

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
MEETING MINUTES

October 12, 2005
7:00 p.m.

Bellevue City Hall
City Council Conference Room

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

COMMISSIONERS ABSENT: Commissioner Orrico

STAFF PRESENT: Kathleen Burgess, Matthews Jackson, Nicholas Matz, Department of Planning and Community Development

GUEST SPEAKERS: Ellen Kerr, Gary Smith, Bridle Trails Community Club

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:08 p.m. by Chair Bonincontri who presided.

2. ROLL CALL

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

3. APPROVAL OF AGENDA

The agenda was approved by consensus.

4. STAFF REPORTS

Comprehensive Planning Manager Kathleen Burgess reported that Commissioner Lynde did a fabulous job presenting the critical areas package to the City Council on October 10.

5. PUBLIC COMMENT

Ms. Alice Prince, 6021 136th Avenue NE, Kirkland, spoke on behalf of the Lake Washington Saddle Club and the Bridle Trails Park Foundation. She said both of the clubs favor retaining trees in the Bridle Trails area. The big houses that are being built are taking away from the ability of homeowners to keep horses.

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

7. STUDY SESSION

- A. Land Use Code Amendment
– Bridle Trails Trees

Ms. Burgess reminded the Commission that the Bridle Trails trees issue was first brought to the

table in May 2005. During the intervening months staff has been working with community representatives to write a draft ordinance.

Mr. Gary Smith, 6429 108th Avenue NE, Kirkland, said he lived in Bridle Trails for 11 years in one of the most heavily forested parts of the neighborhood. He said he was initially attracted to the area because of its beautiful woodland nature. The area is exceptional and merits special protection.

Mr. Smith said the community's interest in preserving the tree canopy started in 2000 when there was a large property in the vicinity of 134th Avenue NE and NE 30th Street that was cleared; more than 130 mature trees were removed. Photos of clear-cut areas in Bridle Trails were shared with the Commissioners. The Bridle Trails Community Club formed the Bridle Trails Tree Committee in 2001, and since that time the committee has been working with city staff. A survey of Bridle Trails residents was done in 2002 to gain the views of Bridle Trails property owners. A total of 511 property owners responded, and the interest shown in favor of tree preservation was quite high.

Ms. Ellen Kerr, 4255 134th Avenue NE, co-president of the Bridle Trails Community Club, said she has served for the past three years on the Bridle Trails Tree Committee. She said the community is working diligently both formally and informally to preserve the woodland nature of the Bridle Trails community for the reasons that were outlined for the Commission in May. For the most part, the proposed ordinance represents what the neighborhood has been trying to achieve. Bridle Trails residents indicated through the survey that the city is not doing enough to preserve trees and the woodland nature of the city as a whole and in Bridle Trails. Seventy percent of the respondents indicated a desire to see the city adopt new regulations for the Bridle Trails neighborhood. Sixty percent held that the city is not doing enough to educate the citizens with regard to the value of trees, and 62 percent feel the city is not doing enough to encourage tree protection.

Ms. Kerr said there is broad support in the neighborhood for moving forward with the proposed tree preservation ordinance for the Bridle Trails community.

Senior Planner Matthews Jackson said the Council previously considered a citywide proposal to amend the tree preservation regulations. That proposal did not receive support, though the Council did agree to hear proposals from individual neighborhoods having broad community support. The Bridle Trails proposal is the first such proposal to be brought forward. The proposed ordinance, which applies only to the R-1 land use district of Bridle Trails, addresses tree clearing on vacant lots prior to subdivision development as well as developed lots. The Land Use Code and the Clearing and Grading Code allows for some clearing on undeveloped properties prior to development for maintenance purposes. The definition of "maintenance" is not completely clear, and the loophole has allowed for property clearing without having to meet the city's requirements for subdivisions to preserve 15 percent of the diameter inches of significant trees. The code defines a significant tree as one that has a caliper measurement of eight inches or more at 48 inches from grade. Some properties in Bridle Trails have been completely cleared, leaving no opportunity to save the trees at the time of subdivision.

