

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
MEETING MINUTES

July 27, 2005
7:00 p.m.

Bellevue City Hall
City Council Conference Room

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

COMMISSIONERS ABSENT: Commissioners Lynde, Sheffels

STAFF PRESENT: Kathleen Burgess, Mary Kate Berens, 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 7:04 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 Lynde and Sheffels, both of whom were excused.

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. STUDY SESSION

- A. Land Use Code Amendment
– Critical Areas

Commissioner Robertson noted for the record that although she did not attend the July 6 public hearing on critical areas, she reviewed the printed materials and listened to the tape recording and was ready to participate in the discussion.

Legal Planner Mary Kate Berens reviewed with the Commission the comments received since the previous meeting. Referring to the matrix in the Commission packet and comment 1.d, she said the question raised has to do with dock standards and the provisions in the Regional General Permit (RGP) about mooring piles. She said staff is suggesting deletion of the specific reference since the issue is covered by the RGP and there is no independent best available science to be

concerned about.

Ms. Berens said following the printing of the packet a letter was received from the Pacific Legal Foundation in which legal concerns are raised regarding whether or not the critical areas ordinance complies with the Growth Management Act (GMA) goals for housing, economic development and property rights. Generally speaking, the city's housing targets are unaffected by the critical areas ordinance given the degree to which the city is developed and the fact that redevelopment is allowed under the proposed ordinance. The area within the city with the greatest development potential is the Downtown, and that area is specifically exempt from the critical areas ordinance. The ordinance also will not negatively impact economic development given the additional flexibility the proposal allows over what is permitted currently. The GMA goal of protecting property rights is upheld by the reasonable use exceptions contemplated by the ordinance.

Ms. Berens said the Foundation also voiced concerns about the flexibility option, claiming that it shifts the burden of regulation to private property owners. She said the best available science supports the standard regulations included in the proposal, and by adding flexibility property owners are benefited, not burdened.

Ms. Berens said the Foundation in its letter questioned whether the proposed regulations incorporate the GMA requirement to use best available science. She said over the past few months the Commission has been fully briefed on the various reports the city has had prepared to determine best available science. The analysis supports the need to make some changes to the existing regulations in order to protect critical areas.

Answering a question asked by Commissioner Orrico, Ms. Berens said the argument of the Foundation appears to be the flexibility option proves the city has not adequately justified that the standard regulations are necessary to protect the functions and values of critical areas in Bellevue, and that the burden is being shifted to the property owner under the guise of the flexibility option.

Ms. Berens said presentations on the proposed regulations have been made to the East Bellevue Community Council, the Environmental Services Commission, and the Parks Board. The East Bellevue Community Council pointed out a number of typographical errors to be corrected. The Parks Board had no comments, and the Environmental Services Commission raised a concern about nonconforming structures, but that issue becomes moot under the staff approach of drawing the buffer around the footprint of existing structures.

Commissioner Bach asked if the Pacific Legal Foundation attended any of the study sessions, the public hearing, or made contact in writing while the regulations were being crafted. Ms. Berens said they sent in a letter asking to be added to the mailing list of interested parties; that was after the draft regulations were in hand.

Calling attention to the matrix of comments received since the public hearing and the staff responses that was included in the Commission packet beginning on page 2, Ms. Berens agreed with the position highlighted in 1.d regarding the requirement for moorage pilings to be within 12 feet of a dock structure. She allowed that there is no best available science on which to base the provision and as such it should be eliminated.

Motion to accept the recommendation of staff to eliminate the requirement for moorage pilings to be within 12 feet of a dock structure was made by Commissioner Robertson. Second was by Commissioner Mathews and the motion carried unanimously.

Answering a question asked by Commissioner Robertson, Ms. Berens said the regulations contain no requirement for property owners to change existing landscaping. Proposed expansions may also be allowed through the stewardship option if some enhancements are made somewhere else. All existing landscaping can be maintained, and maintenance may include changing existing shrubbery, adding annuals, etc. over time.

Commissioner Robertson asked if consideration has been given to the option of allowing a property owner to pay into a habitat corridor fund or something similar in lieu of making small enhancements. Ms. Berens said the approach would require setting up a system similar to the transportation impact fee program under which the collected funds must be tracked and spent within a six-year period on a list of identified projects. Such programs are used by other jurisdictions, especially in regard to wetlands mitigation. The proposed ordinance does not, however, include a fee in-lieu option; if the Council wants to explore the option, there would need to be some analysis of the costs and procedures before coming back with a Land Use Code Amendment. She allowed that the suggestion to explore the approach could be made in the Commission's transmittal memo. Commissioner Robertson said she would be interested in doing that.

