

Theresa Rice

From: jonquitslund@att.net
Sent: Saturday, February 16, 2013 11:34 AM
To: Anne Blair; Debbi Lester; Kirsten Hytopoulos; Steve Bonkowski; Bob Scales; David Ward; Sarah Blossom
Cc: Theresa Rice
Subject: remaining SMP issues

TO: Members of the City Council

FROM: Jon Quitslund (5192 NE Sullivan Road, Bainbridge Island; 780-4006)

I wish to thank Kirsten Hytopoulos for her 'Guest Opinion' in the *Bainbridge Island Review* of February 15, 2013, and to add my perspective on misunderstandings stirred up around the "nonconforming" status of many shoreline homes.

You may be aware of the attention given to this issue on the Bainbridge Shoreline Homeowners website. Over the long run of the SMP update process, that website has carried some substantive discussion of issues, sometimes with room for pro and con opinions. I myself have posted comments and have seen some of them published. Recently, after the Council decided, 4 to 3, to retain "nonconforming" language in the SMP, a read a post (unsigned, but written I believe by Ken Sethney) that took Ms. Hytopoulos and others in the majority to task – quite unfairly, I thought. I wrote a comment: see the paragraphs in italics, immediately below.

This account of the Council's decision on the SMP language regarding "nonconforming" structures is inaccurate in one important respect, in a way that will lead shoreline homeowners and others to misunderstand the basis for the position taken by the Council majority.

It is understandable that many shoreline homeowners are angry, feeling that their discomfort with the 'nonconforming' label has not been taken seriously enough. I believe, however, that Kirsten Hytopoulos and her colleagues in the majority were right to resist an argument that would have accorded some shoreline homeowners preferential treatment, or would have required sweeping changes in the land use regulations that govern owners of upland property.

All Island property owners should bear in mind that there are two omnibus ordinances regulating land use and development. The SMP update is on our minds now; it works in tandem with the Critical Areas Ordinance (CAO), which was updated a few years ago.

It should not be forgotten that the revised CAO, like the unwieldy and inadequate ordinance that it replaced, rendered many preexisting homes and other structures in all parts of the Island nonconforming. This was a matter of concern for a few people at the time, and there was some confusion back then, but it was generally understood that homeowners with nonconforming structures were at no disadvantage, and their homes were

perfectly legal, so long as any modifications did not increase the extent of nonconformity (e. g., by encroaching on a buffer zone or impacting a wetland or a steep slope).

I'm sure there were some instances where the revised CAO made it difficult or impossible for homeowners to add to their homes' footprints, and some decisions by COBI's planners may have seemed arbitrary: in its final form the CAO was something of a monster, and it has proven difficult to administer fairly. On the other hand, planners have proven quite willing to permit development of properties impacted by CAO conditions – sometimes to the distress of neighbors and environmentalists. And I know of no instance where being out of conformity with the CAO had an impact on the value of a property, stood in the way of a sale, or made it difficult to get a mortgage.

I believe, therefore, that it is misleading to compare the predicament of a shoreline property owner to the situation of an upland homeowner whose house no longer conforms to current building codes. The Council majority of four had good reasons to retain the SMP language describing nonconforming structures, which renders them legal, safe, and sound so long as they are well maintained and the nonconformity is not increased, or it can be shown that a modification would meet the 'no net loss' standard.

I wasn't entirely surprised that this comment was not published. I was on a fool's errand, I suppose. But I haven't made my peace with the close-mindedness of those in our community who have led a stubborn, high-pitched, and sometimes devious resistance throughout the long process of the SMP update.

I want to emphasize that I respect the opinions and the actions of the three Council members who were in the minority in the recent vote, and in other previous votes. Close votes reflect real divisions in our community, and the difficult choices that have to be made in spite of differences of opinion.

I hope that in the discussions that remain before final action on the SMP update, one or more members of the Council will point out to the dissatisfied shoreline property owners that many changes were made in the draft SMP to accommodate their rights and their concerns.

During the Planning Commission's many meetings devoted to the SMP, property owners' interests were protected and strenuously advocated, not by citizens alone but within the P C itself, and many changes were made. Still, the party line is that the Council should fix the wrongs that were done by the Planning Commission, and inconvenient facts are excluded from consideration.

Maybe there will be more 4 to 3 votes before the Council completes its work on the SMP. At the end, however, I fervently hope that the Council will vote unanimously to endorse the whole document, in spite of its inevitable imperfections and what may be deep dissatisfaction with this or that provision.

In my view, the final vote will not have as much to do with the ordinance itself, as with the process to which so many people, in their various capacities, have contributed. As messy and unsatisfying as it may be at times, the process of self-governance here is open and fair, and deserves our long-suffering support.