

***City of Brisbane
Planning Commission
Agenda Report***

TO: Planning Commission For the Meeting of March 14, 2013

FROM: John Swiecki, Community Development Director
Hal Toppel, City Attorney

SUBJECT: Amendment to Grading Ordinance and Section 17.32.110 of the Zoning Ordinance

2nd Supplemental Report

Background/Discussion

This matter was considered at the January 24 and February 28 2013 meetings and continued. The previous staff reports and written correspondence received to date are attached for information, and the primary outstanding issue from the last meeting is discussed below:

Planning Commission Evaluation Criteria

Proposed Section 17.32.220.A includes evaluation criteria to be used by the Planning Commission when considering grading permits under their purview. The criteria includes grading sensitivity and fit with the natural topography and avoidance of large retaining walls, among others. The existing ordinance includes no such criteria, although the proposed criteria have been established via adopted Planning Commission policy and applied historically in cases of Planning commission review of grading. The staff recommendation was to formalize adopted Planning Commission policy by incorporating the criteria into the ordinance.

There was substantial discussion about these criteria, and concerns were raised regarding the degree of subjectivity. While staff appreciates the certainty provided by quantitative criteria, not all issues (including grading) lend themselves to precise quantification. For example there is no way to quantitatively or objectively define when grading fits with existing topography and its surroundings. Even when a quantitative standard can be developed (such as retaining wall height) it may not be appropriate to do so, in that such a blanket standard represents a "one size fits all" approach which does not recognize unique site context issues. The unintended consequence of a uniform retaining wall height standard could be to trigger more variances, thereby increasing processing complexity, time, and cost.

While grading review lends itself to subjective evaluation criteria, it was also pointed out that terms such as “minimize” or “large” are pseudo-objective and do not provide a useful basis for Planning Commission evaluation. Staff concurs with this concern, and suggested revisions (shown in strikeout/redline format) to the review criteria as shown below. These are intended to provide more useful guidance to applicants, the community, staff and the Commission when it comes to understanding what the Planning Commission will be looking for when it reviews grading permit applications.

§17.32.220 Grading permit; when review by Planning Commission is required.

A. Grading permits to be issued by the Director of Public Works/City Engineer pursuant to Chapter 15.01 of this Code shall be subject to review by the Planning Commission when required by the provisions of Subsection 15.01.110.A of this Code. The review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be ~~minimized~~ and designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to ~~avoid large exposed retaining walls?~~ ensure that retaining walls visible to the public are designed to be as visually unobtrusive as possible by means including but not limited to:
 - (i) ensuring walls are architecturally integrated with proposed or existing structures on the site;
 - (ii) ensuring wall faces are decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;
 - (iii) screening with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls?
- (3) Will the proposed grading be designed to minimize removal of:
 - (i) existing street trees, (see Section 12.12.020);
 - (ii) any California Bay Laurel, Coast live Oak or California Buckeye trees;
 - (iii) three or more trees of any species on the same site having a circumference of at least 30 inches measured 24 inches above grade?

Where removal of existing trees is necessary, do the landscape plans for the project include the planting of appropriate replacement trees?

BRISBANE PLANNING COMMISSION
Action Minutes of March 14, 2013
Regular Meeting

CALL TO ORDER

Chairman Munir called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners, Parker and Cunningham and Chairman Munir
Absent: Commissioner Do and Reinhardt
Staff Present: Community Development Director Swiecki and Senior Planner Johnson

ADOPTION OF AGENDA

Chair Munir moved and Commissioner Parker seconded to adopt the agenda. The motion carried 3-0.

SELECTION OF OFFICERS

Commissioner Parker moved and Commissioner Cunningham seconded to continue selection of officers to the Meeting of March 28th, 2013.

APPROVAL OF DRAFT ACTION MINUTES

Commissioner Parker moved and Chair Munir seconded to approve the draft action minutes of November 8, 2012. The motion carried 3-0.

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

Chair Munir acknowledged communications regarding Zoning Text Amendment RZ-1-13, which will be part of the record for that item, rules of procedure and other communications not on the agenda.