Commissioner Orrico asked what kinds of mitigation efforts homeowners may be asked to do where their only option for expanding an existing structure is toward a critical area. Ms. Berens said the mitigation could take the form of planting native vegetation closer to the stream or wetland, removing impervious surfaces that exist within a buffer area, and stabilizing eroding stream banks with large woody debris. Shoreline property owners could remove a bulkhead and create a small cove. The property owner would have to provide a critical areas report that shows the result will be as good or better than what would result from following the standard regulations. Staff has discussed with the Council producing a development manual with templates for people to use; the option remains a possibility though the action has not been funded. As critical area reports are turned in, however, they could be collected and used as examples of what can be done.

Commissioner Orrico said she would be interested in seeing the habitat impact fee program at least considered.

Commissioner Mathews asked how it would be determined which property owners could take advantage of the habitat impact fee program instead of providing mitigation, an approach which might over time reduce the level of mitigation overall. Ms. Berens allowed that is one of the issues that would have to be studied. How and where the collected fees are spent would have to be very carefully calculated and determined.

Chair Bonincontri pointed out that actions by homeowners that do not require a permit may in fact encroach on the buffers for critical areas without notice and without enforcement action. Ms. Berens agreed, pointing out that the rules are enforced only on a complaint basis.

Commissioner Robertson pointed out the need for more and better mapping of critical areas. Without a full and accurate inventory, the city will never truly know how a proposed action will impact a specific critical area. Ms. Burgess noted that the city has more mapping of critical areas that is commonly understood. Associate Planner Heidi Bedwell allowed that not every critical area in the city is mapped, most of the streams and all the lakes are. Even where there is good mapping, however, property owners will likely still be asked to provide specific information about their individual properties.

Commissioner Robertson commented that those who have streams on their properties or live along a shoreline know they have critical areas to contend with and protect, but suggested that

property owners with less distinct critical areas may not know they even have critical areas on their properties. She asked how a property owner with a moderately steep slope will know they have a critical area without hiring a geotechnical engineer, adding that the city should be able to say with some degree of certainty which properties have critical areas and which do not; it should not be up to the homeowner to hire an expert. Ms. Berens pointed out that development on moderate slopes are regulated under the current code, but the proposed code eliminates those restrictions. Typically, a geotechnical report for a steep slope is not called for until the slope is 40 percent or greater, and the city has mapping and layers in the GIS system that provides contours. It is unlikely someone will have a landslide hazard on a slope of less than 40 percent. Property owners can always avoid the expense of hiring technical experts by simply adhering to the buffers.

Commissioner Robertson held that the ordinance should be more definitive in establishing a trigger for a more intense review by geotechnical experts. It should not be necessary for every property owner on a slope to seek expert analysis. Ms. Bedwell said the requirements for geotechnical reporting include flexibility where it can be demonstrated that there is no major concern. More often than not staff is willing to rely on city resources to avoid having property owners obtain a geotechnical report, unless there is obvious evidence of a landslide hazard. Ms. Berens added that the definition of landslide hazards is based on science; absent having full and complete mapping, there is no other way to ensure that all safety issues are addressed.

Turning to the issue of the city program alternative, Ms. Berens said the work of fleshing out the particulars will not be done unless the Council directs staff to go down that road. In the transmittal memo, the Commission could elect to highlight for the Council the question of whether or not the regulatory package is the appropriate approach, and if not what investments the city should make in projects and programs.

Commissioner Mathews suggested that the city program alternative is a moot point if the city does not have funding to put into the program. Ms. Berens said it would be safe to say that the city program alternative as described in the DEIS would require the redirecting of funds from some other program. The city does have some programs in place that serve to protect critical areas, and those funds could be earmarked to the program alternative, though they would not be sufficient to fully fund the program. Creation of a development manual would cost far less than the full program alternative. A fee in-lieu program has not been costed out yet.

Commissioner Robertson said she would like to see a buy-out option in place where appropriate for wildlife corridors, stream restoration, wetland restoration, and greenbelts. Where the technology exists for people to safely build on steep slopes, they will do so. That may not, however, be the best thing for the city if open areas and greenbelts are of more importance overall. She said she would also like to see the city move toward having complete maps of all critical areas.