For many in Bridle Trails, the trees are the view. The loss of a significant number of trees along streets and roads is changing the very image of the neighborhood. The ordinance tackles the issue of preserving the view of trees from the streets and roadways within the Bridle Trails community. The community believes there should be in place a strong disincentive to clearcutting properties given the value of the trees as timber, and the ordinance addresses that issue as well.

Clearing and grading permits have historically been triggered by the disturbance of 1,000 square feet of land, or excavation or fill of 50 cubic yards of material. Prior to May 2005, the city's interpretation was that three mature trees equaled the 1,000 square foot disturbance threshold and triggered the need for a clearing and grading permit. Based on a potential challenge to that interpretation, especially where trees were removed but the stumps were left in place, the Director updated the interpretation to allow for the removal of up to 20 trees without the need for a clearing and grading permit.

Mr. Jackson allowed that while there is a code requirement to preserve 15 percent of the diameter inches of significant trees in subdivisions, there is no requirement to preserve trees on developed properties that do not have encumbrances such as critical areas or specific plat conditions. In the R-1 zoning district there is a 35,000 square foot minimum lot size; such lots are large and carry the bulk of the tree canopy in the neighborhood. The proposed ordinance increases the minimum requirement for significant tree retention to 25 percent of the diameter inches within the interior of lots, and requires the preservation of all trees within the perimeter of lots, which is defined as the first 20 feet in from the property line where there is no conflict with required access, utilities, or trees that constitute a safety hazard to persons or property, or due to a sight distance issue for transportation purposes.

Mr. Jackson noted that the existing code has the landscape development and tree retention requirements combined into a single section. In order to fold in the specific requirements applicable only to the R-1 district of the Bridle Trails community, the landscape requirements will need to be separated from the tree retention requirements. The proposal takes that tack and will better accommodate other neighborhoods coming forward with similar requests to preserve trees in their areas.

Bridle Trails residents do not want to see flexibility reduced by the ordinance. They want people to be able to use their properties and to develop them to the dimensional requirements allowed by the Land Use Code. One of the provisions included in the proposed amendment spells out that where there are conflicts, the dimensional requirements of the Land Use Code trump the requirement to retain trees in perimeter areas, though an alternative retention option is triggered which calls for increased vegetation preservation on the overall site.

The proposal also includes a change to the Clearing and Grading Code to close the loophole that has allowed some clearing on lots prior to development. The change would require a clearing and grading permit for the removal of any significant tree on a vacant or developed lot in the R-1 land use district in Bridle Trails. Development of a specific tree removal permit was considered, but in the end it was concluded that the existing single family vegetation permit could be modified to be easily obtainable at a reasonable cost.

Mr. Jackson allowed that there will need to be substantial outreach to the neighborhood with regard to the need for a clearing and grading permit in order to remove a single significant tree. It would be helpful to have a single point of contact for tree information. The city does have foresters on staff; they work primarily on natural resources management but they also interact with the owners of properties that abut Native Growth Protection Areas and parks.

One of the proposals made by the Bridle Trails Community Club was to impose a three- to five-year moratorium against approving a short plat application for any property on which the tree preservation requirements have been violated. Mr. Jackson noted that the state has a strong role in regulating how the short plat and subdivision processes are handled. On the advice of legal counsel, staff concluded that the moratorium approach is not an option the city can take. By requiring a permit to remove any significant tree, it will not be as easy for property owners to violate the code in the ways they have in the past.

Ms. Kerr said the neighborhood feels it will be very important to allow for flexibility while making sure there are tools available to enforce the regulations. As things currently stand, property owners are allowed nearly free rein to remove all the trees they want; the primary intent of the proposed ordinance is to prevent that from happening. There must be some strong disincentives, such as a moratorium. The penalties combined with the new clearing and grading permit requirement will be sufficient incentive to keep people from removing trees at will.

Mr. Jackson said the civil violation section of the city code includes a mechanism for levying fees against anyone who violates the code. The city has not, however, aggressively enforced that section of the code against those who have removed trees in violation of the existing tree preservation requirements. The city has provisions that enhance the penalties for anyone who illegally removes trees from public property. For any civil violation, the standard penalty is \$100; the penalty increases to \$200 for the second day a person fails to comply, then \$300 the third day and so on up to a maximum penalty of \$500.