OLD BUSINESS

1. **Zoning Text Amendment RZ-1-13** to Amend Brisbane Municipal Code Title 17: Chapter 17.32.220, "Grading Permit- When Required" to clarify the circumstances under which grading permits are subject to Planning Commission review and to establish review criteria upon which the Planning Commission will evaluate grading permit applications; Applicant, City of Brisbane.

Director Swiecki presented the agenda report and highlighted the recommended text changes to the ordinance since the last meeting.

The Commission asked questions of staff regarding reducing the grading volume threshold and the potential impacts on development of single family homes and on the review process to address stormwater and groundwater flow from sites, which may impact neighboring sites. After discussion on these issues, the Commission requested that the City Engineer provide an informational session to the Planning Commission regarding safety issues related to grading. The Commission agreed with the recommended changes and there were no members of the public to address the Commission on this item.

Commissioner Cunningham moved to recommend approval of RZ-1-13 to City Council and Commissioner Parker seconded. The motion carried 3-0.

**City of Brisbane
Planning Commission
Agenda Report**

TO: Planning Commission For the Meeting of February 28, 2013

FROM: John Swiecki, Community Development Director
Hal Toppel, City Attorney

SUBJECT: Amendment to Grading Ordinance and Section 17.32.110 of the Zoning Ordinance

Supplemental Report

Background/Discussion

This matter was considered at the January 24, 2013 meeting and continued to allow for staff to address a number of issues that arose at the hearing. The January 24 staff report is attached for information. The issues of concern are outlined and discussed below:

1. 250 Cubic Yard Review Threshold

There were discussions at the January 24 meeting regarding the 250 cubic yard threshold for Planning Commission review of grading, with the specific concern that the threshold was too high and the Planning Commission should consider lowering it. It should be noted that no changes are proposed to the existing 250 cubic yard threshold, which has been in place since before 1984. While there is no definitive written explanation as to the basis of this threshold, the 1994 General Plan articulates a measured approach in applying regulatory requirements, as embodied in General Plan Policy #4 (*"Acknowledge the fundamental rights of citizens to freely act and to use their own property, except to the extent government rules or regulations are necessary for the public health and safety and protection of the environment"*.) and General Plan Policy #5 (*Use the least intrusive rules and regulations consistent with overall government needs and State and Federal laws"*.)

This is reflected in the City's zoning regulations, especially in regard to the development of single family residences and duplexes. New single family residences and duplexes and alterations that comply with adopted development standards are exempt from discretionary review, unless there are unique environmental habitat or ridgeline issues. Historically, the 250 cubic yard grading threshold has accommodated typical compliant single family residences, duplexes, and additions thereto without triggering the need for standalone Planning Commission review of grading. As such, the existing threshold is consistent with the General Plan's regulatory framework.

A specific suggestion was made at the previous Planning Commission meeting that the Planning Commission should consider reviewing all grading permits applications (5 cubic yards or more). To better understand the implications of this approach, staff researched grading permits processed between 2009 and 2013, and a table is attached for the Commission's information. In summary, applying Planning Commission review of all grading permits would impose a new regulatory requirement on small scale residential projects that would otherwise be exempt from Planning Commission review. This would add a \$1,244 application fee and add 3-4 weeks of processing time to applications that would otherwise be processed administratively. The Planning Commission should consider the implications of such a revision (or reducing the threshold to any extent) in the context of General Plan Policies.4&5 referenced above. And since the Planning Commission review authority would be limited to grading, any issues related to the structure itself, such as design, height, style, appearance, and access would not be within the Commission's review authority. Experience shows that in most development it is the structure which is of primary interest, not the grading to accommodate the structure. It is unclear how the public interest will be served through a process which requires Planning Commission review of standalone grading for homes and additions.

Staff would further question the presumption that the existing threshold is "too high". Any numeric threshold is subjective, and the existing threshold has been in place for at least 20 years. If this threshold is perceived as inappropriate, there should be examples which demonstrate this is the case, and the Planning Commission might wish to take this into account as it considers modifying this long-held threshold.

2. Applicability

As proposed, Planning Commission review of grading would be applicable in Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, Northwest Bayshore, or Quarry districts, thereby excluding Beaty, Baylands, Sierra Point, Southeast Bayshore and Northeast Bayshore districts. The basis for this distinction is based on the Planning Commission's purview in reviewing grading, which relates to impacts on natural topography and retaining wall visibility. The districts proposed for exclusion are either highly developed, mostly flat, or represent manmade landforms. These site circumstances would render the Planning Commission's grading criteria not applicable in most or all cases.

