

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
MEETING MINUTES

July 20, 2005
7:00 p.m.

Bellevue City Hall
City Council Conference Room

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

COMMISSIONERS ABSENT: Commissioners Robertson, Sheffels

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:05 p.m. by Chair Bonincontri who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioners Robertson and Sheffels, both of whom were excused.

3. APPROVAL OF AGENDA

The agenda was approved by consensus.

4. STAFF REPORTS – None

5. PUBLIC COMMENT

Mr. Dan Hardin, Jim Hart and Associates, 220 6th Street, Kirkland, strongly encouraged the Commission to support the vesting rule for short plats as recommended by staff. He also proposed that the consultant hired by the city to focus on shorelines should be retained again to better define the purpose of the shoreline critical area. The change could lead to a better definition of the buffer and what could be done to enhance the buffer. The idea would be to encourage shoreline property owners to do whatever it takes to enhance buffer areas to meet the goal of the critical areas by allowing some flexibility in the redevelopment of existing homes.

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

7. STUDY SESSION

- A. Land Use Code Amendment
– Critical Areas

Legal Planner Mary Kate Berens briefly reviewed the schedule, noting that Commission meetings focused on the critical areas ordinance are slated for July 27 and August 3. She said the final transmittal memo will be ready for review the first meeting in September. Time is scheduled with the Council to begin their review of the ordinance on September 26.

Ms. Berens worked through the comments made by citizens at the July 6 public hearing shown in matrix format in the packet. With regard to comment 1.a, she clarified that the proposed buffer for shorelines is 50 feet with no structure setback; the current setback is 25 feet. The comment is focused on impacts associated with nonconformity in the shorelines, and Ms. Berens said the city does not have the tools available to know exactly how many parcels would become nonconforming with the proposed buffer change. In rough numbers, there are 30,000 single family parcels in the city; of those, only 840 are vacant, and about 250 are redevelopable. There are some 1,000 multifamily parcels in the city, of which 30 are vacant and 30 are redevelopable. There are about 1,300 commercial properties in the city, of which about 50 are vacant and 120 are redevelopable. A large majority of the vacant and developable parcels have critical areas on them; almost all of the vacant and redevelopable single family parcels have critical areas of one type or another, and the same can be said for most of the multifamily and commercial sites.

Ms. Berens allowed that the proposed rule changes would have an impact on the vacant and redevelopable properties, and to some extent an impact on the properties that are already developed. In the case of smaller wetlands or lower order streams, it could be that even with an expanded buffer many of the houses will not be nonconforming because of the way the site is developed. The approach outlined by the Commission for establishing buffers is based on the best available science, and any existing structure lying within a buffer area would be subject to the nonconforming rules; remodeling such structures could trigger compliance with the new regulations to the extent possible.

Ms. Berens said the King County Assessor's Office does not take into account issues of nonconformity when assigning value to a property. However, there is the public perception that a nonconforming status does carry with it impacts. In recognition of that, the staff approach of drawing the buffer lines around existing structures was developed; under that approach, no structure would be rendered nonconforming. The rules for remodeling under the Commission approach track the rules that apply for nonconforming structures that exist in other parts of the Land Use Code; the staff approach is more lenient in terms of critical areas nonconformance. She urged the Commission to adopt the staff approach.

Answering a question asked by Commissioner Mathews, Ms. Berens said under the staff approach the key difference would be where a remodel is anticipated. There would still be a limit on expanding further into a buffer area, which is the same as under the Commission approach. There would not, however, be a requirement to come into full compliance where a remodel value exceeds the 100 percent threshold.

Ms. Berens allowed that under either scenario there will need to be a proactive public education program initiated.

Commissioner Lynde asked if there is a threshold for how much of a structure would need to be over the line before calling it nonconforming. Ms. Berens said the code is written in an either/or format; if any part of a structure crosses the line, the entire structure is nonconforming. Commissioner Lynde said if the Commission approach is chosen, a percentage threshold should be included in order to be more reasonable.

There was consensus on the part of the Commissioners to adopt the staff approach.

Ms. Berens said several people questioned why the city is choosing to regulate the shoreline as a critical area when the Shoreline Management Act regulates the shoreline. She explained there was a Growth Management Hearings Board case which indicated that shorelines are critical areas if they provide critical area functions, such as fish and wildlife function. The shorelines in Bellevue do provide those functions. The case went on to determine that where a jurisdiction fails to consider in its critical areas ordinance the best available science, and to develop regulations that protect the shoreline for its critical area functions, it has failed to comply with the Growth Management Act. In response to that case, the legislature in 2003 passed a law which says at the time a jurisdiction does its Shoreline Management Act update, it can regulate the shoreline critical areas under its shorelines regulations, but those shoreline regulations must provide at least as much protection to the shoreline critical area as the GMA critical areas regulations do. Under the guidance of the state Department of Ecology, the determination was made that until Bellevue does its shorelines update it is required to protect shoreline critical areas with regulations that reflect the best available science. The intent is that rules being modified through the critical areas update process will also be consistent with the shoreline guidelines so that when the Shoreline Management Act update is done in 2009 there will not have to be a reconsideration of the appropriate buffers, dock and bulkhead standards.

