

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
MEETING MINUTES

October 23, 2013  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Tebelius, Commissioners Carlson, Ferris, Hamlin, Hilhorst, Laing

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Nicholas Matz, Department of Planning and Community Development; Carol Helland, Mike Bergstrom, Department of Development Services

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:35 p.m. by Chair Tebelius who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Carlson who arrived at 6:36 p.m.

3. PUBLIC COMMENT

Ms. Stephanie Walter, 14418 SE 19th Place, asked to have an issue temporarily resolved through an emergency zoning ordinance be addressed in the Comprehensive Plan update. She noted that for 50 years the residents of the Spiritwood neighborhood have honored the common sense definition of single family zoning. Unfortunately, however, recently investors who do not live in the neighborhood and have no ties to the neighborhood have taken advantage of the gaps in the single family zoning rules. They buy small modest homes, remodel them, sometimes without permits, and then rent out as many individual rooms as they can in those homes. In September the City Council passed an emergency ordinance to address the issue in the short term. The action is greatly appreciated but may prove difficult to enforce. The next step would be for the new Comprehensive Plan to provide a permanent solution to protect and enhance moderate single family neighborhoods. Renting homes for profit is a business activity and should be licensed and regulated. One benefit of requiring licensing would be to provide safety and security for people moving to the area to attend Bellevue College which has no official dormitories. The pressure for student and other reasonably priced housing is falling to the Lake Hills neighborhood, most specifically Spiritwood. The Commission is faced with a great opportunity to do it right. In the absence of leadership from the city, others will make it their financial opportunity without regard for neighborhoods or the best interests of the city. She said a development group is currently renting individual rooms in dwellings a block from her home. The rooms go for up to \$600 per month, possibly higher, and a six-bedroom 1300 square-foot

home can bring in \$3600 per month. If rented as a single family home, the total rent would be about half of that. The same development group is in the process of building a new structure, also just a block from her, that can best be described as a dormitory with ten bathrooms and up to 15 sleeping quarters in three stories, all in a neighborhood zoned single family. Without licensing and regulation, once the house is built it will be difficult to know how many unrelated people live there, and it will fall to the neighbors to observe and report on the externally visible use of the house. A new level of regulation will require a lot of work and resources, but in the absence of that modest single family neighborhoods are going to be reshaped without a cohesive strategy. Affordable housing options are needed and the city is faced with a major opportunity to establish licensing and regulation.

Answering a question asked by Commissioner Laing, Ms. Walter said the Council has passed an emergency ordinance that is subject to being renewed every six months. Something more permanent is needed. The Comprehensive Plan drives code and code drives enforcement, so without something in the Comprehensive Plan the rest will fall flat.

Commissioner Carlson asked what actual day-to-day impact the use is creating for the Spiritwood neighborhood. Ms. Walter said the most obvious is traffic. Having so many unrelated persons in a home without the benefit of a resident assistant to protect them and help resolve conflicts is problematic.

Commissioner Ferris noted that as Bellevue College transitions to a four-year college the demand for housing will only increase. Multiple studies have been done by various people on how the college could provide an opportunity for student housing to occur within the campus boundaries. Absent that, the market will continue to seek ways to get around the restrictions. Pressure needs to be applied at the Bellevue College level starting with the college president.

Comprehensive Planning Manager Paul Inghram said plans are being made to hold the November 13 Planning Commission meeting at Bellevue College.

Chair Tebelius asked if the community has banded together to make its collective wishes known to staff or the Commission. She also asked if the temporary approach should simply be made permanent. Ms. Walter said some level of regulation is needed, but the neighborhood has been told the city does not have adequate staff to provide the necessary oversight. Current city rules limit the number of unrelated persons who can share a house, but there is no way to really know who is related and who is not. The names of persons who own properties in the city are public records and it would not be unreasonable to make the names of renters a public record as well.

Commissioner Hilhorst asked how a structure with ten bathrooms and 15 sleeping quarters could even be built in a single family neighborhood. Mr. Inghram said he did not have any information regarding the property in question. He noted, however, that property owners are allowed a great deal of flexibility with regard to what they want to include in their homes. Multiple bathrooms are allowed, though single family homes are limited to a single kitchen. There are also height limits and setbacks that must be observed. So long as all building code and fire code requirements are met, the city cannot deny a permit.

Mr. Martin Selig, 3203 165th Place NE, said he owns a student dormitory in Eugene, Oregon, that is situated on a property that is zoned multifamily. The structure has 44 rooms and currently is home to some 55 students who receive meals there as well. The property is part of a neighborhood that is adjacent to the University of Oregon. There are a number of similar

dormitories around the University and they are objectionable to the owners of single family homes in the immediate neighborhoods. Such uses should indeed be restricted in single family neighborhoods for all the reasons described by the previous speaker.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, suggested the Commission should keep in mind the fact that one of the tools available to work with in transitioning from high-density development into single family residential is on-street parking. Neighborhood parking programs are not unusual and may be appropriate for Bellevue.

#### 4. APPROVAL OF AGENDA

There was agreement to revise the agenda to eliminate item 9.B and to allow the public to address the Commission prior to item 9.C.

A motion to approve the agenda as amended was made by Commissioner Laing. The motion was seconded by Commissioner Hilhorst and it carried unanimously.

#### 5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS

Commissioner Hamlin reported that he, Chair Tebelius and Commissioner Hilhorst attended the Transportation Commission meeting on October 17 where the focus was on elements of the Transportation Element of the Comprehensive Plan. The most interesting part of the discussion centered on how to measure progress toward achieving adopted goals.