3. Clearing and Grubbing

Concerns were also raised that "clearing and grubbing (C&G)" needed to be defined more clearly in the proposed ordinance. The primary reason for providing a definition of C&G was to have a contrast for the term "weeding", and therefore being able to create an exemption for a grading permit for fire department ordered weed abatement. In most cases C&G is a precursor to grading which is subject to a grading permit.

However, in order to provide limitations on what constitutes C&G, staff recommends modifying the definition by adding the last (bold and italicized) sentence as shown below:

"Clearing and grubbing means the removal of trees, shrubs, bushes, windfalls and all other materials from above and below the natural ground surface. This activity removes vegetative ground cover, removes top soil, and removes/disturbs root mat. ~~Except in those cases where specifically approved by a grading permit, "grubbing" for the removal of stumps and roots shall not exceed 18" below the original surface of the ground."~~

Lastly, at the January 24 2013 meeting the Planning Commission received correspondence from the public regarding the whole of the Grading Ordinance (BMC Chapter 15.01) which is not subject to the Planning Commission's review authority. This correspondence will be forwarded to the City Council when it considers the proposed grading ordinance in its entirety.

Attachments:

- Grading Permit Summary Table
- January 24, 2013 Planning Commission Report

for



Hal Toppel,
City Attorney



John Swiecki,
Director of Community Development

GRADING PERMITS 2009-2013

PLANNING COMMISSION *

<u>Address</u>	<u>Project</u>	<u>Application Date</u>
601B Tunnel Ave.	temporary soil stockpile	6/5/12
3000-3500 Marina Blvd.	2 office buildings, parking structure	6/9/11
575 Tunnel Ave.	temporary shuttle bus yard	1/20/10
Baylands	soil recycling	11/16/09
148 Visitacion Ave. ***	new single-family residence	2/17/11
90 San Benito Rd. ***	single-family residence addition	9/17/10
418-420 Monterey St. ***	new duplex	4/22/09
3836 Bayshore Blvd.***	new mixed-use building	6/9/12
338 Kings Road ***	landscape improvements	5/12/12
6 San Diego Ct. ***	new single-family residence	6/4/10

PUBLIC WORKS DEPARTMENT

<u>Address</u>	<u>Project</u>	<u>Application Date</u>
Santa Clara St./San Francisco Ave.	geotechnical excavations	10/18/12
Swallowtail Ct.	Altamar garage water proofing	10/10/12
10 Kings Road	driveway retaining wall	8/31/12
812 Sierra Point Rd.	parking deck	3/15/12
3150 Geneva Ave.	PG&E security wall	10/24/11
6 San Diego Ct.	retaining wall	4/11/11
3150 Geneva Ave.	PG&E modular building	12/9/10
200 Annis Rd.	new single-family residence	11/5/10
398 Alvarado St.	single-family residence remodel	9/23/10
925 Humboldt Rd.	foundation work	9/21/10
239 Sierra Point Rd.	retaining wall	8/9/10
852 Humboldt Rd.	single-family residence addition	6/8/10
756 Sierra Point Rd.	retaining walls	5/13/10
90 Santa Clara St.	sewer repair	4/13/10
3150 Geneva Ave.	PG&E modular building	10/30/09
3150 Geneva Ave.	demolition	10/30/09
240 Valley Dr.	demolition	4/8/09
55 San Francisco Ave.	single-family residence addition	4/2/09
233 Sierra Pt. Rd.	single-family residence addition	3/25/09
50 San Benito Ave.	single-family residence addition	2/11/09

*For new construction projects, Grading Permit review by the Planning Commission may have been incorporated into the Design Permit process.

***These projects were reviewed by the Planning Commission for reasons other than grading.

OLD BUSINESS

1. ~~Zoning Text Amendment RZ-1-13~~ to Amend Brisbane Municipal Code Title 17: Chapter 17.32.220, "Grading Permit- When Required" to clarify the circumstances under which grading permits are subject to Planning Commission review and to establish review criteria upon which the Planning Commission will evaluate grading permit applications; Applicant, City of Brisbane.