Commissioner Sheffels offered the scenario of a property owner who elects to remove ten significant trees from a site and immediately pay a \$1000 fine. She said that property owner will have gotten away with an illegal action for a relatively small sum of money. Mr. Jackson said that could be the case under the current code for someone who elects to pay the fine on the first day. The penalties for trees removed illegally from public property are significantly higher: the greater of \$500 for each tree cleared or for each act of clearing, or triple the value established by the International Society of Arboriculture (ISA). A mature fir tree can be valued at several thousand dollars, and with a fine of triple that amount the penalty represents a clear disincentive. Staff is not recommending treble penalties but is recommending the penalty be the greater of \$200 or the value established by the ISA.

Mr. Jackson said he will bring to the public hearing examples of how that scenario could play out. He stated that the city is committed to being more aggressive in handing down financial penalties, and to having enhanced penalties for violating private tree retention requirements. The penalties will not be confined to the Bridle Trails community alone but will be applicable citywide.

Commissioner Lynde asked if the code includes a definition of "cut" and asked if limbing up a tree could fall under the definition. Mr. Jackson said the threshold should be anything that is pruned or cut in a manner that damages the health of the tree. The definition is not currently in the code, though the clearing and grading section does allow for pruning. Commissioner Lynde suggested that it would be very helpful to include a definition.

Answering a question asked by Commissioner Sheffels, Mr. Jackson said the city currently does not send staff out looking for code violations, but they do follow up on anything that appears to be unusual, and code enforcement officers always respond to calls from citizens. Under the proposed approach, the code enforcement officers will be more aggressive in instances where someone is knowingly violating the code.

Mr. Smith asked if the city can use stop work orders in addressing tree violations. Mr. Jackson said that is one tool available to the city and one that is used. When someone calls the city to report tree cutting activities, staff will check to see if there is a permit on file. If there is not, the code enforcement officer will go out immediately; code enforcement officers have the authority to post stop work orders, and prompt action may save some trees. However, the officers are not available after 5:00 p.m. or on weekends, and they are not always immediately available during the workday either.

Commissioner Robertson asked what the current tree retention requirements are for single family lots without critical areas. Mr. Jackson said where there is no subdivision action contemplated, there are no tree preservation requirements, unless there are requirements tied to the platting.

Commissioner Robertson asked if the city can require replanting along property lines as a condition of subdividing. Mr. Jackson said there are currently no landscaping requirements for subdivisions.

Referring to section 20.20.900.D of the proposed code, Commissioner Robertson suggested that the heading would be less confusing if a sentence were added saying "This section shall apply to all of Bellevue with the exception of the Bridle Trails subarea which is addressed under section...."

Commissioner Robertson also suggested as written Section 20.20.900.E.1 says a permit must be obtained for the removal of any tree. Mr. Jackson agreed the section should read "...any significant tree...."

Commissioner Robertson held that Section 20.20.900.E.3.a could be written to be clearer if worded something like "In addition to the required perimeter tree retention area, at least 25 percent of the diameter inches of existing significant trees elsewhere on the site must be retained...."

Commissioner Lynde proposed revising the language to say "...25 percent of the cumulative diameter inches at four feet...."

Commissioner Sheffels noted that part of Bridle Trails is in Kirkland and she asked if Kirkland has tree retention policies. Mr. Smith said Kirkland has been involved in developing a tree management plan for the past two or three years. Their plan is currently scheduled for adoption on November 1 and will become effective on January 1, 2006. The forester for the city of Kirkland has sat in on some of the meetings at which the proposed Bellevue ordinance was being worked on. The provisions of the proposed Bellevue ordinance are less stringent than those of the proposed Kirkland ordinance. Mr. Smith pointed out, however, that the Kirkland City Council has set a goal of increasing the percentage of tree canopy within the city limits to 40 percent by the year 2010. Their percentage of tree cover is currently about 30 percent.

Commissioner Robertson suggested that additional clarification is needed with regard to what is meant by "damage" as it relates to pruning and trimming activities.

