

East Bellevue Community Council
Summary Minutes of Regular Meeting

July 5, 2005
6:30 p.m.

Lake Hills Community Clubhouse
Bellevue, Washington

PRESENT: Chair Bell, Vice Chair Keeffe, and Councilmembers Eder and Seal

ABSENT: Councilmember Wiechmann

STAFF: Mike Upston – Planning and Community Development
Michael Paine – Planning and Community Development

1. **CALL TO ORDER**

The meeting was called to order at 6:31 p.m. with Chair Bell presiding.

2. **ROLL CALL**

Upon roll call by the Clerk, all Councilmembers except Mrs. Wiechmann were present. Chair Bell led the flag salute.

3. **COMMUNICATIONS - WRITTEN AND ORAL:** None.

4. **APPROVAL OF AGENDA**

Mr. Keeffe suggested adding the following items to Agenda Item 11, New Business:

(b) Sweetwood property, (c) Landerholm Plaza, and (d) Lake Hills Boulevard improvements.

Mr. Keeffe moved to approve the agenda, as amended, and Mr. Eder seconded the motion. The motion to approve the amended agenda carried by a vote of 4-0.

5. **PUBLIC HEARING**

(a) Lake Hills Shopping Center Rezone

Chair Bell opened discussion regarding Ordinance No. 5611 approving the application of Lake Hills Investment, LLC, to repeal the existing Concomitant Zoning Agreement adopted by Ordinance No. 3755 (as amended by Ordinance No. 5307) for the Lake Hills Shopping Center and to replace it with a new Concomitant Zoning Agreement to allow for redevelopment to a mixed-use neighborhood retail center.

Mr. Bell opened the public hearing and reviewed the rules for providing testimony. He noted Mr. Eder has recused himself from participating in this decision.

Chair Bell questioned the Council regarding ex parte communications about the Lake Hills Shopping Center application. Mr. Bell, Mr. Keeffe, and Mr. Seal indicated they have not engaged in communications with proponents or opponents regarding this matter outside of the public hearing process. All indicated they will not be affected financially by the outcome of the application. All three Councilmembers said they can consider the matter in a fair and objective manner. In response to Chair Bell, no one in the audience objected to any Councilmember's participation.

Mike Upston, Senior Planner, described the rezone application that would replace the existing Concomitant Zoning Agreement with a new one allowing redevelopment of Lake Hills Shopping Center. The agreement amends the underlying CB (Community Business) zoning designation to customize development for the site. City Council voted on June 27, 2005, to approve the rezone application. The East Bellevue Community Council is asked to take action approving or disapproving Ordinance No. 5611.

The following citizens came forward to comment:

(1) Harry West asked about the 45-foot building height.

Mr. Upston explained that the maximum building height is measured from the average ground elevation around the building perimeter. The site will be nearly flat after it is regraded. The 45-foot height allows approximately three stories. Most of the buildings planned for the site are two stories high. Due to the building and site design as well as landscaping, the building height will actually appear to be lower.

(2) Jeff Wilson asked if the decision will be made tonight.

Chair Bell said the Council plans to take action tonight.

Mr. Keeffe moved to close the public hearing. Mr. Seal seconded the motion, which carried by a vote of 3-0.

Responding to Mr. Keeffe, Oscar Del Moro (Cosmos Development) confirmed that the southeast corner of the site will be leveled by approximately 12 feet. There will be retail space and landscaping at the corner and the sidewalks will be rebuilt. In further response, Mr. Upston said Code-related and environmental-related traffic and other types of improvements will be part of the project.

Responding to Mr. Seal, Mr. Upston said a branch library would be allowed in the center.

[Carol Morris, legal counsel for the East Bellevue Community Council, joined the meeting.]

Mr. Keeffe expressed concern about a blank for the Clerk's Receiving Number in the ordinance, which is a number that will be assigned to the Concomitant Zoning Agreement. Mrs. Murphy

explained that the number cannot be assigned until an ordinance is approved and the agreement is signed. Ms. Morris said she has not seen other ordinances with blanks. Staff confirmed that all City ordinances and resolutions in Bellevue are written this way.

Ms. Morris noted the blank is for the purpose of providing a reference number. She feels a court would not invalidate an ordinance based on this practice.

Staff responded to questions of clarification regarding the application and hearing process for the Lake Hills Shopping Center redevelopment proposal.

Ms. Morris opined that state law requires a public hearing on the Concomitant Zoning Agreement and the City Code requires a hearing on the rezone application.

