

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
MEETING SESSION MINUTES

July 6, 2005  
7:00 p.m.

Bellevue City Hall  
City Council Chambers

COMMISSIONERS PRESENT: Chair Lynde, Vice-Chair Bonincontri, Commissioners Bach, Mathews, Orrico, Sheffels

COMMISSIONERS ABSENT: Commissioner Robertson

STAFF PRESENT: Kathleen Burgess, Mary Kate Berens, Michael Paine, Carol Helland, Department of Planning and Community Development

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:03 p.m. by Chair Lynde who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Robertson who was excused.

Chair Lynde welcomed new Commissioner Pat Sheffels.

3. APPROVAL OF AGENDA

The agenda was approved by consensus.

4. STAFF REPORTS – None

5. PUBLIC COMMENT – None

6. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None

7. PUBLIC HEARING

- A. Land Use Code Amendment  
– Critical Areas

Chair Lynde said the purpose of the hearing is to accept public comments on both the proposed ordinance and the Draft Environmental Impact Statement that was prepared for the critical areas update. She said the Planning Commission began its review of the city's existing regulations protecting critical areas following adoption by the City Council of the Environmental Element of the Comprehensive Plan in November 2004. Between that date and May 2005 the Commission held 14 study sessions, all of them open to the public, to consider the existing regulations,

information about the critical areas that exist in Bellevue, the functions performed by those critical areas, and how the existing regulations could be modified to better protect those areas. Throughout the process five key principles have been kept in mind: 1) the need for regulations to be Bellevue-appropriate; 2) the importance of neighborhood character; 3) the right balance between protections and the rights of property owners; 4) the need for a permitting process that is both predictable and flexible; and 5) the need for the update process to be inclusive of a variety of stakeholders.

Chair Lynde said the Commission anticipates conducting several additional study sessions on the topic to consider the public comments offered, to consider the details of the draft proposal, and to finalize the proposal and forward a recommendation to the City Council by the end of July. The Council is expected to begin reviewing the recommendation of the Commission in September.

Legal Planner Mary Kate Berens said the Growth Management Act (GMA) is the main planning statute for Washington State; it is the key reason the city initiated the process to update the critical areas regulations. Under the GMA, jurisdictions must designate both urban areas and rural areas, and must concentrate growth in the urban areas. Jurisdictions are required to protect critical areas, which are defined as streams, wetlands, shorelines, steep slopes, flood areas, and habitat that supports wildlife.

Critical area regulations were first put on the books in Bellevue in 1987 prior to adoption of the GMA. Those provisions have not been significantly updated since. Recently the state legislature amended the GMA to add a requirement for all jurisdictions to consider the best available science in developing policies and regulations to protect critical areas. Jurisdictions are also required to periodically review their Comprehensive Plans and development regulations to ensure consistency with the GMA. The first update was required to be completed by the end of 2004.

Ms. Berens said best available science is defined as science that can help inform decisions. It includes information about what kinds of critical areas exist in Bellevue, and what kinds of functions and values those areas perform. Functions and values is a term related to the role critical areas play in the environment and includes providing water quality benefits, flood control and habitat for wildlife. Critical areas also have certain aesthetic values.

The Land Use Code is the main city document that regulates private property. The changes that are under discussion are to the Land Use Code.

The State Environmental Policy Act (SEPA) is a state statute that requires jurisdictions to understand the environmental impacts of all actions taken prior to taking those actions. It serves as a tool for policymakers to use in understanding the distinctions between various alternatives.

The Planning Commission is a board that advises the City Council about things having to do with land use. The Commission plays a key role in all things having to do with land use and in providing recommendations about the Comprehensive Plan and Land Use Code. The proposed code revisions have been developed by the Commission. All public comments regarding the proposal will be considered by the Commission. The Commission will ultimately make a recommendation to the City Council, the body that has the final say. In addition to offering comments during the hearing, the public can submit written comments.

Ms. Berens said in the years since Bellevue adopted its first critical areas regulations, the science related to the field has changed and understanding has increased. The overall project goal for the work to update the regulations is to ensure that a number of factors are considered alongside the

best available science to make certain there will be both improved protections for critical areas and a better experience for landowners.

The proposal concerning regulations is only one component of the broader strategy to protect the environment. Other components include the provision of incentives for managing properties in ways that will benefit critical areas, and various city programs.

Ms. Berens said the best available science starts with the assumption that developments and uses near critical areas do create impacts. The removal of vegetation affects habitat, and development affects the amount and the rate of water that flows into water bodies. The best available science suggests regulatory tools for avoiding or lessening some of the impacts, the most important of which is the buffer, which is land adjacent to critical areas that is left undisturbed. To the extent possible, development should be kept away from critical areas. There are times, however, when development must occur within the buffer area or within a critical area, and in those cases the proposed regulations set forth performance standards that include best management practices to lessen the impacts. If there are impacts, mitigation is the tool that can be used to replace the functions and values somewhere else.

With regard to wetlands, Ms. Berens said the proposal includes a change to the typing system currently in use by the city. Wetlands categories are tied to their importance, the functions they provide, and the level of protection they deserve. The typing system currently in place was developed and is used only by Bellevue. It places value on the relationship of wetlands to a stream or other open water. Under the proposal, the typing system developed by the Washington State Department of Ecology would be adopted. It places value on wetlands based on habitat and water quality functions. The proposal includes changes to the buffers that relate to the various kinds of wetlands; for the most part, the proposal is to expand the width of the buffer areas. For the most protected wetlands in the city, the buffer could be as wide as 215 feet. For private properties, buffers will range between 40 feet and 120 feet. Under the current provisions, the most valuable wetlands are protected with a buffer of only 50 feet.

