

***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.