Commissioner Hilhorst said the meeting was very interesting. The level of debate around how to visually portray ideas was extensive. The meeting was open to representatives from all the city's boards and commissions and there was a variety of opinions around the table. In addition to counting cars, there was agreement that person throughput should be calculated as a measure of effectiveness.

~~Chair Tebelius said a large number of opinions were expressed at the meeting.~~

#### 6. COMMITTEE REPORTS

Commissioner Ferris reported that at the October 16 meeting of the Downtown Livability Initiative CAC the results of a survey put together by the staff and filled out by the committee members was revised. The survey listed the development incentives that are currently allowed in the downtown along with a number of ideas that had come from the public and the committee members. The various items were rated in terms of importance to downtown livability, and ranked as to whether they should be incentivized through land use or incorporated in some other way, such as public/private agreements. It was clear that words on a page can be interpreted in different ways, so with some clarifications the committee members were allowed to fill out the survey a second time; the survey was also made available to the public. A number of public events are scheduled that will allow opportunity for the public to weigh in.

Commissioner Ferris said the committee also had a discussion regarding housing affordability. The committee as a whole concluded affordable housing is important from the standpoint of downtown livability, but also agreed that further analysis is needed. Affordable housing is a complex issue that land use alone will not be able to solve.

7. STAFF REPORTS - None

8. PUBLIC HEARING

A. 2013 Comprehensive Plan Amendments

Senior Planner Nicholas Matz stated that two Comprehensive Plan amendment applications survived the threshold review process and were moved on to final review in which the Commission will conduct a public hearing before developing and forwarding to the Council a formal recommendation for each application. The anticipation is that the Commission's recommendations will be before the Council in December.

Mr. Matz said the Bellevue Apartments application involves a 1.84-acre site located at 148th Avenue NE and NE 8th Street and seeks a change from Office to Multifamily-High. He said the recommendation of staff was to approve the amendment. The request is consistent with the Comprehensive Plan and other goals and policies of the city, the Countywide Planning Policies, the Growth Management Act and all applicable laws. The change represents an opportunity to make efficient use of infill development while maintaining compatibility with surrounding land uses and benefitting the transportation system. The proposal also addresses the interests and changed needs of the city and fits well with the mix of land use and transportation uses that have developed over the years within a quarter mile of the subject property.

Continuing, Mr. Matz said in the opinion of the staff the proposed amendment addresses significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. In taking action to move the application forward to final review, the Council concluded that the property previously had not had the opportunity through the subarea plan to anticipate that a higher density might be appropriate in that the plan itself did not anticipate such a rich mix of uses supported by transit and other elements.

Mr. Matz said the Bellevue Apartments proponent has had conversations with the city's development review staff and there is a general belief that no development regulations or requirements would need to be changed in order to increase the density of the site. Staff believes the property is suitable for development in general conformance with the adjacent land uses, and with the zoning standards. Additionally, the proposal represents a public benefit and enhances the public health, safety and welfare of the city in that it makes the most efficient use of the resources available to the community.

With regard to the Bel-Kirk Office Park Comprehensive Plan amendment, Mr. Matz said the recommendation of staff is for approval of the proposal that seeks to amend the map designation for the 7.62-acre site on NE 33rd Place from Light Industrial to Office. The proposal is consistent with the city's goals and plans for the area, and is consistent with the Comprehensive Plan and other goals for urban growth areas redevelopment, including the policies in the Land Use Element that address the supply and location of Light Industrial uses in the city. The land use goal for the North Bellevue subarea which talks about the protection of single family properties by using various levels of density in Office and Light Industrial is met by the application. The Growth Management Act and the Countywide Planning Policies are consistent in that the proposal encourages urban growth in an appropriate area to make efficient use of transportation and other infrastructure.

Continuing, Mr. Matz said the proposal meets the decision criterion relative to changed needs for the entire city. The area in which the subject property is located is adapting away from industrial uses toward uses that do not need a reliance on transportation infrastructure. The primary use in the building on the property is office in line with the changes that are trending in the area.

Significantly changed conditions have occurred which warrant approval of the proposed amendment. The subarea plan did not anticipate that the area would move toward a predominantly non-industrial focus. The land use decisions that have occurred over time include the expansion of SR-520; a 2001 Comprehensive Plan amendment to the north that changed to multifamily a Light Industrial designation on a property developed with multifamily; the proximity of the South Kirkland transit-oriented development site; and the repurposing of the Burlington Northern/Sante Fe rail corridor.

Staff believes the subject property is suitable for development in general conformance with adjacent land use and development patterns. In September the Commission discussed how the existing uses would fare under the existing zoning and the Office zoning, and discussed the issues associated with the critical areas on the site due to the adjacent rail corridor. A rough estimate of the redevelopment potential was made and reflected in the threshold determination that was issued.

Mr. Matz said in the opinion of staff the proposed amendment demonstrates a public benefit and enhances the public health, safety and welfare of the city. The proposal is aligned with policies for urban growth areas redevelopment and clarifies the relationship between the site's designation and its evolving use. It enhances the buffering function the site performs between residential and non-residential uses, and it positions office uses and their workers within walking distance of the future non-motorized use of the Burlington Northern/Sante Fe right-of-way.

A motion to open the public hearing for the Bellevue Apartments Comprehensive Plan amendment was made by Commissioner Carlson. The motion was seconded by Commissioner Hilhorst and it carried unanimously.