Similar changes to the typing system are contemplated for streams. The current approach places a lot of emphasis on the riparian habitat and vegetation within the stream corridors, whereas under the typing system developed by the Department of Ecology the classifications with the highest protections are offered for fish-bearing streams. Property owners will benefit under the proposed adoption of the state's rating system in that it will be easier to find consultants who are familiar with the typing system, and by being consistent both with other jurisdictions and the best available science. The buffers for streams are also proposed for expansion. Currently, the most protected streams have a buffer of only 50 feet, and under the proposal those streams would have a buffer of 100 feet.

Shorelines are also protected as critical areas under the GMA; they are also regulated under the Shoreline Management Act. The proposed changes are targeted to protecting the critical area functions and values of the shoreline. The buffer areas associated with shorelines are proposed to increase to 50 feet from the existing 25 feet. In addition, the regulations modify the rules relating to new docks. The city is not the only authority that has permitting authority over docks; they are also regulated by the state Department of Fish and Wildlife and by the Army Corps of Engineers. Those two entities have recently adopted what is called a Regional General Permit (RGP) which includes a set of standards for new docks; the RGP allows property owners to get an expedited permit. In an effort to streamline the permitting process, the proposal includes adoption of the provisions of the RGP, including regulations on the types of materials with which docks can be constructed, a requirement for open decking to allow light to shine through, and requirements on the width and overall square footage of docks. In all cases, the proposal allows for property owners to deviate from the standards through a site-specific study;

the same option is allowed at the state and federal levels.

The proposal also includes modifications to the standards relating to bulkheads and shoreline stabilization in line with new guidelines issued by the Department of Ecology under the Shoreline Management Act. The proposal is to limit new bulkheads to more natural solutions that incorporate rocks and large woody debris in conjunction with native vegetation as opposed to poured concrete or rockeries. If it can be demonstrated that it is not feasible to take the softer approach, poured concrete bulkheads and rockeries will still be permitted.

Ms. Berens said steep slopes and geologic hazards are critical areas regulated under the existing code and under the proposal. The most significant change is the addition of a toe of slope setback for steep slopes, which are slopes with a grade of 40 percent or more. Flexibility for property owners is increased in that slopes with less than ten feet of rise and which are less than 1,000 square feet overall are not regulated under the proposal. In addition, the ability to modify medium-sized slopes, those with rises of between ten and twenty feet, is allowed with a geotechnical report that demonstrates development can be safely allowed without harming any adjacent property. The setbacks from geologic hazards can under the proposal be modified if there is a geotechnical report showing a proposed development is protective of adjacent development, provided there is no wildlife function provided by the slope.

No significant changes are proposed to the floodplain regulations. There are, however, revisions to various general provisions. The first is the inclusion of citywide impervious surface standards. The total amount of impervious surface within a basin has an impact on streams and other critical areas by increasing erosion, affecting habitat, and increasing pollutants. The proposal establishes different impervious surface standards based on the zoning category involved, and the numbers were established based on the typical development within each zoning category. The typical single family land use district suggested impervious surface standard is 50 percent; in multifamily and commercial areas, the suggested standard is 80 to 85 percent.

Provisions for subdivisions with critical areas are included in the proposal under a process being called conservation subdivision. The tool is designed to ensure consistent management of critical areas on sites that can be subdivided into multiple building lots. The current approach does not include a requirement for critical areas to be set aside in separate tracts; the critical areas can in fact be divided into separate individual lots. Under the conservation subdivision proposal, the critical areas are required to be set aside in separate tracts to be jointly owned by the homeowners within the subdivision or acquired by the city for management. In recognition of the impact on the ability to divide the property, the proposal allows for modification downward to 65 percent of the lot size otherwise required by the zoning district. A number of design elements are contemplated to ensure compatibility between the conservation subdivision and surrounding development, including setbacks and lot configuration.

Ms. Berens said a number of provisions in the proposal are designed to protect property owners. The key benefit is the addition of flexibility to the code. The current code takes a one-size-fits-all approach; buffer widths are dictated and cannot be modified. Under the proposal, property owners can submit site-specific studies in support of demonstrating that something other than the standard is acceptable and will provide at least equal protections. The provision is most likely to apply to properties with significantly degraded critical areas or critical area buffers. The process allows for reducing the buffer size provided the smaller buffer is enhanced to ensure at least the same protections the larger buffer would yield.

The city is more than 90 percent developed. There is no expectation that all buffer areas will be turned back to native vegetation and remain untouched. The proposal includes flexibility for

property owners to use some of the buffer area in exchange for enhancing other parts of the buffer area. There is a recognition of the fact that property owners act as stewards of the critical areas and should be encouraged and assisted by the city in using and managing the areas.

Ms. Berens said there is no obligation for existing owners of already developed properties to comply with the new regulations, unless something about the way a property is used or developed is contemplated for change. Maintenance and repairs of existing structures is allowed, as is the continued use of properties. Where improvements or expansion of existing structures is planned, there may be a requirement to come into compliance, though in most circumstances only partial compliance is required. Under the proposal, there is a hierarchy established for how expansions of existing structures might happen, with top priority given to expanding away from a critical area. Second priority is given to expansion parallel to the critical area buffer. Expansion toward the critical area can be allowed if there is no other feasible option.

Ms. Berens said the city manages critical areas in a variety of ways. In some cases the areas are acquired and managed by the Parks Department as either no-touch areas or critical areas open to public enjoyment and education. The city also undertakes restoration and rehabilitation projects annually, including removal of fish passage barriers, restoration of stream habitat, and incorporates best management practices in streets cleaning and the use of pesticides and herbicides. There are a number of education programs the city undertakes in conjunction with schools, neighborhoods and interested property owners and citizens.

The question of whether the proposed approach offers the right balance is in part the focus of the analysis conducted for the Draft Environmental Impact Statement. The public hearing is required in part to accept comments on that document. A number of alternatives are analyzed in the DEIS, including the proposed regulatory alternative, and the city program alternative under which the current regulations would be kept unchanged and the city would increase its investment in acquisition, restoration and education projects so as to achieve a result roughly equivalent to the protections envisioned in the regulatory alternative.