Ms. Berens said comment 1.d relates to the appropriate buffer for the shoreline and suggests that the best available science could support a range of buffers. She noted that the issue has been discussed at length not only with regard to the shorelines but also to streams. Staff is not suggesting any change to the buffer widths.

Comment 1.e is focused on the critical areas report process and echoes a theme that was heard from a couple of different speakers. During the public hearing several expressed support for allowing flexibility but said the ordinance is not detailed enough to help the applicant understand what might be approved. Ms. Berens said staff believes it would be appropriate to include in the Land Use Code more details about the submittal requirements, the minimum report contents, and the standard of review to help identify who the successful applicants might be.

The Commission agreed that approach should be taken.

Ms. Berens said several speakers expressed concern about the amount of time allotted to respond to or provide comments concerning the critical areas ordinance. She noted that the Commission was previously informed with regard to all of the outreach efforts for the project and the ways people have to both keep informed and provide input. She added that written comments can still be submitted, specifying that they should be received by July 27 to allow time to craft a response. The formal comment period for the Draft Environmental Impact Statement (DEIS) closed on July 18.

With regard to comment 2.d, which was that the Shoreline Management Act allows certain exemptions and that the city should not seek to condition exempt actions, Ms. Berens said the Shoreline Management Act sets up both a permitting regime and substantive standards, and local jurisdictions must adopt shoreline management programs that include both the permitting regime and regulations that are consistent with the state guidelines. The proposal does that. The exemption referred to is from the permitting regime; it is a way to relieve some of the permitting burden from a single family property owner in terms of expense and time. The project, however, must still comply with the substantive requirements of the shoreline management program.

Ms. Berens addressed next comments 2.f and 2.g concerning steep slopes. She said there was some concern on the part of commenters that the steep slope regulations, particularly the addition of a toe of slope setback, takes a lot of land out of development. She noted that steep slopes are regulated in many ways for safety reasons to ensure that construction is protected

from landslide hazards and slope failure for both those building at the top and at the bottom. Construction can happen within the steep slope buffers if a geotechnical or engineering report is generated and complied with. One commenter suggested that the idea of slopes providing wildlife functions is so vague it takes away all of the flexibility; the code language seeks specifically to protect species of local importance, not all wildlife.

Commissioner Orrico referred to comment 2.e and the flexibility for new uses and landscape features added outside the buffer area in exchange for enhancements of the buffer area near the critical area. She asked why new uses and landscape features outside the buffer area would need enhancements. Ms. Berens said the wording is not clear; the area in question is the outer portion of the buffer, but still within the buffer.

Ms. Berens said there were several issues in comment 3 concerning the King County ordinance and best available science that do not require any change to the ordinance. The Commissioners had no specific questions regarding those comments.

Ms. Berens said comment 4 was in regard to the level of public involvement in the process to date. She said the response included in the matrix details the lengths to which the Commission has gone in developing the ordinances.

Comment 4.b raises the issue of mapping critical areas. Ms. Berens said the city has a tendency to undersell the mapping it has available in an attempt to limit reliance on it; the result often is the misunderstanding that the city has no maps at all and does not know where critical areas are. She shared with the Commissioners a map of the stream typing classifications and allowed that the typing for all of the major streams in the city is known. There are tributaries and smaller streams that have not been mapped; most of those do not affect many parcels. There has been no effort to map all of the wetlands in the city, and there will still be a need for some property owners to conduct a wetland or stream typing. The wetlands that are not known are more likely to fall into categories three and four and require smaller buffers. Over time the mapping picture will be filled in more completely.

Commissioner Lynde stressed the need to develop a good database of critical area reports prepared and submitted by individual landowners so that others can rely on them. Ms. Berens said staff is working on building such a resource going forward. Commissioner Lynde said that will make it easier for property owners to utilize the alternative approach.

Ms. Berens said comment 5.a is focused on the impact of erosion on some property owners that is perceived to be resulting from stormwater conveyance through open channels. She suggested that some revisions should be made to the ordinance to address the issue. At the very least, the ordinance should allow property owners who have been impacted by erosion to be able to do some stream bank stabilization if necessary to protect a structure or property. She agreed that there should also be some exploration of what continued stream bank erosion might mean for a property owner in terms of the setback. If the staff approach of drawing the buffer around existing structure is adopted, the issue will to some degree be addressed. Continued erosion could, however, cause a setback to get closer and closer to a structure, and the notion of establishing a fixed point from which to measure the setback should be explored.