Commissioner Bach said the only reason people are cutting down the trees is because the land is very expensive. Those who are selling the properties know they are going to be developed or redeveloped for profit. He noted that penalties even in the \$10,000 range is nothing where the properties will be selling for more than a million dollars each. Mr. Jackson said the city is always looking to hold out incentives, but in the case of tree preservation the only incentive appears to be to avoid monetary fines. There are some incentives included under the critical areas ordinance to use low-impact development techniques, and those may come into play.

Ms. Kerr said one of the most effective approaches will be for the city to back up the proposed ordinance with preventative education to help people understand what they are supposed to do with regard to protecting the woodland nature of neighborhoods and the overall tree canopy. That is the approach Kirkland takes.

Ms. Kerr asked where the \$200 penalty figure came from and if the city would consider a higher penalty for cutting trees. Mr. Jackson said the figure came from doubling the standard civil

violation. The ISA value will be substantially higher in any event.

Commissioner Mathews asked where the 25 percent figure of 20.20.900.E.3.a came from. Mr. Jackson said the number came forward as a proposal of the Bridle Trails Tree Committee. Staff agreed that the number is reasonable.

Chair Bonincontri opened the floor to comments from the public.

Mr. Brian Collato, 13508 NE 29th Place, said he is grateful for the efforts of staff and the citizen committee that has been working on the proposed ordinance. He said he has lived in his home since 1998, and since that time there has been a fair amount of tree cutting in the neighborhood. Development is always a challenge because of private property rights, but reasonable minds can come together to craft positions that will work for everyone. The Bridle Trails community is not just about people who have expensive properties and want to protect their assets. Bridle Trails is a neighborhood that is surrounded by a 500-acre park that is an asset for the area. In addition to penalties, the ordinance should contemplate corrective actions; simply applying a monetary penalty in the amounts proposed will not be relevant to investments in the multi-million dollar range.

Mr. Bill Wilson, 13611 NE 30th Street, commented that in May soil stability became a major issue. A significant rainfall caused a steady stream of mud to flow down NE 30th Street as a result of the clear cutting that occurred on the country club property. The trees along the north side of NE 30th Street are public trees, but the adjacent property owner chose to limb up all of them; that has left all of the homeowners on the north side of NE 30th Street exposed to the new development, and there is nothing that can be done about it. The proposed 20-foot perimeter retention area is a requirement that will satisfy a lot of people. In Bridle Trails the trees are the view and they should be preserved, especially along the roadways.

B. Land Use Code Amendment
– Comprehensive Plan Amendment Process

Senior Planner Nicholas Matz explained that the proposed amendment is more of a reorganization than a change of direction. In 2000 the Commission worked to develop a docketing process for managing amendments to the Comprehensive Plan. Based on how the approach has worked since that time, there is general agreement that clarification of the two-step process is warranted. Furthermore, the public participation framework was broadened in the seven-year Comprehensive Plan update, and the changes need to be reflected in the provisions for amendment and review of the Comprehensive Plan. In making the changes, the focus has been on making the process simpler and easier to understand.

Mr. Matz said terms have been changed to make them easier to understand and the word “docket” has been eliminated. However, the concept of the two-step process is retained. What used to be called the docket is in the proposal referred to as the threshold review; the second step is final review. The idea of having site-specific and non site-specific amendments is done away with in the proposal. The focus has been changed to refer to who is making the application, and amendments are identified as either being initiated by the city or the public, which is everyone except the city. The authority to initiate city amendments will lie solely with the City Council and the Planning Commission.

Mr. Matz said the separate criteria for geographic scope at the threshold stage and the final review stage have been eliminated. Consideration of the geographic scope is, however, retained as one of the steps under the threshold review, and the idea remains to determine whether or not the question raised concerning one property can validly be applied to another, similarly situated

property.

Mr. Matz said the three-year rule was imposed to keep property owners from coming back every year with the same request for a particular parcel. He allowed that there has been some confusion with regard to how the timeframe is to be measured, and the proposal redefines the three years as three amendment cycles.

Answering a question asked by Commissioner Sheffels, Mr. Matz said in the scenario of a proposed amendment that involves a single lot in which the geographic scope was expanded to include the adjacent lot, if the full package does not make it beyond the first threshold review, there is no requirement for the property that was geographically scoped in to wait three years before submitting the request again. The three-year rule does apply to properties brought in through geographic scoping once they have been included in the work program.