The recommendation of the Commission will be forwarded to the Council for review in September. Following Council action, any changes to the Land Use Code will be effective December 1, 2005.

Motion to open the public hearing was made by Commissioner Bonincontri. Second was by Commissioner Mathews and the motion carried unanimously.

Mr. Dan Hardin with Jim Hart and Associates, 220 6<sup>th</sup> Street, Kirkland, said the proposal covers a broad range of topics, some of which are laudable and some of which show a lack of thinking through the issues. He restricted his comments to the proposals relative to shorelines, which he said fall largely into the latter condition, with the possible exception of the requirements for docks and everything on the water side of the shoreline. The proposal contemplates making massive portions of waterfront properties nonconforming by designating shorelines as critical areas; development along shorelines is currently subject to a shoreline setback of 25 feet, but under the proposal there is a no-touch area of 50 feet, plus the 25-foot setback. The Comprehensive Plan only mentions once the notion of including shorelines in the category of critical areas, and nowhere does the Comprehensive Plan discuss the implications of making waterfront developments nonconforming. Shorelines are in fact regulated under the Shorelines Management Act (SMA); the two state laws overlap somewhat but are in fact separate. No jurisdiction is being forced by GMA to implement critical areas for shorelines; some local jurisdictions are choosing not to. The SMA does not contain provisions for supporting its

regulations through the use of best available science; the concept is in fact deliberately fuzzy in the SMA to recognize that scientists themselves disagree on various points. The recommendations offered by consultants on best available science are at best general recommendations. The best available science for shorelines in fact suggests a range of between 16 feet and 300 feet of natural vegetation to filter runoff. The city's consultant has recommended a no-touch zone of 50 feet; it was one of four choices offered in a range of between 50 and 100 feet, and recommended conducting a lake-specific study. The consultant recommended a variable width buffer by way of allowing for more flexibility. The proposed critical area report mechanism will not offer the desired flexibility in that there are no standards for successful application of the report or standards for review of the document. The regulations proposed for shorelines are unfair to all waterfront residents. Making a whole class of legal property owners into a class of nonconforming property owners in one stroke of the pen is neither fair nor advisable.

Mr. Charles Klinge, 14104 SE 46<sup>th</sup> Street, said it would be impossible to respond in five minutes to a 38-minute staff presentation. He said the state Department of Ecology has been informing jurisdictions that they must act to regulate shorelines, but in fact the legislature has told them not to do so. The legislature (2003.321.1) has stated that critical areas within the jurisdiction of the SMA shall be governed by the SMA, and the critical areas outside the jurisdiction of the SMA shall be governed by the GMA. In other words, critical areas ordinances are not to be used to regulate shorelines until the Shoreline Master Program is updated, something that does not have to be done until 2009. The legislature also said shorelines of statewide significance may include critical areas, but shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance. The staff proposal makes all shorelines critical areas in direct opposition to the direction of the legislature. The SMA exempts single family residences up to 35 feet under certain circumstances. In addition, bulkheads are not regulated under the SMA. Making single family residences nonconforming by the way a critical area buffer line is drawn is a bad thing. Staff has tried to spin it positively. There is no best available science that says backyards should be turned back into critical areas; it will not create habitat. Existing developed backyards are not in fact critical areas; they do not serve as buffers. The city of Kent recently decided its regulations are sufficient and elected not to change them in line with the best available science pushed by the Department of Ecology; their conclusion was that the science is not directed to urban areas. Nowhere in the best available science is it said that development on a 40 percent slope is contraindicated. Development on such slopes has occurred all over Somerset and none of them have fallen off the hill. Steep slopes should not be called out as wildlife habitat given that all areas in fact serve as wildlife habitat. The idea of flexibility is therefore thrown out the window without any basis. Steep slopes should not automatically be classified as geologic hazards.

Ms. Judith Phinney, 17300 135<sup>th</sup> Street, Woodinville, said she decided to get involved when she heard mention of 300-foot setbacks under the King County approach. The King County Council had already decided on their ordinance the day it was presented to the public, so the public comments did no good. She warned the Commission that Bellevue residents will not see the proposed regulations as being fair. The state Attorney General will likely be helping people who have had their land rights taken away. County residents were told that the critical areas ordinance would only apply to rural areas, but now Bellevue is reviewing its regulations; what came to the rural areas is coming to the urban area of Bellevue. The proposed rules appear to just be a copy of the King County rules. It is unfair to ask existing property owners in an urban area to increase setbacks and not extend beyond the existing footprint. It costs big bucks to buy a house, and soon 60 percent of the people will not be able to afford a house. It is much less expensive to remodel a home, and many times the children must provide a home for the parents. Because of the regulations in the rural areas, however, many are selling and moving out. It is not a good idea to have rules that will remove families from their land. Some \$12.5 million was

spent on Longfellow Creek, but when the fish hit the creek they died. Bear Creek has been unsuccessful in increasing salmon runs. Planning has simply not been successful. Pure water does not mean more fish. The *Seattle Times* cited a study showing the heavily developed Duwamish Waterway in the Seattle industrial area obtained one of the best salmon runs in the area. The group called Rural Majority thinks an advocate is needed, but that is not the case, neither in the rural areas or in Bellevue. Each property owner should know how to take care of their property. The city should study ways to better do that and then ask the property owners to comply, not demand like Communists. Perhaps the city is interested in a for-profit billing because the city needs more money. Studies have shown that up to ten feet can still benefit a creek; it does not have to be 300 feet for potential habitat when there is not even any fish in the water. That is debatable science instead of due process. Best available science should not be allowed to rule over due process. The rules should be tried first on Bellevue public property, and then the residents should be asked to try them. It is not true that a five-acre rural property with one home is as valuable as a five-acre urban property with 20 homes; rural properties are losing value because the property owners are not allowed to use them for certain purposes. Horse owners are suffering from the new rules. In Washington State, all political power is inherent in the people, and government derives its just power from the consent of the governed. The government is established to maintain and protect individual rights. Bellevue should not attempt to take over the role of the federal and state government regarding shorelines. The constitution secures property rights, not the Department of Ecology.