Commissioner Bach asked if the stormwater from detention ponds flows directly into creeks. Senior Environmental Planning Manager Michael Paine answered that in some cases water is conveyed directly into Lake Washington and Lake Sammamish. Some of the drainage from the West Lake Sammamish Parkway goes directly into Lake Sammamish, and large amounts of the area drain directly into Meydenbauer Bay and avoids being discharged to streams. Areas of new development have detention facilities into which storm water flows. Those facilities release

water slowly into a pipe that is then discharged into a stream.

Commissioner Bach allowed that stormwater will eventually flow downstream, but asked if there could be some way to minimize the impacts on downstream property owners. Mr. Paine allowed that detention facilities are designed to protect against hundred year flood events. It is the smaller events, not the peak flush that comes out during a storm event, that are probably the most critical erosion components over time. Detention facilities are designed to hold back stormwater during large events and release it at a rate to prevent downstream damage. The facilities that meet the 2005 Department of Ecology manual requirements are supposed to better approximate natural conditions. The fact is, however, that once trees are removed from a landscape there is little that can be done beyond holding water in large volumes, either in a pond or a tank, and release it slowly over time. A city could conceivably institute a capital program to assist property owners in making bank changes through vegetative improvements and grading in an attempt to reduce the rate at which erosion occurs, though such a program would be very expensive.

Chair Bonincontri asked if that type of program could be incorporated into the city alternative program. Ms. Berens said it could be so long as there were an evaluation of how much critical area function such actions would protect versus other projects. A set of criteria would need to be developed to establish the priorities for spending program dollars.

Ms. Berens addressed comment 7.b concerning offsite mitigation ratios by noting that the code allows for wetlands enhancement as a way to mitigate, but it is not clear with regard to when offsite mitigation is acceptable. She agreed that the language needs to be revised and tightened to be clearer.

Answering a question asked by Commissioner Lynde concerning the success rate for created wetlands, Mr. Paine said there are some studies that show some of the early mitigation projects in King County suffered almost uniform failure rates. Bellevue has had limited success, but has not had many projects to date. There is a newly created wetland associated with the NE 29th Street extension project, but it has the advantage of existing hydrology by virtue of being close to a stream system. Ms. Berens said a mitigation bank into which property owners could buy is a strategy that could be implemented, though enhancement of existing wetlands is probably the more feasible approach.

Ms. Berens said the critical areas report process allows for flexibility in the buffer, but the ordinance does not allow buffers to drop below a minimum standard. That was done to some extent to manage expectations. She allowed, however, that where it can be argued that a different approach will yield a result as good or better, having an arbitrary minimum buffer would serve to reduce flexibility. She said staff agrees that the minimum buffer requirement could be eliminated.

With regard to comment 9.a concerning tree retention, Ms. Berens said there are some things being done separate from the work on the critical areas ordinance to address the issue. The Commission is working with the Bridle Trails community on a tree retention ordinance, and the City Council has indicated that if other neighborhoods express a similar interest they will be listened to.

Turning to comment 9.b, Ms. Berens said the issue of whether or not the regulations make it easier to establish highways and transportation corridors through wetlands was raised by a couple of speakers from the Bellevue Way area of the city. She said the code currently allows and will continue to allow new roadways to be established in critical areas where there is no feasible alternative. Under the existing code there is little guidance concerning what “no feasible

alternative” means and the proposed ordinance expands on it somewhat. She said she has not been able to confirm that there is any exemption from mitigation for highways of statewide significance; in fact, projects that receive federal dollars are required to adhere to all requirements of the National Environmental Policy Act, which requires mitigation. In most cases, mitigation would be required.

Ms. Berens said the speaker who offered comment 18.b was concerned about adopting the Regional General Permit. She clarified that the standards were included as standard regulations so that a property owner will have only one set of guidelines to follow to get a streamlined permit from all three jurisdictions involved in permitting new docks. The approach is not, however, the only way to build a new dock; a person wanting to deviate from the standards for one reason or another is free to do so with a biological evaluation, a study of the site-specific impacts of an alternative to the typical dock standards and suggested mitigation. She said the city will accept the same report to satisfy the critical areas report process.

Ms. Berens said comment 27.a concerns buffers that may be cut off by existing rights-of-way and makes the suggestion that the buffer should terminate at the edge of the right-of-way. She said staff concurs with the suggestion and will incorporate the change. A review of the provisions would be in order to make sure that mitigation will be required should a roadway be expanded.

Commissioner Lynde called attention to a letter received from the Pacific Legal Foundation and asked if staff has prepared any responses to the issues raised. Ms. Berens said the only correspondence received by staff from that entity was a request to be added to the mailing list. Commissioner Lynde said she will copy the letter and make it available to staff.