Chair Bell noted that elements of the Agreement were discussed throughout the process.

Mr. Keeffe said he is not comfortable acting on the ordinance tonight without seeing a signed Concomitant Zoning Agreement. Mr. Seal said it is unclear whether the City Council discussed the Agreement specifically.

Mr. Bell feels the substance of the rezone proposal, the ordinance, and the Agreement are identical. Mr. Upston agreed and noted that the Agreement has not been changed since it was first presented to the Community Council in recent months.

Councilmembers noted that page 6 of the Hearing Examiner's decision is missing in the bound Hearing Examiner's Report.

Chair Bell reviewed the conditions outlined by the Hearing Examiner. Responding to Mr. Bell, Mr. Upston said the key parts of the Concomitant Zoning Agreement are the two drawings (Site Plan and Landscape Plan) and the Master Plan which specifies permitted uses, dimensional standards, and performance standards. Mr. Upston said the City Council based its decision regarding the rezone application on the Hearing Examiner's report.

Responding to Mr. Bell, Mr. Del Moro said the traffic impacts of the project are minimal due to the mixed uses. Intersection improvements to be completed by the developer will improve overall traffic flow.

Responding to Mr. Keeffe, Mr. Upston explained that neighborhood compatibility is based in part on the design of a project. The mixed-use design is compatible with the neighborhood because it provides underground parking, landscaping, low-rise buildings, and low-intensity uses. In addition, it provides amenities not currently available to residents.

Chair Bell reviewed the staff report included in the Hearing Examiner's Report and Mr. Upston responded to questions of clarification.

Responding to a request by Mr. Keeffe, Chair Bell reopened the public hearing to provide new arrivals the opportunity to speak. The following citizen came forward:

- (3) Susan Gardner expressed support for the redevelopment proposal and the forward-thinking concept for the shopping center.

Mr. Keffe moved to close the hearing. Mr. Seal seconded the motion, which carried by a vote of 3-0.

Ms. Morris reiterated her position about problems with the Concomitant Zoning Agreement that could result in its invalidation or inability to be enforced. She is concerned that the Agreement is signed by the City Council and can be amended by administrative staff. She said amendment of a development agreement by administrative staff requires a public hearing.

Ms. Morris said the Agreement has no term specified.

Mr. Upston clarified that this is a zoning agreement and not a development agreement. Ms. Morris disagreed and feels it is a development agreement. She expressed concern about the lack of page numbers on the document and that some attachments are not included in the Council's packet.

Responding to Ms. Morris, Mr. Upston confirmed that the Master Redevelopment Plan will be approved in a separate process. Ms. Morris felt this was improper.

Chair Bell clarified that there are two parts to the process, one is the Master Redevelopment Plan and the other is design review for actually building the project. Mr. Upston concurred.

Ms. Morris feels the documents should be clear that the City Council is the only body that can amend the Concomitant Zoning Agreement.

Mr. Keffe feels the packet presented to the Community Council is incomplete.

Mr. Seal suggested submitting a memo to City Council outlining the Community Council's concerns and suggestions.

Chair Bell reviewed the Land Use Code decision criteria applicable to this matter. He is satisfied that the rezone request is consistent with the Comprehensive Plan. He noted the rezone bears a substantial relation to public health, safety, and welfare. The rezone is warranted because it enables the reasonable development of the subject property. Criteria D states that the rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject property. Mr. Bell feels this criteria has been met and noted testimony by adjacent neighbors in support of the proposal. The last criteria is that the rezone has merit and value for the community as a whole. Mr. Bell feels this has been amply demonstrated as well.

Chair Bell summarized that the criteria have been met and the application should be approved. He noted that concerns regarding the presentation of packet materials do not materially affect the substance of the redevelopment proposal or the Concomitant Zoning Agreement. He encouraged the Council to move forward to approve or disapprove the ordinance.

Mr. Seal moved to approve Resolution 479 adopting Ordinance No. 5611 approving the application of Lake Hills Investment, LLC. Mr. Keeffe seconded the motion.

Responding to Mr. Keeffe, Ms. Morris agreed with Chair Bell that Councilmembers should look at the merits of the application to make their decision. However, she also supports notifying the City Council and staff about deficiencies of the Concomitant Zoning Agreement. Ms. Morris said the issues discussed tonight regarding the Agreement should not cause the Community Council to disapprove the ordinance and redevelopment proposal.

As a substitute motion, Mr. Keeffe moved to postpone action on Resolution 479 to the August East Bellevue Community Council meeting. The motion failed for lack of a second.