Ms. Jane Hague, 13646 NE 37<sup>th</sup> Place, said the city of Bellevue has always been very thoughtful in implementing new policies and procedures, and in working collaboratively with its citizens and business owners. She urged the Commission to seek an adequate public process; two study sessions and a public hearing do not begin to meet the level of outreach that is necessary on something as important as the critical areas ordinance. The Commission should first have a major education and outreach to all neighborhood groups so they can feel they understand the proposal and have had an opportunity to respond. The city should also make sure it has a map of all sensitive areas; absent proper mapping, the city can come off appearing to be reactive. Everyone has a right to know in advance what their status is. The city should move slowly with regard to waterfront issues and impervious surface standards. Bellevue must comply with the GMA, but it must first protect private property rights, promote affordable housing, and foster economic development; clearly there must be a proper balance found. The citizens should be educated and well informed, and the city should not skimp on its public process.

Mr. Tom Kinsman, 829 134<sup>th</sup> Avenue NE, said he has appreciated his contacts with city staff and has been impressed with their quality and responsiveness to questions asked. He allowed that his property will be greatly impacted if the current 50-foot setback is increased to 100 feet. The effort to add flexibility to the ordinance is appreciated. One option would be to simply apply flexibility to the ordinance that is already in place in Bellevue. He said Kelsey Creek flows through his property. The creek has caused significant erosion in recent years due to high water flows. The result is a bank with a 12-foot vertical side that is quite hazardous. It appears that fixing the problem will cost about \$60,000. Staff has said peak flows and the resulting flooding have been mitigated by the retention ponds Bellevue has put in, and by the drainage retention tanks required for new development. The fact is, however, those same features create a situation whereby significantly high stream flows occur over a longer period of time, and that is likely the cause of much property damage. There may be nothing in the proposed update that will mitigate those stream flows. If that is the case, the new rules must be seen in a negative light. He said his property will be further encumbered by the increased setback, and the erosion will continue which will cost a significant amount of money to repair. Bellevue has an underlying policy to use Kelsey Creek as a storm drainage facility, whether or not it is called that. New development must put in retention tanks, but the water does not stay in those tanks forever; it meters out in the streams, which are thus drainage facilities.

Mr. Steve Kelly, 416 156<sup>th</sup> Place NE, asked to see the Land Use Code as it currently is alongside the proposed changes. He asked if the rules regarding slopes are applied differently to loose soils and hardpan. He said the downspouts on his home are channeled into dry wells, not down the street. Neighborhood signs do not bring in new homeowners; the signs should all be similar so as to be recognizable and not just another piece of landscaping. It will not be possible to save all animal species; species come and species go, and that migration of wildlife cannot be stopped through regulations. He quoted John Adams by saying “The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

Mr. Jeffrey S. Jones, 35316 28<sup>th</sup> Avenue South, Federal Way, said he is a professional wetlands scientist and spoke representing Mr. Ed Urquhart, owner of the property at 2045 120<sup>th</sup> Avenue NE. He said the allowed wetlands impacts and mitigation requirements of the proposed code are not an option for most properties in highly developed urban communities. The buffer requirements are larger than those that currently exist, and they exceed the sizes of many small urban properties. Extra land suitable for the creation of wetlands would need to be available to meet the large mitigation exchange ratios. Mr. Urquhart has a hydrologically isolated wetland system dominated by black cottonwood and Himalayan blackberry. Two sides of the triangular wetland have no buffer. Under the proposed code there would have to be a much larger buffer, one that could only be reduced to a minimum of 35 feet with buffer averaging. The minimum buffer, however, cannot be met, thus impacts to the existing wetland buffer would not be allowed even though the wetland could benefit greatly from mitigation in the form of vegetative enhancement. If the code were to allow impacts to isolated wetlands and wetland buffers when significant improvements to wetland functions would occur from vegetative enhancement and/or other mitigation, it would be a win-win situation for the property owner, the environment and the public. Use of the Washington State Department of Ecology methods for assessing wetland functions for pre- and post-mitigation functional assessment of the wetland should be used. The method accounts for the anticipated positive and negative changes to a wetland so opportunities to improve a wetland are not missed. It must be recognized that restoration of degraded wetlands will not occur without the willingness of property owners and their money. There are a number of isolated wetlands in Bellevue. The public should know that going through the process will achieve the desired end result. Studies cost money and time, and if the end result remains an unknown, many property owners will not opt to go in that direction.

Ms. Michelle McKee, 4430 149<sup>th</sup> Avenue SE, said she has been involved in the environmental movement since the 1970s. She said she is an electrical engineer with a minor in environmental engineering. She said it has been her experience over the years that regulations are imposed without using real science or the best available science; most regulations are crafted to accommodate the needs of special interest groups. Telephone poles in Colorado have been required to be green, and lead has been removed from gasoline even though the problem with gasoline is not the lead but in the mining of it and its transportation in open train cars. Someone wanted a patent for unleaded gas, however, so the law was passed. Those kind of things should be considered. The stability of slopes depend totally on geology, on the rock structure, and on the type of foundation used. It is possible to build a building on any slope with the right foundation; it has been done for many years and still continues. It should be kept in mind that when things are regulated too much all of the solutions are prohibited. Requiring certain kinds of grasses and vegetation to be planted often means that the natural plant species are choked out, and problems result because the soil is not held as well. Too many times the environment has been damaged by regulations. If a property owner sees something is not working, they can change it, but it takes years to change a regulation that is not working. Catastrophic forest fires have resulted solely from environmental regulations. The regulations do not take into account that humans are a part of nature and are taking care of the environment.