Mr. Joe Tovar, 540 Dayton Street, Edmonds, spoke on behalf of his clients Tsai LLC. He said the staff did an excellent job in their report highlighting why the proposed application meets the decision criteria. He noted that the history of the property was outlined during the threshold review stage. The site is currently developed with a three-story wood-framed apartment complex with 39 units. There is a Rapid Ride bus stop located immediately in front of the complex. To the east is a gas station and convenience store; to the southeast is a utility substation; and to the south is Walgreens drugstore. The proposal is to change the map designation from Office to Multifamily-High. The existing driveways will continue to provide access even with additional units, as well as to the properties to the west and north via easements. The probable location for new units on the property was highlighted on a map for the benefit of the Commissioners. Detailed design work has not been done to determine exactly how many new units could be added to the site, but the theoretical maximum would be 15. Addressing the letter submitted by Mr. Plummer objecting to the request, he said many of the points made are generic. The claim that additional units would impact the traffic system is refuted by the SEPA analysis done by transportation staff which concludes that the increase would be minimal.

Absent additional members of the public wishing to address the Commission, a motion to close the public hearing was made by Commissioner Laing. The motion was seconded by Commissioner Carlson and it carried unanimously.

A motion to open the public hearing for the Bel-Kirk Office Park Comprehensive Plan amendment was made by Commissioner Laing. The motion was seconded by Commissioner Hilhorst and it carried unanimously.

Mr. Jeremy Eckert, land use attorney with Foster Pepper PLLC, 1111 3rd Avenue, Suite 3400, Seattle, spoke on behalf of Rosen Properties. He said Rosen Properties is opposed to the redesignation of the Bel-Kirk Office Park. City code prohibits the Commission from forwarding the redesignation to the City Council. Part 20.30I.150 of the Bellevue city code says that an amendment to the Comprehensive Plan must meet five specific criteria. With regard to the second criterion, he pointed to policy LU-5 of the Comprehensive Plan which says that the city needs to ensure enough properly zoned land to provide for Bellevue's share of regionally adopted demand forecasts for industrial land for the next 20 years. No analysis in the record talks about the city's demand for industrial land over the next 20 years, and nothing that addresses whether or not the city has enough industrial land to meet the need. Policy LU-34 calls for exploring the appropriate long-term direction for the location of light industrial businesses, but there is no reasoned analysis in the record. The proposed application would authorize 20,000 additional square feet of office which would not protect single family neighborhoods. Policy LU-37 calls for discouraging the additional potential for office areas beyond areas currently designated in the land use plan, but there is no discussion in the record of that policy. Criteria B.1 and B.2 are not met, and therefore the Commission cannot forward the matter to the Council. Comprehensive planning is about meeting the needs of the city and addressing how economically competitive the city will be over the long term. The applicant concedes that nothing will change should the application be approved, but in fact the change will take away part of the city's light industrial land base. The action will not provide benefit to the public or meet any long-term goals of the city; it will only provide a windfall to a private entity. There may be merit to the proposal, but to make that determination will involve looking at the site comprehensively. The city is currently in the process of updating the Comprehensive Plan; the update will address whether or not there is enough industrial land, how to protect single family neighborhood, and many other issues. The applicant should withdraw the application and work with the city through the Comprehensive Plan update process so informed decisions can be made about the city's land use base.

Commissioner Laing asked Mr. Eckart if he is familiar with the Bel-Red plan. Mr. Eckart allowed that he is. Commissioner Laing asked Mr. Eckart if his law firm also represents Wright Runstad, and the answer given was affirmative. Commissioner Laing asked Mr. Eckart what position his firm took when the Bel-Red plan was adopted vis a vis the sufficiency of light industrial lands in Bellevue for the next 20 years. Mr. Eckart said he did not work specifically on that proposal and was unable to answer the question.

Mr. Jack Burns, 5500 Carillon Point, Kirkland, spoke as one of the owners and the trustee for the estate that owns part of the Bel-Kirk Office Park. He voiced his support for the recommendation of the staff. Though the property is designated Light Industrial, the site is developed as Class A office space, not as a light industrial space. There is no proposal to return the site to a light industrial use. The argument about examining the light industrial needs of the city 20 years into the future is not appropriate given the current use of the property and the uses of the surrounding properties. The application seeks to align the Comprehensive Plan designation with the current use of the property. All of the existing uses on the property are compatible with and would be allowed under the proposed zoning.

Commissioner Laing asked what the purpose of the proposed amendment is if the site is currently being used consistent with the zoning designation; will not render any use nonconforming; and there is no intention to return the site to a light industrial use. Mr. Burns explained that with an Office zoning additional uses would be allowed that are forbidden under the Light Industrial zoning.

Absent additional members of the public wishing to address the Commission, a motion to close the public hearing was made by Commissioner Laing. The motion was seconded by Commissioner Hilhorst and it carried unanimously.

## 9. STUDY SESSION

### A. 2013 Comprehensive Plan Amendments

With regard to the Bel-Kirk Office Park Comprehensive Plan amendment, Commissioner Hilhorst asked what the city's plan is for light industrial uses. Mr. Matz explained that the policy language does not direct the retention of the city's light industrial base. Rather it indicates there will be changes to light industrial just as there are changes over time to other land uses. The city does allow for sufficient zoned areas across the different categories through the growth targets, and the consensus is there is enough land zoned in certain ways to produce the types of jobs and housing the region says Bellevue needs to take as a metropolitan center. The second part of the issue has to do with the nature of light industrial uses in the city; that was part of the conversation the Commission had regarding the North Bellevue subarea which historically had light industrial uses. In the case of the subject property, though zoned for light industrial uses the site never was developed for light industrial. The subarea plan presumes that light industrial will be sustained in the area, yet the community and the market have been moving away from light industrial uses over the years. There is no question about retaining something that is no longer there.