The Commissioners were informed that after extensive review by and discussions with the Parks and Community Services department, concerns were raised with regard to public access to shorelines through park properties and the uses allowed in those buffer zones. The Parks Department owns and operates marinas and beach parks with lifeguard stands and picnic areas that are within what otherwise would be the shoreline critical areas buffer under the provision. They voiced concerns regarding continued vehicular access to shorelines for boat ramps and for handicapped accessibility. They also voiced concerns about historic over-water structures the Parks Department oversees on Meydenbauer Bay and the remodeling threshold. Ms. Berens said the Shoreline Management Act places a lot of value on public use and enjoyment of shorelines. In light of that, staff agrees it would be appropriate to make some changes to the provisions about uses in the critical area buffer, particular those uses supporting public access to the shoreline.

Commissioner Orrico asked to what extent will mitigation of a shoreline impact be allowed through enhancement to other critical areas on the same property. Ms. Berens said it would have to be shown through the mitigation plan that the functions and values that will be impacted will be mitigated. To the extent it can be shown that a shoreline function would somehow be replaced through a wetland enhancement, there would be no prohibition against it. However, the report would have to show that the impacted function is the same function being replaced or mitigated elsewhere.

Ms. Berens commented that under state law an applicant is protected against changes in regulations at the time of vesting. For proposals to subdivide property, vesting occurs when a complete subdivision application is submitted. There is an additional vesting for long-subdivisions that is gained under state law on the date the final plat is filed whereby the individual lots are vested from changes for five years. The same allowance for lots in a subdivision does not exist for short-subdivisions, and staff agrees that the provision should apply

to both short and long subdivisions. The Commission concurred.

With regard to the flood plain regulations there is a need to make sure the same phrases are used consistently. The section also needs to be revised to better track the organization of the overall critical areas section.

The Commissioners were informed that staff will add definitions where applicable from the Comprehensive Plan glossary to make sure the documents work together. There also are agencies that have permitting authority over some of the same projects over which the city has permitting authority; the provisions applicable to the critical areas report and mitigation plans will need to be amended to allow for the use of reports created for those other permitting authorities, calling for supplementation only where necessary to address issues unique to the Bellevue Land Use Code.

Commissioner Orrico said it would be helpful to know where Bellevue requirements exceed those of the state and federal permitting authorities. Ms. Berens said any work in a stream requires a state permit, and work at or below the ordinary high water mark requires both a state and federal permit. For shoreline work, the Bellevue regulations are consistent with the other permitting authorities. For bulkheads, the proposed guidelines follow those of the Shoreline Master Guidelines.

Ms. Berens said staff will amend the code to make it clear that the critical area report and mitigation plan requirements could at some point in the future be satisfied by using standard templates not yet created by the city. Staff will also make a final overall review to ensure consistent cross referencing and formatting.

Commissioner Lynde asked if there have been any additional steps taken toward developing the city program alternative that would buy out critical areas as outlined in the DEIS. Ms. Berens said staff has not gone beyond broadly identifying the framework in the DEIS. The Department of Ecology has been contacted to hear what their concerns might be regarding the approach, and they voiced several. No specific details of the program will be developed absent direction from the Council. It may be that the regulations will be satisfactory to the Council, in which case the city program alternative would not be pursued.

Commissioner Lynde suggested that the city program alternative has some merit; it certainly overall shows a greater beneficial effect. Ms. Berens agreed. She said the approach was highlighted in the DEIS primarily to afford the Council a choice other than regulation, and a great deal of effort went into developing the concept. To take it to the next level, however, will require a great deal of time and effort. No other jurisdiction is known to have taken the same approach, and its very unusualness has proved to be a hurdle. The Department of Ecology and the city of Kent went some distance down that path but without reaching an agreement; Kent went ahead with an approach that does not change their typing system or buffer requirements, and an acquisition program, and has since been sued by the Department of Ecology before the Growth Management Hearings Board. It is possible that the Department of Ecology does not thoroughly understand the limitations placed on city councils against committing to expenditures over long periods of time, and has set a very high standard on proving the alternative program to be as good or better than the regulatory approach.

Commissioner Orrico asked if CTED is involved, and Ms. Berens said CTED has joined the suit against Kent. She said Bellevue staff has been talking to the Department of Ecology only. The understanding is that CTED generally relies on the Department of Ecology for issues related to best available science.

8. NEW BUSINESS

Commissioner Orrico reported that DASH and St. Andrews Housing Group is putting together an affordable housing tour.

9. OLD BUSINESS – None

10. PUBLIC COMMENT – None

11. ADJOURNMENT

Commissioner Lynde adjourned the meeting at 8:41 p.m.

Staff to the Planning Commission

Date

Chair of the Planning Commission

Date