Mr. John Albertson, address not given, stated that Bellevue has lost 50 percent of its tree cover in the last 20 years. The proposed regulations are coming to the scene too late. Bellevue was once green but is now a noisy place divided by larger and wider freeways and roads. There are few people left who have any horse sense. Bellevue is a great place to live, and there is still the potential for returning to where it came from. The issue of trees must be addressed. There are people with agendas focused on their properties. The proposed approach goes a long way toward getting the debate going. The Department of Planning and Community Development has come a long way in recent years in embracing new sciences and technologies. There is, however, a bit of deck-stacking going on with regard to the proposed flexibility. Section 20.25H.070 uses broad definitions for new uses that are very unwelcome in terms of preserving wetland buffers; they allow too much of a gimme that may not have any basis in best available science. The Commission should review the language of the proposal more in-depth and shy away from furthering agendas.

Ms. Leslie Lewwallen, 5811 116<sup>th</sup> Avenue SE, said the GMA calls for amendment of critical areas ordinances only where necessary. The staff presentation did not offer any proof that the existing regulations are ineffective or not working. Bellevue should follow the lead established by Kent in saying further regulations are not needed. The proposal is very similar to the King County rural stewardship program which is intentionally written to be squishy. Under the current land use laws, the onus is on the city to show that regulations are necessary. By allowing flexibility, the burden is improperly shifted away from the city onto the property owner in violation of the law.

Ms. Nan Campbell, 480 West Lake Sammamish Parkway NE, said she served as chair of the critical areas citizens advisory committee that recommended the policies the Commission is reviewing. The CAC met for a year and a half and operated with a wide range of members with a broad representation. The committee worked well together and had excellent assistance from staff. She enthusiastically supported the proposed regulations; they appear to offer the right balance of environmental protection and programs that recognize Bellevue as an urban center. She said she was very pleased to see how many people turned out for the public hearing and commended the Commission and staff for the work that will take Bellevue into the future and provide for future generations.

Mr. Ted Yellman, 11614 SE 49<sup>th</sup> Street, agreed with the comments of Ms. Campbell. He said there is a need to protect critical areas for future generations. It may impact some people, but there is no evidence that it will significantly affect existing properties. A 50-foot buffer is a reasonable thing to ask for on new development. No one has the property right to use their properties in ways that destroy the fish or the ground water.

Ms. Stacie LeBlanc Anderson, 214 110<sup>th</sup> Ave SE, asked if Bellevue Way could be called an extension of a highway of statewide significance. If that could be done, the city could be exempted from mitigating noise, wetlands, shorelines, endangered species or other impacts brought about by development or transit. She asked staff to explain the circumstances under which the action could be possible, or if it is not possible, and to cite the appropriate WAC, federal code, city code, RTID documents, or any other applicable documents in support of the city's decision. She said she is concerned about it because of the draft interest statement the City Council amended and adopted part of. It also all ties into the critical areas ordinance. Revising the critical areas ordinance from the existing code will give too much flexibility to the city to make changes to the near wetlands that could have sweeping impacts to the wetlands, shorelines, endangered species, and to the adjacent neighborhoods and residents. The wetlands belong to all citizens and should not be impacted to provide transit options that should be brought into the Downtown by the recent Access Downtown project that cost the taxpayers \$139 million. The

bulk of the traffic should be brought in from NE 4<sup>th</sup>, NE 6<sup>th</sup> and NE 8<sup>th</sup>, not by expanding lanes or using HCT into the wetlands on Bellevue Way near Mercer Slough, impacting the quality of life or endangered species and endangering neighborhoods. The city should be a leader in protecting and enhancing both the wetlands and the neighborhoods, and the critical areas ordinance language should not be changed to create an even more unbalanced field while weighing development, transit and commerce and existing neighborhood future interests.

Mr. Glenn Oliver, 637 Bellevue Way SE, said his concern with the proposed changes is not that they will not protect the environment but that the city in the past has gone to great lengths to expand its control over the use and occupancy of residents. For an example, he said there is a storm drain running through his property which the city calls a creek. There are no fish present, nor will there ever be, because the only time there is water in the drain is when it is raining. He said he has a covenant with the city for 25 feet, and if the city wants to expand it he will be forced to rescind the covenant. Having the drain classified as a riparian corridor is a problem. The site does not show up on any sensitive area map. If the current proposal is nothing more than a land grab on the part of the city, state law provides that the property be acquired through the proper channels. The drain acts to filter and cool the runoff water before it enters Lake Washington, which is good, but it is not a riparian corridor and it does not support any type of habitat. There is no reason for having to suffer the burden of an additional buffer for an intermittent stream that flows directly to the storm drain. He said it appears his only alternative is to take legal action against the city.

Mr. Don Sherrard, 5027 159<sup>th</sup> Place SE, said he served on the critical areas CAC as a scientist and environmentalist. He allowed that while the science used is not perfect it is the best that is available. Public comment was invited on numerous occasions during the nearly two-year study. The proposal is well supported and documented to the extent possible. The person who said planning has not helped should compare Los Angeles or San Jose to Bellevue. He said several years ago when he lived in King County a ditch was approved for location above his property; during the next storm the water ran directly through his garage. It has been argued that property owners should be able to use their properties as they see fit, but that is not always the case; there must always be a recognition of possible damage to the community and to neighboring properties. The state, while responsible for enforcing the Shoreline Management Act, does not effectively do so; the group Save Lake Sammamish a few years ago had to sue the state to enforce the Act to keep developments around the lake from dumping pollution directly into the lake. Good planning is absolutely essential. The proposed document is not perfect but is a good step. The claim that the proposed increase in buffer size will impact existing property owners is not true; no one will have to move their homes or keep from remodeling them.

Mr. Michael Gordon, 705 Shoreline Drive SE, said there is a very steep slope some 75 feet away from his house. About 15 years ago the slope slid and hit the house below it, knocking it off its foundation. About 12 years ago there was a second slide that narrowly missed another home. People living at the toe of slopes in the Puget Sound area have been killed as a result of slides; numerous homes have been lost. He urged the Commission to move ahead with plans to protect steep slopes and not to make any move that will weaken the current protections. The dangers are real.