Chair Bell called for a vote on the motion on the table.

The motion to approve Resolution 479 failed by a vote of 2-1, with Mr. Keeffe dissenting.

Responding to Mr. Keeffe, Ms. Morris opined that the Council's concerns about the Concomitant Zoning Agreement are not adequate to uphold disapproval of the ordinance because they are not substantive in nature.

Mr. Seal moved to reconsider Resolution 479, and Mr. Bell seconded the motion. The motion to reconsider carried by a vote of 3-0.

Mr. Keeffe moved to approve Resolution 479 adopting Ordinance No. 5611 approving the application of Lake Hills Investment, LLC. Mr. Seal seconded the motion.

As a substitute motion, Mr. Keeffe moved to postpone action on Resolution 479. Ms. Murphy opined that Mr. Keeffe already made this motion and it cannot be resubmitted. The motion failed for lack of a second.

Chair Bell noted the option for action on Resolution 479-A disapproving Ordinance No. 5611.

Chair Bell requested action on the motion on the table to approve Resolution 479.

The motion to approve Resolution 479 adopting Ordinance No. 5611 approving the application of Lake Hills Investment, LLC, failed by a vote of 2-1, with Mr. Keeffe opposed.

Mr. Keeffe moved to approve Resolution 479-A, which disapproves Ordinance No. 5611. Mr. Bell seconded the motion. The motion to approve Resolution 479-A disapproving Ordinance No. 5611 failed by a vote of 0-3, with Mr. Keeffe silent and his vote being counted with the majority [according to the Community Council's rules].

Chair Bell noted disapproval of Ordinance No. 5611 cannot be reconsidered because there were no votes in the affirmative. He clarified that Ordinance No. 5611 will become effective 60 days from the date of City Council approval (June 27, 2005) due to the absence of action by the East Bellevue Community Council.

Chair Bell noted Council consensus to ask Ms. Morris to compose a brief memo to the City Council outlining the Community Council's suggestions to improve the Concomitant Zoning Agreement.

At 8:45 p.m., Chair Bell declared a brief break.

(b) Critical Areas Update

The meeting resumed at 8:50 p.m. with Mr. Eder back at the Council table.

Michael Paine, Planning Manager, recalled that the Community Council was briefed in April regarding the Critical Areas Update. Elements of the proposed critical areas ordinance have not changed significantly since that briefing. The Planning Commission is holding a public hearing on the ordinance on July 6. Final action on the ordinance is anticipated in the fall.

Chair Bell opened the courtesy public hearing on the Critical Areas Update. No one came forward to comment.

Mr. Keeffe moved to close the public hearing, and Mr. Seal seconded the motion. The motion to close the hearing carried by a vote of 4-0.

Mr. Paine explained that the Growth Management Act requires the City to designate and protect critical areas. Bellevue has been doing so since 1987, prior to the passage of the Act in 1990. In 1995, the state legislature amended the Act with provisions that jurisdictions must include "best available science" in developing policies and regulations and that policies must protect anadromous fish. This led to the City's update of critical areas policies and the development of the proposed critical areas ordinance.

Mr. Paine reviewed overall strategies governing the City's review of critical area regulations. One is that any policy changes must take into consideration that Bellevue is a developed urban center and cannot be returned to its natural environment. A second principle is to preserve neighborhood character. A third is that any regulatory changes to be made should be predictable and flexible.

Mr. Paine said a citizen advisory committee met for approximately one year to develop recommendations for critical areas policies and regulations, which were adopted by City Council. The proposed ordinance implements these policies and regulations. Three open houses were held and mailings were sent to 4,500 households over the past year or so.

Mr. Paine noted this is the first time critical areas regulations affecting the shoreline have been drafted. Incentives are included in the ordinance to encourage property owners to protect the environment.

Mr. Paine explained that the ordinance replaces the City's stream-typing and wetland-typing systems with the state's typing systems. This streamlines the administration of regulations and enables better sharing of information across jurisdictions. The ordinance expands buffers, changes dock and bulkhead standards, and moves toward conformance with federal regulations

because property owners are required to obtain federal permits for docks. The ordinance exempts certain small isolated slopes from regulation.

Mr. Paine said the new rules will primarily affect single-family property. The regulations will not affect routine repairs or ongoing practices. If a resident is mowing or landscaping an area that will be protected under the new ordinance, the resident will continue to be able to mow and landscape. The rules will apply in a situation in which a resident wants to expand his or her home into a wetland or other sensitive area, however.