Director Swiecki presented the agenda report.

As requested by Chair Munir, Director Swiecki summarized the written correspondence. Chair Munir then opened the public hearing. The following Brisbane residents spoke and raised concerns over the potential lowering of the grading volume threshold for Planning Commission review, as discussed by the Commission in the previous meeting: "Aradami" (inaudible), Luc Bouchard, Mike Glynn, Ron Davis, and Jerry Kuhel.

The Commission discussed the proposed text in the draft ordinance in detail and focused on the grading volume threshold and the geographic areas of the City for which Planning Commission review would be required on projects, as well as on the text regarding the required Planning Commission findings for grading permits and for retaining walls. The Commission agreed that the volume threshold for Planning Commission review could remain unchanged, but had concerns over the degree of subjectivity in the ordinance. Staff was directed to provide revised text to address these concerns in the next meeting.

Commissioner Parker motioned to continue the matter to the regular meeting of March 14th and Commissioner Reinhardt seconded. The motion carried 3-0.

City of Brisbane
Planning Commission
Agenda Report

TO: Planning Commission For the Meeting of January 24, 2013

FROM: John Swiecki, Community Development Director
Hal Toppel, City Attorney

SUBJECT: Amendment to Grading Ordinance and Section 17.32.110 of the Zoning Ordinance

Recommendation:

Approval of Planning Commission Resolution RZ-1-13 recommending to the City Council that the proposed amendment to Section 17.32.220 of the Zoning Ordinance be adopted.

Environmental Determination:

The legislative action is categorically exempt under Section 15308 of the CEQA Guidelines as an action being taken by the City to assure the maintenance, restoration, or enhancement of natural resources and for the protection of the environment. Also, the amendment to the Zoning and Grading Ordinances will not, in itself, authorize the performance of any construction work or other modification of the environment.

Applicable Code Sections:

Section 15.01.110 of the proposed Grading Ordinance and Section 17.32.110 of the Zoning Ordinance.

Background and Discussion:

The City has prepared a comprehensive revision to the Grading Ordinance, as contained in Chapter 15.01 of the Municipal Code. The proposed ordinance is the result of a collaborative effort between the City staff and Mountain Watch and incorporates many comments and suggestions made by Mountain Watch and its legal counsel. Both a redline and clean copy of the proposed ordinance have been included in your packet. The redline copy represents all of the changes that have been made to the Grading Ordinance, as compared to the existing provisions in the Municipal Code.

The Grading Ordinance is part of the City's Building and Construction regulations. Amendments to these regulations are normally adopted by the City Council without prior review and recommendation by the Planning Commission. However, Section 2 of the proposed ordinance (on page 44 of the redline draft and page 43 of the clean draft) is an amendment to Section 17.32.220 of the Zoning Ordinance, which does require a review and recommendation by the Planning Commission. A corresponding amendment to the Grading Ordinance will be made in Section 15.01.110 (on page 9 of the redline and clean drafts). This memo will primarily discuss the proposed changes to the Zoning Ordinance.

The existing language of Section 17.32.220 uniformly requires a permit from the Planning Commission whenever the grading involves more than 250 cubic yards of material, or where more than 50 cubic yards of material will be removed from the site, or where grading is not otherwise approved in connection with issuance of a building permit. This language fails to distinguish between types of grading projects and results in the Commission being involved in grading operations that raise engineering concerns rather than planning issues. Moreover, the existing ordinance fails to articulate the factors that should be taken into account by the Planning Commission in its evaluation of an application for a grading permit, nor does it indicate the findings that need to be made for issuance of the permit. In other words, the existing ordinance can result in the Planning Commission being given the impression they have similar review responsibility of the City Engineer without the professional qualification (i.e., licensure and defined authority per the Professional Engineers Act) or guidance (as specified in the California Building Code) to carry out that responsibility.

The proposed ordinance will amend Section 15.01.110 to clarify that grading permits are only issued by the City Engineer but the application for such permit will be reviewed by the Planning Commission in certain defined circumstances. The quantity limit of 250 cubic yards would still apply, but the project site must be located within certain zoning districts (Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, Northwest Bayshore, or the Quarry), *and* the grading is part of an application for which a land development permit (such as a design permit, PD permit or use permit) is being considered by the Planning Commission.