Commissioner Carlson said the tone of the presentation by Mr. Eckart on behalf of his client Rosen Properties seemed to suggest a marker for litigation is being established should the vote not go his way. He specifically stated that the proposed amendment does not address the interests and changed needs of the entire city as identified in its long-range planning and policy documents, and that no analysis has been conducted to justify a finding otherwise. Mr. Matz said the decision criteria offer a framework but not black and white answers. The conversations held around Comprehensive Plan amendments allows for introducing the larger questions. In the opinion and reasoned analysis of the staff, determining that criterion B.2 is in fact met by the proposal is appropriate. The decision criteria are not tantamount to application of code.

Commissioner Laing said he is sympathetic to the difficulty faced by Mr. Eckart. He said it would not be appropriate for him as a Commissioner to construct arguments either for an applicant or an opponent. However, he said it is not coincidental that the staff report and the letter from Mr. Eckart rely on the same policies but come to different conclusions. Comprehensive plans are typically considered to be precatory and do not carry the force of law, yet adopted zoning must be consistent with the comprehensive plan, and the comprehensive plan must be consistent with the Growth Management Act. The argument Mr. Eckart raises is compelling insofar as the city does have growth targets set by the state for population and employment, and the Growth Management Act does have language here and there one could construe as suggesting cities are to go through an stringent exercise in determining whether or not there is adequate land zoned for each type of use.

Continuing, Commissioner Laing said Bellevue's Comprehensive Plan calls for ensuring enough properly zoned land to provide for Bellevue's share of the regionally adopted demand forecasts for residential, commercial and industrial uses for the next 20 years, and that suggests some level of analysis is needed in order to make an informed decision. Mr. Matz said that work has been done and is documented in the buildable lands report, the conclusion of which is Bellevue does have sufficient zoned land. When it comes to reviewing the specific site that is the subject of the proposed amendment, the loss of industrial jobs that never existed in the first place are compared against the office jobs that do exist on the site, and the conclusion reached is that despite the proposed change there will continue to be sufficiently zoned land to meet the city's responsibilities under the Growth Management Act for jobs and housing.

Mr. Inghram said one key to the conclusion reached by staff is the fact that the subject property is not an industrially zoned property with a manufacturing use on it. Approving the proposal will not result in the loss of industrial jobs. Commissioner Laing countered by saying notwithstanding that argument, the issue is whether the city has property that could be used for industrial uses. Rezoning a light industrial site to office will result in the loss of land zoned for light industrial uses irrespective of the actual uses on the site. That is the point at which the argument made by Mr. Eckart is somewhat availing.

Commissioner Ferris said use allowed in the Light Industrial zone that would not be allowed in an Office zone is growing marijuana. He asked what uses allowed in Office are not allowed in Light Industrial. Mr. Matz said the Office zone allows the full range of office uses that primarily occur indoors. Light Industrial contemplates office uses that are secondary to a primary use that tend to need outdoor facilities. Neither zone allows the retail component.

Commissioner Laing asked staff to address the language of Policy LU-37 which calls for discouraging the creation of additional potential for office development beyond the areas currently designated in the land use plan map unless an areawide planning process identifies office uses as appropriate for a non-residential area under transition from an earlier use that is in decline. Mr. Matz said the argument falls to the fact that the site is already developed with an office use. The proposed amendment will not get rid of an existing light industrial land use. The policy language does not specifically disallow the proposed action, which will match the zoning with the current use while not interfering at the broad level with the city's ability to meet its housing and jobs obligations. The site-specific Comprehensive Plan amendment process does not preclude the city from addressing the question of light industrial when it comes up, as it will in Bel-Red, in Richards Valley, and in Eastgate.

A motion to approve the Bellevue Apartments Comprehensive Plan amendment was made by Commissioner Hamlin. The motion was seconded by Commissioner Carlson and it carried unanimously.

A motion to approve the Bel-Kirk Office Park Comprehensive Plan amendment was made by Commissioner Hamlin. The motion was seconded by Commissioner Ferris.

Commissioner Ferris voiced concern about the view of the city toward light industrial uses. He noted that surprisingly the issue never came up as a discussion item during the Bel-Red corridor study. Many cities go out of their way to preserve their light industrial land use and job base. He said if light industrial has any importance to the city at all, there should be a concerted effort put into what, why and where. Mr. Matz suggested that notion could be conveyed to the Council

in the transmittal memo.

Commissioner Hamlin commented that the buildable lands report does not clearly distinguish between commercial and light industrial. Taken together the city has a huge surplus of appropriately zoned land. That does not, however, speak to the actual demand. The Bel-Kirk Office Park property will not make a difference to the overall picture, since the use on the site is not currently light industrial.

Commissioner Laing said he would like the transmittal memo to include a clear message that the look-back on the Bel-Red plan needs to be given top priority on the Commission's work plan. The predominant supply of Bellevue's light industrial land is in the Bel-Red corridor. He agreed that approving the Bel-Kirk Office Park Comprehensive Plan amendment will not have a profound effect on the availability of light industrial-zoned property, but the Bel-Red plan effectively renders all the existing light industrial uses nonconforming.

The motion to approve the Bel-Kirk Office Park Comprehensive Plan amendment carried unanimously.

- B. Presentation: Policy Lessons from Vancouver - Applying Planning Principles Across the Border

Item to be rescheduled.