Commissioner Robertson suggested that Section 20.30I.140.F could be revised by adding to the end of it “but shall not include properties that otherwise violate the three-year limitation rule set forth in LUC 20.30I.130.A.2.d. Commissioner Sheffels pointed out that the language would address one problem but also serve to limit the flexibility of the Commission to include adjacent properties in the geographic scoping. It was agreed not to add the language.

Mr. Matz allowed that the changed circumstances criteria has proved confusing over the years. Under the current approach, the criterion is “significantly changed” at the docket level and “changed” at the decision level. The proposal eliminates the word “significantly” and drops the criterion from the final review altogether on the notion that the criterion should only have to be met once at the first threshold.

Mr. Matz said the proposal returns to the Commission the authority to initiate Comprehensive Plan amendments of any type under any circumstance. Any Commission-suggested amendments, however, must still be approved by the Council before being placed on the work program. Such amendments are not subject to the threshold review, but they are subject to the three-year rule.

With regard to subarea reviews, Mr. Matz said they fall under amendments adopted by the city as part of the Comprehensive Plan Update. The proposal opens the door to public involvement processes beyond just the citizen advisory committee approach.

Commissioner Lynde indicated her support for the new approach. Chair Bonincontri agreed, saying it is clearer and simpler.

It was agreed to set November 16 as the date for the public hearing on the amendment.

C. Land Use Code Amendment
– Notice Distance Extension

Mr. Matz said the proposal expands the noticing requirement from 200 feet to 300 feet, which is in line with the direction provided by the Council and the Commission. The expansion has been called for over the years by many citizens as well.

Commissioner Robertson asked if the distance requirement used to be 400 feet why the proposed action is not to restore that requirement, or even to make it 500 feet. Mr. Matz said other sections of the code call for a distance requirement of 300 feet and the proposed action seeks standardization. Over the years the city has determined that 300 feet provides for sufficient notice in urban areas.

Commissioner Robertson asked how many properties on average fall within the 300 feet distance requirement. Mr. Matz said he will have an answer to that question at the public hearing.

8. NEW BUSINESS

Ms. Burgess informed the Commission that the Council on October 10 declared a 60-day moratorium on changes in land use for auto row on the east side of 116th Avenue SE between NE 8th Street and SE 3rd Street. A proposal for a big box retail use is imminent and the Council wanted time to examine the traffic impacts. A hearing is scheduled for November 7.

9. OLD BUSINESS

Commissioner Robertson said some homeowners associations are up in arms because they are under the impression that the exemption for tree trimming in the critical areas ordinance does not apply to topping. She said the Commission was very clear that topping is included. She said pruning includes topping, but if there is any uncertainty the Commission should clarify exactly how the wording sent forward to the Council reads.

There was consensus on the part of the Commissioners that pruning includes topping.

Commissioner Lynde said the Council was very complementary of the work done by the Planning Commission on the critical areas ordinance. They had questions about replacing patios or decks in critical areas given that under the Commission's proposal the line is drawn around the footprint of the house but not patios or decks. They noted that as proposed a homeowner would need a permit to replace an existing deck.

Commissioner Lynde said the Council had some questions regarding the PUD process, and wanted to know exactly why the Commission rejected the notion of going with the programmatic alternative and how the city would go about undertaking that approach if the Council elected to do so. The Council discussed the issue and made the decision not to go with the programmatic alternative.

10. PUBLIC COMMENT

Ms. Cindy Ludwig, co-president of the Bridle Trails Community Club, reminded the Commissioners that when the Twilight CPA was proposed a loophole in the process did not trigger notification to residents of the nearby R-1 district. Even if the noticing distance had been 500 feet, the result would have been the same. The community was made aware of the proposal only because a resident scanned the permit bulletins. When changes are proposed that will affect an entire subarea, the notification area should be expanded to include the entire subarea at the very least.

11. ADJOURNMENT

Chair Bonincontri adjourned the meeting at 9:24 p.m.

Chair of the Planning Commission

Date

Staff to the Planning Commission

Date