

5. A. ZONING TEXT AMENDMENT ZTX-09-08: A proposed amendment to the Zoning Ordinance text to add a local wetlands preservation ordinance.

Background:

In response to a request by Council, Planning & Development staff researched the issue of adopting a local wetlands preservation ordinance. Planning Staff held a workshop with the Planning Commission and completed a draft ordinance. The Planning Commission held a public hearing regarding the proposal on September 1, 2009. The item was tabled until another workshop could be held for a detailed review of the proposed ordinance. That workshop was held on September 29, 2009. However, there were still concerns about the scope of the ordinance. Staff was asked to research a different approach to preserve and protect wetlands that focused less on having the city become a permitting authority, and more on providing additional protections to water quality. The original item remains on the October 6, 2009 Planning Commission agenda as old business.

The key provisions of the attached ordinance would accomplish the following:

1. Wetlands and Standing Water Bodies (WSWBs) are considered protected unless it can be demonstrated that impacting them is absolutely necessary in order to make some reasonable use of a property. It is inadvisable to establish a total prohibition against impacting WSWBs due to concerns over potential “takings” challenges. This ordinance provides the flexibility necessary to alter such areas, but requires greater justification for doing so, and permits the City to require design changes to avoid or minimize impacts.
2. A “pre-application meeting” with City staff is required for all properties that contain WSWBs. The purpose of this meeting is to allow staff to explain the ordinance to property owners wanting to develop their land, while at the same time engaging in a discussion about proactive site design to avoid or minimize impacts to WSWBs and instead utilize these natural areas as amenities to their development.
3. A survey is required as part of any development permit application, for lands containing WSWBs. This is similar to the survey the City is contemplating in the proposed tree preservation ordinance currently on hold, and the information for both tree preservation and wetland protection may be compiled into one detailed survey.
4. A permit is required for any disturbance of a WSWB. The information needed for such application is detailed, including an analysis of the stormwater and habitat values for these areas, soil analysis, and examination of the development potential of the site assuming a “no disturbance” scenario. Again this would only apply to those properties where the developer has decided that impacting WSWBs is unavoidable.

5. A list of acceptable and prohibited activities and practices within WSWBs is specified. Many of them related to best management practices known to help preserve water quality, which is a key goal in adopting such an ordinance.
6. A WSWB buffer regime is established, requiring buffers surrounding the natural area, an important goal of which is to preserve water quality related to stormwater runoff. There are measures put in place to insure that the buffers do not significantly impede the use of a site for residential purposes, i.e. through lot size reductions. The ordinance also includes a list of prohibited and acceptable activities within said buffers.
7. Mitigation of WSWB impact is required providing that such mitigation occur within the same watershed as that being impacted by the disturbance. Where mitigation is not appropriate or feasible, payment into a restoration fund is available.
8. Standards for re-vegetation of WSWBs are included, as well as standards for wetland and riparian area restoration and monitoring and creation of new wetland areas.
9. Language has been added to specify that fuel removal is acceptable in a wetland buffer to help prevent wildfires, and that fire-resistant species should be used in wildfire prone areas.

To summarize, this ordinance would have the desirable effect of leading property owners to very carefully consider the overall design goals of their projects, to determine if impacting WSWBs is really necessary to their development goals, or if an alternate design would achieve protection and preservation, while at the same time protecting their right to develop properties in an economically desirable manner.

However if the consensus among Planning Commission members, as expressed in the September 29 workshop, is to go back to the drawing board and devise an ordinance with a narrower scope and breadth of regulation, the Commission may wish to consider taking this issue off the table, and then remove it from further consideration (two separate actions). Finally, the Commission should then direct staff to prepare a revised ordinance.