- C. Shoreline Master Program Conformance Amendments

Senior Planner Mike Bergstrom reminded the Commission that the conformance amendments are needed to assure that the Land Use Code as a whole functions properly with respect to the new Section 20.25E, the Shoreline Overlay District. There needs to be internal consistency, deferrals to 20.25E where appropriate, notes for user convenience, and alignment of definitions.

The Commissioners were informed that if additional study sessions are needed they will be scheduled. A courtesy hearing will need to be held for the East Bellevue Community Council, and the Commission will need to conduct a public hearing and make a recommendation to the Council. The Council will review the amendments in study session before taking final action. After the Council takes final action, the package will go back to the East Bellevue Community Council for final approval or disapproval.

Land Use Director Carol Helland called attention to the stream section of 20.25H and noted that a commenter requested additional information about why the Type S waters would remain because of the reference to inventories under the Shorelines of the State. She explained that the edit was not meant to refer to shoreline critical areas. The old language was in fact clearer by stating that Type S waters means all waters other than shoreline critical areas. Because there are no longer shoreline critical areas, the reference was deleted. However, within the inventories of the Shorelines of the State there are some stream complexes in the city that exceed the Shoreline Management Act requirement for cubic feet per second that makes the subject to shoreline jurisdiction. The Kelsey Creek and Mercer Slough stream systems actually are inventoried as part of the shoreline jurisdiction under state law because of their flow volumes. That is why Type S waters cannot be eliminated from 20.25H.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, pointed out that the request of

former Commissioner Himebaugh to see the conforming language and to see how critical areas would be blended with the shorelines was made several years ago. The proposed schedule included on page 35 of the Commission packet indicates that yet another year will pass before the work will be finalized. In the meantime, people along the shorelines are being regulated inappropriately and punitively under the critical areas ordinance that was adopted in 2006. The schedule going forward should be revised and shortened.

Mr. Charlie Klinge, 10900 NE 8th Street, Suite 1325, provided the Commissioners with 11 action-item changes, five of which involved only clarifications. He said there are a number of different critical areas that need to be worried about, including flood hazards, slopes and streams, although Lake Washington does not have a flood hazard problem because of the way the lake level is controlled by the Corps of Engineers. He showed the Commissioners maps of Lake Washington and Lake Sammamish and indicated the flood hazard and steep slope areas.

Continuing, Mr. Klinge called attention to the use table beginning on page 48 with the type of critical area listed at the top and the allowed use or development shown on the left side. Specific references to provisions in the critical areas ordinance are made where the columns intersect. He highlighted specifically "existing landscape maintenance," "vegetation management," and "expansion of existing single family primary structures." With regard to the latter, he noted that development involving the removal of an existing structure is considered to be new construction, not expansion, so therefore it is not allowed where the tear down touches a flood hazard area.

Mr. Klinge referred to his first action item and asked for a simple clarification of 20.25H.015.B by adding to the end "and except where a shoreline permit is required by LUC 20.25E." He explained that for those working in the shoreline management area under a shoreline permit, the regulatory structure should be the shoreline process, which the Department of Ecology is going to want, not the critical area process, which is local only.

With regard to his second action item, Mr. Klinge asked for clarification regarding Type S waters, noting that some jurisdictions include lakes as Type S waters. He asked that 20.25H.075.B.1 be revised to read "Type S water means streams with a mean annual water flow exceeding 20 cubic feet per second..." and to add at the end of the paragraph "This provision applies only to the Mercer Slough and Lower Kelsey Creek." Mr. Inghram pointed out that the definition makes it clear the Type S waters referred to are streams.

Mr. Klinge said his third action item also sought clarification for 209.25H.055 that someone needing a shoreline permit should not also need a critical areas permit. With regard to stabilization measures on the critical areas overlay district chart, he proposed that a footnote should be added to clarify how stabilization measures are treated in areas of special flood hazard, and that those doing a stabilization measure for single family use consistent with the Shoreline Master Program should be exempt from the critical areas requirements. He also proposed changing "Expansion of existing single family primary structures" to "Single-family primary structures." Additionally, he offered a revision to Footnote 9 noting that for expansion of existing structures in flood hazard areas the way the rules read was that the only possibility of going into the flood hazard area was to utilize the reasonable use exception. That, however, does not work for everyone. Redmond, Issaquah, Sammamish and Snoqualmie all allow development in the floodplain if the problems are mitigated. He proposed deleting D.7, the reasonable use exception, and changing Footnote 9 to eliminate the reasonable use exception and saying instead "Moorage structures related to single family use are allowed in the area of special flood hazard areas where consistent with the requirements of the Shoreline Master Program, LUC 20.25E.

These moorage structures are exempt from the requirements of this Part (LUC 20.25H).

Mr. Klinge said his fourth action item related to 20.25H.055C.3. He asked to have added to the end of it "...except that in the Shoreline Master Program, LUC 20.25E, the exclusive standard shall be no net loss of shoreline ecological functions." He explained that in the shoreline management area the test is no net loss.

Action item five related to the performance standards for trails. Mr. Klinge said the problem with the staff's proposed change is that it is too narrow and it creates a problem. The issue relates to Phantom Lake where staff have found wetlands that 40 years ago did not exist but which created by the city's use of Phantom Lake as part of the storm drainage system, causing the water level to rise and the area next to the lake to become saturated. Staff's proposal would have trails accessing single family residential moorage comply with the performance standards in subsection C.3.g of 20.25H.055, which are the same as trails for parks. The language proposed by staff to 20.25H.055.3.f should be eliminated and the paragraph should conclude with "This section regulates only new trails, and does not regulate use, access over, or modification of existing walkways, trails, lawns, landscaping, landscape features, other pedestrian paths, or other access to moorage developed prior to August 1, 2006. Nothing in this provision shall prohibit the development of a new trail or other safe access to moorage consistent with the Shoreline Master Program, LUC 20.25E, in a manner that assures no net loss of shoreline ecological functions."