Mr. Frank Seldon, 14021 SE 10<sup>th</sup> Street, allowed that the proposed critical areas ordinance will not apply to his property in any way. He suggested that much of what is being proposed is not necessary. While it may be true that the state does not enforce the Shoreline Management Act as it should, it still has the jurisdiction to do so. The advice of Mr. Klinge offered earlier in the public hearing relative to whether shorelines should be included in the ordinance at all should be carefully considered. No changes to the current ordinance are necessary. However, if changes are to be made, they should be along the lines of the staff proposal relative to the treatment of

existing residential developments; existing homes should not be made nonconforming. There should also be other ways to address runoff outside of changing the impervious surface limits.

Mr. Dave Douglass, a resident of Snohomish, said he works as a permit coordinator for waterfront construction. He allowed that the land use staff in Bellevue are wonderful to work with. He questioned how an exemption for a pier repair or bulkhead can be conditioned if it is categorically exempt in the WAC from requiring a permit. He also questioned why Bellevue is trying to assume the responsibilities of the state and federal governments in protecting critical habitat and protected species. The proposal appears to simply duplicate the process. Several of the requirements proposed for a simple pier repair will knock a project up a level at the Corps of Engineers and require a higher level of permitting there. Pier repair that involves all above water work, not touching the pilings, is called a no effect by the Corps of Engineers; they do not even require any grating. The proposal for Bellevue will require property owners to narrow the nearshore walkway to only four feet wide and install grating. State and federal review agencies work with applicants at no cost, but Bellevue charges for its review work. The Regional General Permit offered by the Corps does make things easier, but they are only suggested guidelines and not requirements; applicants are still allowed to pursue individual permits under the Corps guidelines. If a critical areas report done by a professional biologist is present to city staff with a rendering of not likely to affect listed species, that recommendation should be accepted, but there is nothing in the proposal that says it will be. Currently, such reports generated at the expense of a property owner goes to the Corps, to US Fish and Wildlife, to NOAA and to WVFW, and they argue about it and claim it is a biased report. The proposal relative to the maximum size on piers should be removed. The RGP limits a single family residence pier to 480 square feet; for joint use the limit is 700 square feet, and for moor owners 1,000 square feet. That does not take into consideration that in some shoreline areas the water depth only gradually increases. In one instance the water depth at 228 feet from the shore is only six feet deep; under the proposal, the pier would have to be four inches wide. The Corps guidelines were written based on best available science, but they do not work for everyone. In nearly every case, the best available science reports being used by government to craft regulations were funded by government agencies with a desired outcome.

Ms. Sarah Schrock, 12604 NE 7<sup>th</sup> Street, offered her support for the staff approach regarding the conformity and nonconformity of existing residences. She allowed that there should be flexibility built in, but pointed out that by allowing flexibility the level of discussion around each individual item will be increased, making the permitting process longer and more cumbersome. It would be better to take the specific flexibilities and formalize them. Residents could then present their plans within the specific flexibility. Expansions of existing dwellings away from or into critical areas are allowed under the proposal, but that flexibility should be more specifically spelled out.

Mr. Lou Phinney, address not given, said his advice could be summed up in a single word: Don't.

Mr. Steve O'Donnell, address not given, suggested that some credit should be given for all of the landscaping private property owners have installed. He said when he purchased his property the vegetation had been completely stripped off of it with the exception of a few fir trees. Since that time thousands have been spent on landscaping. When addressing the no touch zones, some credit should be given to homeowners who have developed their properties; there should be some formula to use. He also suggested that there should be some baseline counts for the fish that are to be protected. There should also be some clarity with regard to the purpose and goals of the regulations. If the goal is to increase the number of fish in the streams, there will need to be some baseline figures developed so it can be known the regulations are working. He asked if there is any best available science documentation that shows making the proposed changes will

in fact increase the number of fish in the streams. He voiced concern over requiring a designation on a deed of trust or title to property and requiring the recording of a covenant or change in status of the title or deed of trust, either prior to or at the time of a sale, that would require disclosure on Form 17 that there are new restrictions or covenants, or that the property has a nonconforming status. Property owners should be listed as an endangered species. They pay thousands per year in property taxes, and changes to property designation should be made very carefully; grandfathering existing properties might be the best approach, or applying the new regulations only to new development. The Commission was urged to exercise great restraint.

Mr. Joel Ulrich, 1060 134<sup>th</sup> Avenue NE, said his property lies along Kelsey Creek. He said every time there is a heavy rainstorm the creek rises very quickly. When the home was purchased in 1968 there were a lot of salmon in the stream, but they are largely gone. The storm runoff from the area shopping malls all ends up in Kelsey Creek, and it happens quickly. When the holding ponds fill up, the water overflows directly into the creek. If the city is serious about restoring habitat, development of the shopping malls must be stopped. To make property owners the villains is missing the point entirely. If the water runoff from the commercial areas is not treated before it flows into the creek, there will never be any fish in the stream. The Commission was encouraged to look at the big picture.

Ms. Molly Malchow, 148<sup>th</sup> Avenue NE, said she is a new Bellevue resident living alongside Kelsey Creek. She said she is concerned about erosion and preserving wetland areas. Before any final decisions are made, there should be more opportunity for public comment. Great effort should be put into finding a solution that will work for everyone.

Mr. Doug Ackerman, a resident of Kirkland, agreed with the comment of Ms. Hague regarding the need to map all critical areas. The changes being proposed are scary to many property owners, yet it is clear that even the city is not sure how the regulations will ultimately affect people, or even who is going to be affected. There has been talk that the proposal will not impact current property owners, but that appears to be narrow minded. Any restrictions on the kinds of remodeling that can be done will have a negative impact on property values. Properties are in fact investments, and the proposal could severely damage those investments. The city should be very careful in analyzing how the proposed regulations will impact people.

Ms. Lucy Acoby, a resident on West Lake Sammamish Parkway, agreed with the previous speaker. She said the emphasis on improving the environment and safeguarding critical areas should be evenly distributed to all property owners, including commercial properties. The costs should not be shouldered solely by the property owners adjacent to critical areas.

