and to add a new chapter to City zoning code for waterfront development standards

SUMMARY
Attached for Council consideration is a draft ordinance that would adopt standards for development along Lake Boren’s waterfront. The draft standards were presented to the Planning Commission at their December 2018, June 2019, August 2019, and October 2019 meetings. A public hearing before the Commission was held October 11, 2019. The Planning Commission recommended approval of the proposed waterfront development standards at that meeting.

FISCAL IMPACT
No fiscal impacts are anticipated.

BACKGROUND

Shoreline Management in Newcastle Municipal Code (NMC)

In Summer 2018, a development application for a pier\(^1\) on Lake Boren was submitted to the City of Newcastle. The extent of the pier was proposed to go beyond the rear property line, located in the bed of Lake Boren. Under typical circumstances, development is not allowed to go beyond any property line of a subject site. When looking

\(^1\) Per Washington Administrative Code (WAC 220-660-140 (1)Description) – a Pier is a fixed, piling-supported structure located over water. A dock is a structure that is fixed to the shoreline but floating upon the water.
for code to define waterfront development, staff found that Chapter 14.10 NMC, the City’s shoreline management code, was not applicable to development within the City for two reasons:

1. The chapter references King County Code (KCC) Title 25, which no longer exists; and
2. The former KCC Title 25 was written for “Shorelines of the State.” In order for Lake Boren to be considered a Shoreline of the State, it would have to be at least 20 acres in size, and Lake Boren is smaller than that.

About Lake Boren and Property Ownership

Technically, Lake Boren is not a lake, but a 16-acre, non-navigable, wetland depression. In the late 1800’s, Lake Boren was called “Etta Cartney Lake,” and was a popular swimming hole. At that time, the lake was 90 feet deep, whereas today it is approximately 35 feet deep. The Lake Boren Subdivision (exhibit 2 shows the original plat map) was finished in 1933, and established an area for small homes on long, narrow lots to be built. In the mid-20th century, China Creek, the creek that feeds the lake from the north (see exhibit 3 for a context map), was armored with concrete, and the homes at the north end of the lake could then be built (the area was previously seasonally flooded). In 2017, China Creek was re-routed as part of the Aegis Senior Community project to its current location to the west of the northern-most homes. The lake was at one time part of the salmon run, and is still stocked with trout. After a culvert was placed under 84th Street in the mid-1950’s, salmon stopped running through the lake.

The lake has City (public), private single family residential, multi-family residential, and commercial lake-front property owners. After some research, the City Attorney found that non-navigable bodies of water are not claimed by the State for ownership, rather, they are co-owned by all property owners around them. Case law highlights “riparian rights” and “reasonable use”:

1. Riparian rights. Riparian rights in Washington pertain to access to and use of non-navigable water abutting the land by a private owner of that land. It gives the owner the right to reasonable use of the entire surface of the lake, including rights of swimming, fishing, boating and other recreational uses.

2. Reasonable use: The use must not impede the riparian rights of all owners.

This means, although some property owners on Lake Boren lay claim to the lake bed itself (see exhibit 4 for property lines that go into the bed of Lake Boren), all property owners abutting Lake Boren have the right to enjoy its surface.

Potential Development on Lake Boren

Due to the finding regarding riparian rights, it was determined that the development of a pier on Lake Boren could go beyond the lake bed property line. However, due to the lack of an applicable code section, the City had no way to enforce development standards on the new dock. Strict application of the City’s setback regulations, meant for structures on land, could require the new pier to be built outside of the stipulated 20-foot rear setback, limiting the length of the dock to approximately 10 feet. Neighboring properties have structures as far as 60 feet into Lake Boren, causing potential equity concerns, and development of a pier so close to the shoreline can have negative impacts on fish breeding habitats, and is discouraged by the Washington Administrative Code (WAC).

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4 WAC 220-660-140 (2): Fish life concerns:
Development within an aquatic area requires an approved hydraulic permit application (HPA) with the Washington Department of Fish and Wildlife (DFW), but the focus of the State’s permit is habitat protection. Only relying on the WAC to regulate structures in the City’s aquatic areas (namely Lake Boren) would leave room for some potentially undesirable impacts. Examples of additional proposed City provisions not included in the WAC include regulation of: maximum height of any structure on a dock (height from decking), required widths between property lines and new structures (side setbacks), and maximum number of structures for a given property. Without some regulation of structure size and setbacks, docks could potentially be built close together, into the middle of the lake, and have very tall structures upon them that would adversely impact views of the water.