Commissioner Orrico asked if the total of the investments for the city program alternative shown on page 36 of the Commission packet is available currently. Ms. Berens said the figures represent dollars being spent on programs that have some critical areas component. Reallocation of those funds, however, would require some reprioritizing. Commissioner Orrico suggested that to the extent possible the burden of stewardship should fall on everyone, not just on individual property owners. The city should be able to claim some credit for already being out in front with regard to stewardship. In many cases, the regulatory alternative is not much of an improvement over the no action alternative. The city program alternative involves a critical mass that could make a big difference and be a win-win. Ms. Berens said staff has talked with the Department of Ecology about the city program alternative. They have indicated that to some extent the city does receive credit for the steps it has already taken toward being good stewards. They believe

the city program alternative could satisfy the GMA obligations. If the city wants to go down that road, there will need to be more research done, and that may not be possible in time to be funded in the budgeting process. There is nothing in the GMA or anywhere else that permits additional time based on steps already taken or based on a planned creative approach. There is also the issue of satisfying the GMA obligations by establishing programs that will require the city to spend money every year, which can be a problem because the City Council can only commit to funding programs for two years at a time.

Continuing, Ms. Berens said the Department of Ecology will require proof with the city program alternative that the city intends to follow through in satisfying all mandates, that the programs are not just being developed magnanimously. The WRIA-8 planning effort has associated with it a number of suggestions for projects that will protect critical areas that have been identified as being important to the watershed, but it is not at all clear that doing those non-mandated projects would result in a credit toward the GMA response.

Commissioner Orrico credited staff with coming up with the city program alternative idea and said it would be great if it could be pulled off in that it would be better on all fronts. She said she would like to at least see the Council direct staff to study the concept further.

Commissioner Mathews allowed that while the city as a whole has the flexibility to identify projects of citywide significance, thus allowing all property owners to share the burden, individual property owners must also bear some of the burden for their individual properties. For some of the bigger projects, there could be some additional cost sharing between the city and the property owners to really try and resolve some of the serious problems being faced, such as Kelsey Creek.

Chair Bonincontri agreed that the alternative approach should be outlined in the transmittal memo. There is not, however, sufficient time to pull together the city program alternative by December. A combination of the regulatory and program alternative approaches could work, but some thought would have to be put into what the mix should be.

Commissioner Robertson said she would not change any of the regulations focused on health and safety. If the city program alternative is selected, it should not be designed so as to allow any property owner to buy his or her way out of addressing health and safety issues. The city program is a fair approach in that it places the burden on the shoulders of all property owners.

Commissioner Bach commented that common sense can never be legislated. Many have objections to the proposed buffer expansions and the like, but the fact is the size of the buffers was determined based on a great deal of input and a review of the best available science. The CAC that developed and forwarded to the Commission a recommendation was made up of citizens representing a variety of viewpoints, not just the environmental community or the development community. Their suggestions have not been adopted wholesale, but their input serves as the foundation for the proposal. The primary problem in addressing environmental concerns is the fact that the city is nearly built out and it is very difficult to try and recreate pristine conditions. At the same time, everything that can be done should be done to keep conditions from getting worse. The proposed approach is balanced. The city program alternative option is intriguing, but in a way it uses other people's money to benefit private individuals. Kicking off another public program is not the way to go for a variety of reasons.

Commissioner Mathews voiced the opinion that the regulations developed over the last year by the CAC and the Commission are good. He expressed reluctance to begin giving away anything in exchange for some type of a city program alternative. If a city program alternative is developed, it should be incorporated into the Parks budget so the lands acquired could be used

by all residents of Bellevue. He agreed that the best the city can hope for is to keep things from getting worse over time.

Commissioner Bach pointed out that the proposed regulations include a great deal of flexibility, which lessens the need for the city program alternative to some degree. The regulations set the course, but the flexibility allows for some bending of the rules where an equal or better result can be achieved by taking another route.

There was consensus that the package of regulations should be forwarded to the Council, and that if the city program alternative is developed it should be in addition to the regulations. There was agreement that tools such as fees in-lieu and better maps should be explored, and that where the focus is on acquisitions the properties should be some of the key last remaining undeveloped critical areas.

Because consensus was reached with regard to which direction to take, there was agreement to cancel the August 3 Commission meeting. Ms. Berens said the transmittal memo will be ready for review the first meeting in September.

8. NEW BUSINESS

Ms. Burgess said any Commissioner wanting to attend the housing tour offered by DASH on Wednesday, August 3, should let her know.

Ms. Burgess encouraged the Commissioners who have not previously taken the planning short course to sign up and take it during the state planning conference to be held in the city in October. She said the course is free. There is no budget for sending Planning Commission members to the full conference.

9. OLD BUSINESS – None

10. PETITIONS AND COMMUNICATIONS – None

11. ADJOURNMENT

Chair Bonincontri adjourned the meeting at 8:36 p.m.

Staff to the Planning Commission

Date

Chair of the Planning Commission

Date