Motion to close the public hearing was made by Commissioner Orrico. Second was by Commissioner Bonincontri and the motion carried unanimously.

## 8. STUDY SESSION

### A. Land Use Code Amendment – Critical Areas

Ms. Berens reminded the Commissioners that staff will respond to each comment offered by the public at the July 20 study session. The responses will also be posted on the website.

Commissioner Mathews allowed that there appears to be some confusion regarding the shoreline requirements. He suggested that clarifications in that area would be helpful.

Commissioner Sheffels noted that several who spoke were concerned with Kelsey Creek and asked if the questions relating to Kelsey Creek should be addressed separately from the rest of the regulations. Ms. Berens said staff will work with the Utilities Department to get some of those questions answered.

Answering a question asked by Chair Lynde, Mr. Paine said the Downtown area is divided into two drainage basins. A significant portion of the drainage passes through a bypass pipe into Meydenbauer Bay, and the rest of it is routed to Sturtevant Creek. Chair Lynde observed that even though the Downtown is exempted from the critical areas update, the point of entry has a huge impact on water quality and asked if the issue is addressed anywhere in the ordinance. Mr. Paine said of all the heavily paved areas in Bellevue, the Downtown has only a limited impact on riparian systems. There is an obvious impact on Sturtevant Creek and will continue to be as Overlake Hospital develops. A real problem is those areas of the city in which there is a lot of impervious surface that was never built with appropriate detention. The current drainage regulations are aimed at controlling peak flows, and that does not necessarily completely address erosion that occurs with smaller storms; that would require a whole new set of drainage regulations. The Department of Ecology has in fact promulgated those regulations and the city is discussing whether or not to adopt them as part of the National Pollution Discharge Elimination System permit process. Retrofitting, however, is enormously expensive and would have to be undertaken by government to make it happen.

Ms. Berens said the city program alternative could have retrofitting as one element. If the alternative gets fleshed out further at the Council's direction, there will need to be consideration given to how projects would be prioritized. It could be that given the circumstances in Kelsey Creek and other particular drainages those projects should be given priority before any true habitat restoration can happen. The issues of stormwater runoff and water quality are addressed in a separate code that is managed by the Utilities Department. Those provisions are being looked at on a different track.

Mr. Paine observed that in some instances it may be less expensive to buy out some existing property owners than to attempt a retrofit to the level necessary. That is because installing detention in developed areas is unbelievably expensive.

Commissioner Orrico asked why the city does not have better mapping of all critical areas. Ms. Berens said mapping the critical areas for which there is data is not difficult to accomplish. Part of the complexity, however, is that the proposal includes changes to the typing system, and the current mapping is based on the typing system in place. The city's maps are far more accurate than the King County maps. Mr. Paine added that what is missing from the maps is the majority of wetlands on private properties; there has never been money budgeted to get that information digitized and into the GIS system. The stream study done in 2001 has put the majority of the streams into the database. People know if they have a stream on their property so it is no revelation to them to see them on a map; what they want to know is how big the buffer is going to be. In most cases staff can tell them, but not in every case, especially in those cases where the stream will need to be retyped. Very little is known about where the wetlands are or what their typing is. The only wetlands data the city has is from the National Wetlands Inventory and city of Bellevue ownership. Under the current Bellevue typing system, even a ditch that is carrying stormwater is considered at least a Type C stream; the new definitions are different and ditches carrying only stormwater may not be typed as a stream.

Commissioner Bach asked if there is a strikeout version of the critical areas ordinance available that could be posted to the web for citizens to view. Ms. Berens said a strikeout version was not produced for 20.25H because essentially everything would be lined out. There has been a complete reorganization and there are new definitions and terminology. A matrix comparing the

existing regulations with the proposed regulations has been produced and will be posted to the website. For the shorelines, subdivision and general ordinances, strikeout versions are available.

Commissioner Bach asked what approach the city of Kent took relative to updating its critical areas ordinance. Ms. Berens said staff has not read their ordinance yet. She said she spoke earlier in the day with staff from the Department of Ecology and found out that Kent essentially determined that no changes were necessary. The Department of Ecology, however, has brought suit against Kent before the Growth Management Hearings Board and it will be some time before that issue plays out. The position of Kent was that based on other GMA goals and balancing, their critical areas provisions did not need to be revised. Mr. Paine added that Kent already had a 100-foot setback for its high-priority wetlands, which is twice what Bellevue's is currently. They may have felt that their current approach is close enough to what the best available science calls for. In addition, they have complete maps and know the location of every single wetland in their jurisdiction.

Commissioner Bach asked where the responsibility rests to determine if building on a steep slope should be permitted. Mr. Paine said the ordinance specifies a 50-foot setback for 40 percent slopes, but the setback can be adjusted based on a geotechnical report, provided the steep slope does not also provide wildlife habitat. Setbacks on steep slopes are routinely adjusted down to 15 to 20 feet when there is a more in-depth investigation.

Commissioner Bach said he does not completely buy into the notion that a nonconforming status hurts property values. Ms. Berens said there are impacts in terms of regulations when a use is nonconforming. If a structure is nonconforming to a setback under the proposed regulations, the ability to expand is impacted in certain ways; for one thing, the amount of remodeling that can happen without coming into full compliance is limited. If a proposed remodel exceeds 100 percent of the replacement value, the rules would require the house to be moved out of the setback to the extent there is additional buildable area on the site. With regard to the impact of a nonconforming status on property values, the County Assessor's Office has said value is based solely on comparable sales. Many believe there is an impact however in terms of having to disclose a nonconforming status to potential purchasers; the perception on the part of some property owners is that a nonconforming status brings with it certain complications.