Creation of a New Code Section

Staff proposed drafting waterfront development standards at the December 2018 Planning Commission meeting. At the June 2019 meeting, staff returned with draft standards. The standards largely reference code language found in WAC 220-660-140 (exhibit 5), however, they also include City specific provisions for maximum structure length, maximum structure height above decking, maximum number of structures per lineal feet of shoreline, prohibition of hard armoring (e.g. bulkheads), setbacks, and references to non-conformance standards already established in NMC 18.32. These provisions are discussed more in-depth in the “Discussion” section, below.

Community Outreach Meeting

On July 30, Staff had a Community Outreach meeting to discuss the proposed provisions, five residents attended. Names and email addresses were collected so the City can keep interested parties updated. The City’s Community Development Director, Surface Water Specialist, Associate Planner, one City Council member, and one Planning Commissioner were also in attendance.

Overall, the Community Outreach meeting was helpful. Two residents brought forward rather negative feelings about City regulation (generally), while others were supportive of the effort to further develop these regulations. The meeting brought up several issues outside of the proposed development regulations, including but not limited to: sedimentation coming from China Creek/murkiness of the water, impacts of legislation on increased water levels, and increased rubbish in the water. While these items are important to waterfront living, they are outside of the parameters of the proposed development code and would not be affected by the proposed standards.

Regarding the proposed code, the discussion focused on areas that are not direct references of the WAC’s - dock length, setbacks, structure height, and bulkheads. Most of these sections were only slightly changed to reflect feedback received at the meeting. For example, maximum structure height above decking was proposed at 4 feet, however participants felt that 6 feet was appropriate for maximum structure height to allow for an apparatus like a slide or a diving board. Allowing anything taller, it was felt, could impact views.

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(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.
In addition, some standards proposed as part of the first draft of code were eliminated after the discussion with participants. The initial version of the code had a prohibition of stand-alone floats; however, the residents did not feel that stand-alone floats should be prohibited, and generally, the lake should be enjoyed as much as possible. They also felt that a proposed regulation requiring the use of pin piles was redundant with the WAC, as the WAC already governs materials that can be used.

Maximum structure length in relation to the City’s own dock as well as potential new multi-family developments was also discussed. It was noted that these types of development serve more people and the length of the docks should be proportionately longer. It was agreed that multifamily properties with longer shorefronts should have longer docks, and that public projects should be exempt from the standards. These provisions are reflected in the proposed code.

Staff did find that proposed restrictions on bulkheads were more controversial. Many, if not all, of the residents at the north end of the lake currently have bulkheads, and some have even needed to raise them to protect their properties. While not allowing future new bulkheads is still proposed, staff reconsidered a proposal to make property owners remove their existing bulkheads as part of a full renovation of any property on the lake. Staff believes there may be unintended consequences to neighboring properties by removing bulkheads in a piecemeal fashion rather than as a coordinated effort.

Planning Commission Public Hearing

On October 11, 2019 the Public Hearing was held with the Planning Commission. Clarifying comments were made, and one resident attended the meeting. The resident had concerns about the existing waterfront pier application, and not the proposed regulations.

DISCUSSION

Adopting the proposed ordinance would entail removing chapter 14.10 NMC – Shoreline Management; adding chapter 18.17 NMC Development Standards – Waterfront; and adding a provision to allow docks to project into the setbacks to chapter 18.12.160 NMC – Setbacks – Projections Allowed.

As mentioned above, most of the proposed ordinance references WAC 220-660-140 provisions, which are already required for waterfront development. Those that are not directly from the WAC are discussed in the table below:

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<tr>
<th>Proposed Section/Subsection</th>
<th>Purpose</th>
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<tr>
<td>18.17.010.A. – “Aquatic Area”</td>
<td>To define what waterfront areas are. This definition is adapted from King County code.</td>
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<td>18.17.020 – Purpose</td>
<td>To define why the City has this ordinance</td>
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<td>18.17.030 – Applicability</td>
<td>To define when the City shall apply this ordinance</td>
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<tr>
<td>18.17.040.A-E. [HPA, SEPA, Critical area, Location requirements]</td>
<td>This allows the applicant and staff to understand what is required to apply for a permit under these provisions</td>
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<tr>
<td>18.17.040.G. [Number of docks for single family residential lot]</td>
<td>Due to the small waterfront shorelines of many of the lots, it keeps a safer distance for navigating around any structures, as well as maintains better</td>
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habitats for fish breeding. (Fish need light to breed.) It also maintains the current character of Lake Boren.