Responding to Mr. Seal, Mr. Paine said the City is interested in identifying opportunities to open culverts and provide better fish passage and access, where feasible.

Mr. Eder noted the use of Kelsey Creek Shopping Center in City documents and said the proper name is Kelsey Creek Center.

Mr. Paine explained that regulation is one part of the overall critical areas approach. The City continues to acquire and protect natural areas as an ongoing practice. The City plans to provide information to assist property owners in complying with the regulations.

[Chair Bell stepped away from the table at 9:32 p.m. and returned at 9:33 p.m.]

Mr. Eder feels there is a need for the definition of “critical areas.” He commended the June 16 memo by Kate Berens in Council’s desk packet. Mr. Eder urged the City to work more aggressively to locate former coal mining areas. He asked the City to publish a list of preferred native plantings to assist residents.

Mr. Paine responded to additional questions of clarification.

Mr. Seal noted a letter from Charlie Klinge and expressed concern that regulations cost money and can discourage development. Mr. Paine distributed copies of staff’s response to Mr. Klinge.

6. **RESOLUTIONS**

- (a) Resolution 479 adopting Ordinance No. 5611 approving the application of Lake Hills Investment, LLC, to repeal the existing Concomitant Zoning Agreement adopted by Ordinance No. 3755 as amended by Ordinance No. 5307 for the Lake Hills Shopping Center and to replace it with a new Concomitant Zoning Agreement to allow for redevelopment of the Lake Hills Shopping Center to a mixed-use Neighborhood Retail Center.

[See Agenda Item 5(a) above.]

7. **REPORTS OF CITY COUNCIL, BOARDS, AND COMMISSIONS:** None.

8. **DEPARTMENT REPORTS**

(a) Kirkwood Garden Planned Unit Development Update

Chair Bell noted the materials regarding Kirkwood Garden PUD in the Council packet. There was no discussion.

9. **COMMITTEE REPORTS:** None.

10. **UNFINISHED BUSINESS:** None.

11. **NEW BUSINESS**

(a) November 8, 2005, EBCC Continuation Ballot – Appointment of Argument Committees for Voter Pamphlet

Chair Bell noted community service applications in the desk packet for participating on the voter pamphlet argument committees for the November election to continue the East Bellevue Community Council. Howard Wilson and Bill Halgren are interested in serving on the Statement For committee. Chris and Susan Hazelman and Joel Glass have volunteered to work on the Statement Against committee.

Mr. Keffe moved to appoint Howard Wilson and Bill Halgren to the Statement For committee and Chris and Susan Hazelman and Joel Glass to the Statement Against committee. Mr. Eder seconded the motion, which carried by a vote of 4-0.

Chair Bell requested action on the Explanatory Statement, noting it is the same statement used for the last election.

Mr. Keffe moved to adopt the Explanatory Statement for the November 8 ballot measure. Mr. Eder seconded the motion, which carried by a vote of 4-0.

Ms. Murphy asked Council to formally approve participation in the Voters Pamphlet.

Mr. Keffe moved to approve participation in the Voters Pamphlet for the EBCC continuation ballot measure. Mr. Eder seconded the motion, which carried by a vote of 4-0.

(b) Sweetwood property

Mr. Seal noted the Sweetwood property is just outside of the East Bellevue Community Council boundary.

(c) Landerholm Plaza

Staff will provide information to the Council on this item in the near future.

(d) Lake Hills Boulevard improvements.

Mr. Keffe is pleased with the Lake Hills Boulevard sidewalk improvements.

12. **CONTINUED COMMUNICATIONS**

Ronald Murk noted the development of condos over the past few years. He said garbage trucks cannot access some of these properties along SE 16th Street so trash containers are put out on the street. Sometimes the containers are left on the curb for several weeks. Mr. Murk feels the containers should be accommodated on private property rather than the public right-of-way.

13. **EXECUTIVE SESSION**: None.

14. **APPROVAL OF MINUTES**

Mr. Keeffe moved to approve the Summary Minutes of the June 7, 2005 meeting. Mr. Seal seconded the motion, which carried by a vote of 4-0.

15. **ADJOURNMENT**

Mr. Keeffe moved to adjourn the meeting, and Mr. Seal seconded the motion. The motion to adjourn carried by a vote of 4-0.

At 10:23 p.m., Chair Bell declared the meeting adjourned.

Michelle Murphy, CMC
Deputy City Clerk

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