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New rules worry Whatcom County shoreline land owners

JOHN STARK / THE BELLINGHAM HERALD

Some Whatcom County land owners are upset over new shoreline rules that they believe will make it difficult to enlarge or even rebuild on their shorefront property.

The new Shoreline Master Program already has been approved by the Whatcom County Council and the Washington Department of Ecology, but at least one attorney for property owners contends that the process was flawed.

"It's our legal opinion that the County Council made some very serious mistakes," Seattle attorney Peter Buck said.

Buck and his clients are concerned with more than just process. Many existing seaside and lakeside homes are "non-conforming" under the new rules, because they were built inside the deeper shoreline buffer zones in the new regulations. That includes buildings within 100 feet of the edge of Lake Whatcom, and 150 feet from marine shorelines. Buck argues that the owners of non-conforming homes could now face legal obstacles if they want to enlarge those homes - or even rebuild them if they burn down.

On a 4-3 vote, the council approved the shoreline rules by resolution Aug. 5, 2008, with Carl Weimer, Laurie Caskey-Schreiber, Seth Fleetwood and Bob Kelly in favor. Barbara Brenner, Sam Crawford and Ward Nelson were opposed.

Buck said the new rules should have been the subject of an ordinance, with the public notice and comment that the ordinance procedure requires. Failing to follow ordinance procedures invalidates the county's action, he said.

At the August meeting, minutes show that council members discussed postponing any action to enable them to follow the ordinance procedure, but four members decided that quicker action was necessary. That was because on July 31, 2008, a complex Washington Supreme Court ruling had called into question the county's ability to enforce its critical areas ordinance until the new shoreline rules were approved.

The council majority feared that delaying approval of the shoreline rules for a month, to follow ordinance procedures, would leave environmentally sensitive shorelines with less protection during that time. That could have created a loophole that might enable some shoreline property owners to rush in to get approval of construction projects that would otherwise have been rejected.

Peter Gill, Whatcom County senior planner, said county officials are convinced that the resolution process was legally sufficient to approve the new shoreline rules, but he acknowledged that the rush to approval was not ideal.

"We're confident that it was done alright," Gill said. "However, the public process wasn't handled very well."

Lots of property owners apparently agreed. At the County Council's Sept. 9, 2008, meeting, hundreds of people showed up to complain. There weren't enough seats in council chambers, and some had to wait in the Courthouse rotunda to hear the meeting on loudspeakers.

After hearing from property owners, council members agreed the matter needed more discussion. It is now tentatively scheduled to go back to the council's Natural Resources Committee on Oct. 21.

Gill argued that the new shorelines rules are not nearly as onerous as some property owners fear.

There was never any intent to impose rules that would stop someone from rebuilding an existing home that burned down, even if that home was inside the new buffers, Gill said. He acknowledged that the language of the new rules could state that more clearly.

Waterfront homes inside the new buffers could also be expanded under the new rules, Gill said - as long as the expansion doesn't move the home closer to the water or into existing property-line setbacks.

Gill also noted that changing shoreline regulation language now would be a slow process. The shoreline rules approved by the council and the Department of Ecology in August now have the force of state law, Gill said, and any changes would have to be reviewed by Ecology.

Buck disagrees. As he sees it, the council's resolution was not legally valid and therefore has no legal force.

Meanwhile, waterfront properly owners like Rick Haggen, co-chairman of Haggen Foods, are trying to figure out how the new rules will affect the use of their property. Haggen said he has plans in hand for a guest house next to his Lake Whatcom home, but he doubts he will be able to move ahead with those plans under the new rules.

Haggen said he realizes that his plight may not inspire much pity, but not everyone affected by the new rules is in the upper income bracket. He wonders about owners of smaller, older waterfront homes who had envisioned selling those properties for retirement income, hoping to find wealthier buyers who would want to replace those older homes with bigger ones.

If nothing else, Haggen said the County Council should revisit the issue to do justice to the public sentiment expressed at last month's meeting.

"They (property owners) really felt it was being pushed down their throats," Haggen said. "That's what I was hearing."

While adjustments may be made to the new shoreline rules, Gill said the expanded buffers are likely to remain, because they are in

line with state laws and policies, and they protect the environment. They also got a lot of public input earlier in the process, he added.

"The buffers are based on the best available science," Gill said.