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<tr>
<th>18.17.040.H.</th>
<th>If a property owner has a larger lot with a longer waterfront shoreline (at least 300'), either by aggregating lots or by chance, a multi-family lot, which assumes many more people per lot, the owner may have two docks, piers, or floats to accommodate more people.</th>
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<tbody>
<tr>
<td>18.17.040.I.</td>
<td>The lake is so small that allowing new private launches, mooring, and piles could have aesthetic impacts of cluttering the lake, and affect fish breeding habitats. Driving piles into the lake bed creates disturbances that have negative effects on the habitat.</td>
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<td>18.17.040.J.</td>
<td>Hard armoring, such as creating bulkheads, has long term negative effects on shorelines. Over time, waves erode away the shoreline and native habitats, creating less of a gradual buffer between properties and the waterline. Water can be displaced around areas that are hard armored, creating potential impacts in other locations. The City would encourage more natural ways of protecting properties, through soft shoreline stabilization. See exhibit 6, this will also be discussed at the City Council meeting.</td>
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<td>18.17.040.K.</td>
<td>While this is not called out specifically in the WAC, the WAC does have many requirements regarding installing grated walking surfaces (&quot;decking&quot;) rather than solid surfaces. Allowing light to penetrate is important for aquatic habitats so that aquatic plants will grow, providing habitat for aquatic animals.</td>
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<tr>
<td>18.17.040.N.</td>
<td>Looking at other shoreline codes, 5’ appeared to be a minimum setback in other jurisdictions. This allows 10’ between structures, so that docks, piers, and floats can be navigated around when in a boat or other apparatus. It also is the minimum setback in the City’s code (NMC 18.12.030) for residential areas. Exhibit 4 shows what a 5’ setback from the property line would look like from the existing property lines.</td>
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<tr>
<td>18.17.050.A.1. – Maximum length inclusive of ells, floats, fingers, etc.</td>
<td>The length of a structure is measured down the long side of the dock, even if it has an &quot;ell&quot; (a turn so the dock or pier looks like a capital letter 'L'). Taking the measurement on an aerial showed that many of the docks on Lake Boren range in size from 40’ – 80’ with an ‘L’. When discussing with the community outreach participants, the desire was to keep the character of the lake similar to what it is now. In addition, when considering &quot;reasonable use&quot; of a water body, it is also important to consider how large a structure should be before it impinges on the riparian rights of all. A disproportionately large dock or pier could have a negative effect on property owners and lake visitors.</td>
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<td>18.17.050.B.</td>
<td>There are many non-conforming existing structures in Lake Boren, including bulkheads, docks, and piers. The reference to the non-conforming standards that already exist in the City’s zoning code provides staff and applicants with a basis if one of these existing non-conforming structures should become damaged or destroyed.</td>
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<td>18.17.060.A.</td>
<td>It became apparent to Staff in the community outreach meeting that the City’s own dock far exceeds the maximum length that would be permitted by the proposed code. Upon further review of the WACs, Staff noticed public recreational docks are treated differently than private residential docks. Accounting for the amount of lakefront shoreline the City owns, the number</td>
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of people its docks are meant to serve (all Newcastle residents) and the environmental review and funding required to construct a dock or pier, Staff came to the conclusion that the WAC regulation (review by the Department of Fish and Wildlife), plus SEPA review (local jurisdiction with peer review by any jurisdiction with authority i.e. DFW and the Muckleshoot Tribe), and potentially JARPA (Army Corps of Engineers), would be ample regulation for any construction or renovation of a City-owned dock or pier.

| 18.17.060.B. | Army Corps of Engineers regulates aquatic structures through Joint Aquatic Resource Permit Application (JARPA) approval. Not all projects are subject to Army Corps review, but applicants should understand when it is and is not. The last the City was told by Army Corps was that any excavation or fill in the lake bed can required JARPA for a dock/pier. |
| 18.17.060.D. | This diagram/description was added to provide staff and property owners a consistent way to measure a dock, pier, or float. |

**ACTION RECOMMENDED**

Planning Commission and Staff recommending the following motion:

I MOVE TO ADOPT THE ORDINANCE AS PRESENTED IN EXHIBIT 1

**OTHER ACTION ALTERNATIVES**

I MOVE TO DEFER THE ORDINANCE AS PRESENTED IN EXHIBIT 1 TO A FUTURE MEETING