Mr. Klinge said action item six relates to the performance standards for existing landscaping in 20.25H.055.3.h. The change is needed to address the problem reported of someone having patio pavers removed in favor of grass only to be cited by the city for a violation of the law for effecting the work without a permit. The issue is related to routine maintenance, but as worded someone wanting to take out a flower bed and replace it with shrubs was exceeding the limits of routine maintenance and would be required to have a critical area permit. Footnote 1 in the chart defines repair and maintenance to include replacement of facilities and systems or expansion so long as the area of permanent disturbance is not expanded. He said his proposed language differentiated between repair and reconstruction in a disturbed area from a natural areas outside preexisting landscaping or disturbed areas. He also proposed language to the paragraph that would discourage rather than prohibit the use of fertilizers, insecticides and pesticides, and which directs homeowners to the city of Bellevue's "Environmental Best Management Practices" document.

Mr. Klinge said the hazard trees provision was the focus of action item seven. He said as paragraph 20.25H.055.3.ii.B was drafted, a home in the shoreline jurisdiction having a steep slope area immediately adjacent and also having a hazard tree leaning on or toward the house would have to leave the tree as a wildlife snag unless pruning or crown thinning is sufficient to address the hazard. He proposed adding to the end of paragraph (B) "except that trees may be removed from residential properties." Additionally, as drafted paragraph (C) requires all tree cuttings to be left in the yard; he proposed adding to the end of the paragraph "except that such debris may be removed from development residential areas."

Commissioner Laing asked if the language of paragraph (C) really says that branches cut off a tree on a property in a critical area or a buffer must be left where they fall. Ms. Helland confirmed that, and Commissioner Ferris pointed out that the provision applies to the entire city of Bellevue, not just the shorelines. Mr. Klinge suggested the global rule should be changed so that it applies equally throughout the city.

Chair Tebelius asked Mr. Klinge to summarize his remaining action items. Mr. Klinge said action item eight is very important. Property owners having a ditch running along the side of their homes, or has some slope on their properties, are not allowed to expand even if the expansion would occur in an already landscaped area. The item also addresses the problem of the flood hazard area by allowing expansion into the flood hazard area consistent with the code. As drafted expansion into the critical area is prohibited.

Mr. Klinge noted that action item nine involved a simple language change, and that action item ten involved only a clarification. Action item eleven involved the flood hazard rules.

Answering a question asked by Chair Tebelius regarding action item seven, Mr. Klinge allowed that the critical areas provisions apply citywide and fixing a problem just for shoreline property owners would be inappropriate. What is needed is a global fix. If the problem is not addressed, property owners in the shorelines will be told what the rules are, then when they go in to apply for a permit they will be told that the flood hazard rules also apply. So even if the shoreline rules say one can do something, actually it cannot be done, even though the same could be done in Redmond, Sammamish or Issaquah. The flood hazard rules are really only relevant to Lake Sammamish. The landscaping problem is just not that dramatic where it involves making a change from one type of landscaping to another; no critical area permit should be required regardless of whether the property is in the shoreline or not. Action items there and eight fit together to address the flood hazard problem. The problem has been highlighted by the public and by the Commission and it needs to be fixed.

Commissioner Carlson suggested Mr. Klinge should meet offline with staff to review their differences with the conformance amendments.

Commissioner Ferris said it has been known all along that within the shoreline there are critical areas. When the critical areas ordinance was written it included the shorelines as a critical area. Even though the Shoreline Master Program update removes shorelines from consideration as critical areas, the other critical areas elements that are in the shorelines have not been exempted. He said his understanding is that flood hazard areas are by definition critical areas as well. The Commission has not been directed by the Council to revisit the critical areas ordinance, only the Shoreline Master Program.

Commissioner Laing agreed with Commissioner Ferris from a process standpoint. The Commission's transmittal memo sent to the Council along with the Shoreline Master Program included a call to look at the conformance amendments and made mention of the need to review the floodplain issue. Several of Mr. Kling's proposals are focused at the critical areas ordinance irrespective of how it interplays with the shoreline regulations, though many are helpful suggestions and hopefully noncontroversial. The floodplain regulations, however, are inextricable from the shoreline because the only property owners subject to those regulations are in the shorelines. The critical areas regulations apply citywide, but shoreline property owners, even without the shoreline itself, are subject to overlapping buffers and many critical areas. It is one thing to put very restrictive shoreline regulations in place to ensure no net loss of ecological function, but quite another not to change the floodplain regulations and to leave the shoreline property owners in exactly the same situations they are already relative to the critical areas ordinance. That is a gotcha game. If the city comes out of the Shoreline Master Program process with shoreline property owners as a practical manner in exactly the same place as they were when the critical areas ordinance was adopted in 2006, the update exercise will have been

nothing but an exercise in futility for everyone involved. The Commission should in fact look at the floodplain regulations with an eye on conforming them to the fairly restrictive standards the Department of Ecology is pushing for regulating the shoreline.

Answering a question asked by Commissioner Carlson, Commissioner Laing said he was okay with items one and two. Certain parts of item three are probably okay but it does involve some mission creep into areas the Commission has not been specifically authorized to address. He said he was fine with items four and five as well.