With regard to seeking additional public comment, Commissioner Bach said the Commission has held a number of study sessions over the last six months and has additional study sessions scheduled in the near future. Prior to that, the Critical Areas CAC met for nearly two years. After the Commission forwards a recommendation to the City Council, they will hold additional open sessions and will take comment from the public. He suggested that additional public outreach is not necessary. Ms. Berens said the city made a mailing to all of the property owners who might be affected based on the critical areas mapping that is available. All interested parties identified through the CAC process also received the mailing which directed the recipient to the city's website for more and updated information. The information on the website has been updated following each Commission study session during which the draft regulations were being crafted. Once the draft was in hand, an additional direct mailing was effected announcing the draft and the open house event. A third mailing was sent out advertising the public hearing. There have been multiple articles in *It's Your City* as well, and information has been supplied to all active neighborhood associations. There has been a steady flow of information to the CAC members to keep them up to date. The City Council has been regularly updated, and there have been two briefings offered to the East Bellevue Community Council, three briefings before the Environmental Services Commission, and briefings given to the Parks and Community Services Board.

Commissioner Bonincontri asked if there are concrete goals to be reached by enacting the new

legislation, such as increasing the fish population above a certain point and improving habitat in some measurable way. She suggested that if there are such goals, there will need to be some benchmark against which to measure progress. She also suggested that simply having the city buy out the property owners along Kelsey Creek and allow erosion to continue will not help the environment in any way. Mr. Paine said his comment was in recognition of the fact that Kelsey Creek needs its space in which to move. The problems will not be solved without spending vast amounts of money; either the stream must be given more room to move, or something will have to be done about improving the drainage. New construction is required to build large underground tanks into which surface water is channeled to be metered out slowly and eventually back into the stream to mimic more natural conditions. To do the same for all existing development would be very expensive.

With regard to public outreach, Commissioner Bonincontri suggested the city has done a very good job. It is not possible to reach every single person who needs the information; it is difficult to get people to attend a study session or open house until the bulk of the work is done and a recommendation is on the table. No additional public outreach is needed.

Commissioner Mathews suggested the responses from staff to the issues raised should be put into a matrix format in a single document and posted to the website.

Commissioner Orrico asked staff to provide an extensive legal analysis of the issues surrounding shorelines. Ms. Berens said she will do that, adding that staff is secure in the positions taken.

Commissioner Orrico asked why wildlife habitat was added as a criteria for steep slopes. Ms. Berens said the issue is habitat for special status species, not for all wildlife. Bellevue has a long history of keeping such slopes free from development and as such they provide a lot of the wildlife linkages throughout the city; that could be lost if modifications are permitted. The GMA recognizes habitat as a critical area. Commissioner Orrico suggested calling out the habitat issues separate from the steep slope issues.

Commissioner Orrico agreed that no additional public comment is necessary unless additional interest has been generated.

Commissioner Sheffels concurred with the call to have the staff answers folded into a single document and posted to the web. She said urban legends get started through misinformation, and direct answers to misstatements should be crafted and made available for everyone to see.

Chair Lynde said she could see no reason to extend the public process. She suggested that the link to the webpage where the updated information is posted should be made more prominent on the city's homepage. She added that the proposal includes additional limits on impervious surfaces, but there is nothing in the documentation that explains why that is necessary, which is that the action will spread the responsibility widely.

Chair Lynde asked if the city charges for consultations. Mr. Paine said staff time spent answering questions at the permit center is paid for out of the general fund budget. The permit fees are established in part based on the amount of time it will take staff to process them. For everything else, applicants must make a deposit and they are charged an hourly fee. Most predevelopment work is handled under a predevelopment permit which includes two hours of consultation time. Chair Lynde stressed the need for the city to develop materials to assist property owners in doing their own research where flexibility is allowed in order to keep the costs down.

Chair Lynde asked if there is a need to disclose critical areas on Form 17 and recording them on

the title. Ms. Berens said she will have to research the Form 17 issue further. She allowed that Bellevue does not require the recording of critical areas and buffers on the title; other jurisdictions do, however. Where there is critical area flexibility allowed, there may be a need to record something on the title.

Commissioner Bach noted that no neighborhood groups were specifically represented during the public hearing. Ms. Berens said all of the neighborhood groups received information regarding the process and the recommendation.

Commissioner Sheffels pointed out a typographical error on page 13 of 35 under landscape features, noting that "...by not..." should read "...but not..."

Commissioner Sheffels called attention to page 23 and the section requiring 50 percent native species vegetation for parking lots. She pointed out that often vegetation for new construction is coordinated with the architecture. There should be some approved species listed and more flexibility allowed. Ms. Berens said she will bring back additional information regarding how the vegetation requirements work.

9. NEW BUSINESS

A. Election of Officers

Commissioner Mathews nominated Commissioner Bonincontri to serve as Chair. The nomination was approved unanimously.

Commissioner Orrico nominated Commissioner Mathews to serve as Vice-Chair. The nomination was approved unanimously.

B. Reports to City Council

Ms. Burgess noted that the Council has requested regular reports from the Commission and she suggested rotating the responsibility among the Commissioners.

Commissioner Bach volunteered to give a report during July, and Commissioner Orrico agreed to give a report during August.

10. APPROVAL OF MINUTES

A. March 30, 2005

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Mathews and the motion carried without dissent; Commissioner Sheffels abstained from voting.

B. April 20, 2005

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Bach and the motion carried without dissent; Chair Lynde and Commissioner Sheffels abstained from voting.

C. May 18, 2005

Motion to approve the minutes as submitted was made by Commissioner Mathews. Second was

by Commissioner Bach and the motion carried without dissent; Commissioner Sheffels abstained from voting.

D. May 25, 2005

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Mathews and the motion carried without dissent; Commissioners Bonincontri and Sheffels abstained from voting.

- 11. OLD BUSINESS – None
- 12. PETITIONS AND COMMUNICATIONS – None
- 13. ADJOURNMENT

Chair Lynde adjourned the meeting at 10:09 p.m.

\_\_\_\_\_  
Staff to the Planning Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair of the Planning Commission

\_\_\_\_\_  
Date