As a totally separate basis for Planning Commission review, and regardless of the quantity of material to be graded, the application for a grading permit would be reviewed by the Planning Commission if the site is located within the HCP area, *unless* the grading operation is limited to weeding, or clearing and grubbing (as such terms are defined in the ordinance), and such work is being performed pursuant to a site activity approval issued by the HCP Plan Operator.

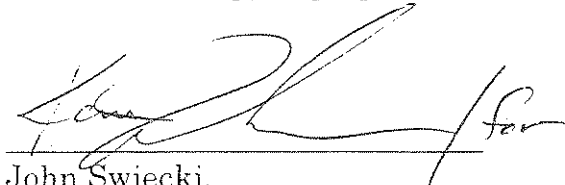
If a review by the Planning Commission is required by Section 15.01.110.A, the amendment to Section 17.32.220 will now specify the potential impacts that the Commission should consider in making its comments and recommendations to the City Engineer. These potential impacts raise planning and environmental issues that the Commission routinely considers during the course of its review of land development applications under the subdivision and zoning ordinances. In other words, the Commission would be performing its traditional role as the planning agency of the city and not acting as a civil or geotechnical engineer.

Although the Commission is not being asked to review or comment on the revisions to Chapter 15.01, listed below, for information purposes, are some of the other major changes that would be made by the proposed ordinance:

- Specific requirements for revegetation have been added. The term has been defined, a revegetation plan must now be submitted with the application for a grading permit, and specific requirements for submittal and implementation of the revegetation plan have been added as Section 15.01.200.
- The scope of the ordinance has been expanded to include weeding, clearing and grubbing (as defined) and provisions added to make it clear that such activities cannot be performed within the HCP area without a site activity review by the Plan Operator.
- Where grading operations will also be controlled or guided by other regulatory authorities, a reference to such regulations has been added. For example: compliance with "best management practices," as defined in Section 15.01.040(6); compliance with the "HCP," as defined in Section 15.01.040(30); protection of historic or archaeological resources required by CEQA, as addressed in Section 15.01.060; and compliance with the Municipal Regional Permit regulating erosion and sediment control.
- Where a violation of the grading ordinance is determined to have been willful, reckless or grossly negligent, the City would be able to impose a supplemental penalty up to \$10,000 for each violation. This penalty would be in addition to any other remedies available to the City under the general code enforcement provisions contained in Title 1 of the Municipal Code.

Attachment:

Planning Commission Resolution No. RZ-1-13
Excerpt proposed Ordinance 579- Section 17.32.220
Redline copy of proposed Ordinance No. 579
Clean copy of proposed Ordinance No. 579



John Swiecki,
Director of Community Development

NEW BUSINESS

1. ~~Zoning Text Amendment RZ-1-13~~ to Amend Brisbane Municipal Code Title 17: Chapter 17.32.220, "Grading Permit- When Required" to clarify the circumstances under which grading permits are subject to Planning Commission review and to establish review criteria upon which the Planning Commission will evaluate grading permit applications; Applicant, City of Brisbane.

City Attorney Toppel presented the agenda report and highlighted those aspects of the ordinance that pertain to the Planning Commission.

Acting Chairperson Parker opened the public hearing. Brisbane resident, Dana Dilworth spoke in opposition to the ordinance. Ken McIntyre, Executive Director of San Bruno Mountain Watch, spoke to clarify their role in the proposed grading ordinance revisions and indicated that he felt that the draft ordinance was written in a way that was responsive to their most pressing concerns. Brisbane resident, Michelle Salmon, spoke in opposition to the ordinance.

The Commission discussed and raised a number of questions regarding draft ordinance. These questions focused on the definitions in the draft ordinance and the level of oversight of grading projects and the 250 cubic yard volume threshold Planning Commission review of a grading permit, versus the 5 cubic yard threshold for a grading permit required by the City Engineer. The Commission suggested that the 250 cubic yard threshold might be lowered. The Commission asked staff for clarification in the next meeting on the definition of clearing and grubbing and on the applicability of the ordinance in different geographic areas of the City. The Commission continued the application to the regular meeting of February 14th.