Commissioner Ferris pointed out that the staff version of the paragraph in question in item five clearly states that nothing in the section prohibits the creation of a soft surface non-motorized trail in a critical area buffer on a single family lot for use by the residents of the lot. That could not be any more clear and the addition of more text saying the same thing is not needed. Commissioner Laing said the additional language is needed because someone in the city has had to explain how they have had their lawn or their trail for 40 years but have found themselves caught up in a code enforcement action.

Commissioner Laing said action item six also involves mission creep. It is, however, bothersome that parks is allowed to expand in a disturbed area even if it is technically within a buffer. What is good for the goose is good for the gander and government should be held to the same high standard. As a principle, however, that is beyond the mission of the Commission.

Commissioner Laing said action items seven and eight clearly are beyond the Commission's scope, except that the last part of item eight deserved some more evaluation relative to the different types of critical areas. He suggested that items nine and ten are noncontroversial. Item eleven having to do with the floodplain issue should be taken up.

Commissioner Ferris allowed that the floodplain issue is very complicated. It involves the Corps of Engineers, and there are provisions under which homeowners can deal with where the line gets drawn. To really get into the floodplain issues will take months of study.

Commissioner Carlson commented that some of the suggestions made by Mr. Klinge involve ideas not previously discussed and if they are to be considered time will need to be allotted to them on an upcoming meeting agenda.

Chair Tebelius agreed that a meeting between staff and Mr. Klinge to work out differences would be in order. She also suggested that Commissioner Ferris and Mr. Klinge should have a discussion.

Mr. Klinge said Commissioner Ferris's position is clear about not wanting to open up the critical areas ordinance and the flood hazard issue. He pointed out that the document already has the general performance standards that are similar if not identical to the regulations adopted by Issaquah, Sammamish and Redmond and approved by the Department of Ecology. They are in the document because a number of uses are allowed in flood hazard areas, including parks expansion, so the rules are in place for building in the flood hazard area. Accordingly, the leap is not as big as it sounds.

Commissioner Ferris said the Commission in working to develop the Shoreline Master Program recognized the conflict with the flood hazard regulations. No decision to dive into it was made, however. The transmittal memo to the Council pointed out the conflict and included a

recommendation to address the issue. It would not be appropriate to open the issue as part of the conformance amendments.

Ms. Helland reminded the Commission that the work to develop the Shoreline Master Program included going through hundreds of comments from WSSA. It took a large number of meetings and a great deal of time before 20.25E was ready for forwarding to the Council. Along the way the Commission expressed dissatisfaction about not being able to address some items in the scope of the shorelines overlay, and the floodplain was one of those items. The conflict was, however, vetted and thoroughly discussed. There was agreement that where conflicts arise between critical area and non critical area provisions, the most restrictive approach should control. In some areas of the code there are very specific provisions getting at not wanting to leave the gotcha; there are footnotes that say a structure may be required to locate greater than 25 feet from the ordinary high water mark when a flood hazard critical area exists on a site adjacent to Lake Sammamish or Phantom Lake. The reason the floodplain was not addressed as part of the Shoreline Master Program update, and the reason the issue is on the docket for the Council to reconsider, is the city has citywide regulations. Staff has heard the issues loud and clear: financing is a problem; there is a floodplain issue on Lake Sammamish; people have their lots flagged. None of those issues can be fixed with a code amendment. In each case a site-specific map amendment is needed, which individual property owners can do by seeking a letter of map revision from FEMA. The city could seek a lake-wide letter of map amendment should the Council choose to fund it, but flagged properties will never be dealt with through a shoreline overlay or any other critical area regulation.

Ms. Helland said another reason the floodplain issue has not been addressed is pending litigation involving a FEMA Biological Opinion. It is not known what the outcome of that litigation will be.

The city's shoreline regulations consolidate a lot of things for the benefit of city residents and for a variety of other purposes. The floodplain regulations in the code meet both the Growth Management Act requirement for flood hazards and the citywide obligation to maintain the National Flood Insurance Program under the policy adopted by the Council in 1978. To change that through the Shoreline Master Program avenue would certainly be out of scope. The Council has the issue on its docket, and it is not that they will not address it, it is just that the time is not right.

Answering a question asked by Commissioner Hamlin, Ms. Helland said the Commission will review its work program docket at the retreat on October 30. At that time the Commission will have the opportunity to indicate which issues should be given priority. The recommendation of the Commission will be carried to the Council in November and will inform their action to set the work program for the Commission for the next year.

There was a full discussion regarding the Commission's schedule of upcoming agenda items. There was agreement to put the conformance amendments on the agenda for the November 13 meeting. Staff agreed to meet with representatives from WSSA prior to that date.

Commissioner Ferris called attention to 20.25H.230 and the uses and development allowed within a critical area or a critical area buffer. He suggested a revision of subparagraph (g) should be retained and worded to read "Shoreline specific uses and development, where allowed within the shoreline overlay, see Part 20.25E." Ms. Helland concurred.

#### D. Subarea Plan Updates and new Neighborhood Boundaries

Mr. Inghram explained that in establishing the work program for the 2014 Comprehensive Plan update the Council identified a need to define a process to update Bellevue's subarea plans and the subarea boundaries. The current subarea plans have not been updated in a long while with the exception of Bel-Red and the tweaks under way in the downtown. The city does not have the capacity to go through and update all 14 subarea plans now; updating subarea plans is a big process that involves engaging the individual communities. Staff proposed, and the Council agreed, not trying to address the subarea plans while the Comprehensive Plan update is under way but to initiate a cycle of going through the plans starting in 2015 once the Comprehensive Plan update work is completed and based on an initial screening and with extensive community input to determine the prioritization of the updates.

Continuing, Mr. Inghram said in the past the city has had different boundaries for transportation management zones, for emergency management zones and for subareas. An attempt is under way to develop a map that better recognizes neighborhood areas as people see them currently and that better aligns with the other mapping work the city does. The thinking is that as the subarea plans are updated, the subareas would be merged into the new map. The new map would not take effect on Day One, but it would be adopted as part of the Comprehensive Plan update along with direction to move toward the new map as the update cycle proceeds. Comments on the new map will be sought during the current Comprehensive Plan update process.

Chair Tebelius commented that every subarea in the city is unique and whether or not the new map will accurately portray their boundaries is something that will take some investigation and community input. Mr. Inghram said staff certainly is open to hearing from the public their preferences and suggestions. The possible map changes include splitting Factoria and Somerset into separate areas, which has already garnered some positive reaction; merging Southeast Bellevue into the Newport Hills subarea; creating new areas for Sammamish and Cougar Mountain/Lakemont.

Commissioner Carlson said he would prefer to cease use of the term "subarea" in favor of calling them simply neighborhoods. Mr. Inghram agreed to look into that, though he pointed out that "subarea" is a term used in the Growth Management Act.

Mr. Inghram noted that the Council has directed the inclusion of two specific scoping requests. The first one came out of the Downtown Livability Initiative and involves looking at the jagged southern edge of the downtown boundary. Staff has been involved in researching the history of the Main Street corridor and how the border was formed, and that information will be presented to the Commission in due time.

Commissioner Ferris pointed out that feelings regarding the downtown boundaries run high on the part of both those who own properties there or live close to it. In the past the Comprehensive Plan amendments submitted for properties on the edge have drawn quite a lot of testimony about why the boundary line should not be moved.

Mr. Inghram said the second scoping request involves a small section of the Bel-Red subarea that is bounded by 156th Avenue NE, NE 25th Street, Bel-Red Road, and Northup Way. The area was included in the Bel-Red subarea in 2009 but residents of the Crossroads and Sherwood Forest neighborhoods have requested that it be put back into the Crossroads subarea for a

number of reasons.

9. OTHER BUSINESS - None

10. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, referred to page 131 of the packet and the potential neighborhood areas. He said he did know what the Northeast Bellevue subarea boundaries are currently, but the West Lake Sammamish Association stretches all the way north into Redmond along the Parkway. The logical boundary for the Sammamish subarea would follow that route. With regard to the floodplain, he said no one is calling for redoing the issue in some magnanimous fashion. Issaquah, Redmond and Sammamish all allow someone to do compensatory volumes for an extension into a floodplain as well as cantilevers over a floodplain, but as proposed the same will not be allowed in Bellevue because the staff are taking a restrictive view of how to apply the regulations. That will put Bellevue at a great disadvantage. Unless changed, property owners will have to take the legal route to seek proper application of the regulations.

~~Answering a question asked by Chair Tebelius, Mr. Nizlek said he understands the reluctance of Commissioner Ferris to open the issue. Anything that can be done to move things along without stumbling should be done. Every effort should be put into solving the issue of how it will be administered.~~

Ms. Stephanie Walter, 14418 SE 19th Place, said the emergency ordinance put in place by the Council is effective but not complete. It is puzzling that there is an interpretation that one or more related persons equals one unrelated person. Given that, a home in a single family neighborhood could have four mothers with their children all under one roof. That is in effect multifamily in a single family home.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said the critical areas regulations regarding trees and limbs is the stupidest thing she has ever heard of. Someone with a steep slope who leaves all their limbs and trees are asking for a slide. It may be in the critical areas ordinance, but maybe people involved in creating that ordinance did not know what they were doing.

Ms. Erica Tiliacos, 18707 SE Newport Way, Issaquah, spoke representing Save Lake Sammamish. She suggested it is unfair of the Commission to give shoreline stakeholders to provide testimony without giving others equal time. The WSSA representatives took more than 30 minutes of meeting time, but the general public is allowed from three to five minutes only. They made the claim that Redmond, Issaquah and Sammamish have all adopted certain provisions, but the real question is how those provisions are being applied. Sammamish went through the whole Shoreline Master Program process and followed that up with an update to their critical areas ordinance, all at the urging of shoreline property owners because the critical areas regulations were impacting them. The critical areas ordinance update has been completed but must be married to the Shoreline Master Program because the old ordinance is the one that rules within the shoreline area, so it will be necessary for them to get the Department of Ecology to adopt the new critical areas ordinance within the shoreline areas. If the state does not approve of the new regulations, the city of Sammamish will end up with two critical areas ordinances, one outside the shoreline areas and one inside the shoreline areas.

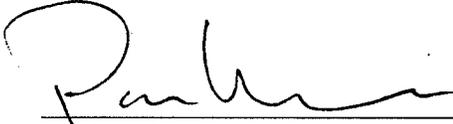
11. NEXT PLANNING COMMISSION MEETING

- A. October 30, 2013
- B. November 13, 2013

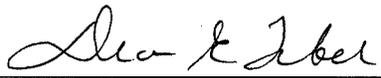
12. ADJOURN

A motion to adjourn was made by Commissioner Laing. The motion was seconded by Commissioner Hamlin and it carried unanimously.

Chair Tebelius adjourned the meeting at 9:52 p.m.

  
\_\_\_\_\_  
Paul Inghram  
Staff to the Planning Commission

1/22/2014  
Date

  
\_\_\_\_\_  
Diane Tebelius  
Chair of the Planning Commission

1/22/2014  
Date

\* Approved and corrected December 11, 2013

