

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

March 25, 2009
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Orrico, Commissioners Ferris, Hamlin, Lai, Robertson, Sheffels

COMMISSIONERS ABSENT: Commissioner Mathews

STAFF PRESENT: Paul Inghram, Cheryl Kuhn and Julie Ellenhorn, Department of Planning and Community Development; Catherine Drews and Matthews Jackson, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:31 p.m. by Chair Orrico who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Lai, who arrived at 6:32, Commissioner Robertson, who arrived at 6:36 p.m., and Commissioner Mathews, who was excused.

3. PUBLIC COMMENT

Mr. Philip Keightley, 542 122nd Avenue NE, said residents of the Lochmore area are very concerned about views. He said two recent remodel projects in the area have blocked views, and another potential project could completely block the view, all under the current code. Property values, property rights, and sunlight are all dependent on preserving views. According to the 2006 Census, the average household size was 3.6 persons; that was the year many of the homes in Lochmore were constructed. As of the 2000 Census the average household size was 2.4 persons. The Puget Sound Regional Council anticipates the average household size to continue to decline and be at about 2.1 persons by 2030. Currently, 38 lots in Lake Hills 17 have three, four or five bedrooms, with the average at 4.03. In the future there will be less of a need for homes with many bedrooms, so the existing homes are big enough already. In the Lochmore subdivision the average home is 3090 square feet; including the garage, that works out to an FAR of 0.35. The current code allows for up to 40 percent lot coverage, so the average three-story homes could legally average 11,500 square feet, and the two-story homes could average 7700 square feet. Bellevue has to decide the future from a policy point of view if there should be two-level homes or three-level homes. Three-level homes would kill the views and property values would drop. According to the 2009 King County Assessor records, views in Lochmore add \$176,000 to the price of the home. Two-level homes do not block views, but three-level homes do. The new height restrictions proposed will not resolve the issue.

Commissioner Sheffels asked if there is a neighborhood association in place with covenants that provide for view preservation. Mr. Keightley said there are covenants in place to that end, but it takes a lawsuit to preserve the covenants, which can be very expensive. Under the covenants, no home in Lake Hills is allowed a home of more than two stories.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

Commissioner Ferris reported that the Meydenbauer Bay park steering committee has resumed meeting. A walk-through was conducted recently to see firsthand how the current plans might play out. Several from the public were present. The steering committee will not meet in April. The Draft Environmental Impact Statement is expected to be published in May, which the steering committee will review before working to finalize its design recommendations, which should take most of the summer. The issue will eventually make its way to the Planning Commission.

Commissioner Robertson said she attended the Bellevue Downtown Association gala. She said at the event several approached her to talk about Bel-Red. Apparently there is some confusion on the part of property owners regarding pre-existing uses and that Coca Cola would not be allowed to continue its operations there. She said it was her recollection that the recommendation of the Commission was specifically geared at making sure the business can continue to operate. Comprehensive Planning Manager Paul Inghram allowed that the recommendation of the Commission in that regard was very clear. He noted that there is a significant section of code that addresses the existing uses issue aimed at allowing them to continue in the corridor. During the Commission's review process and during the Council's review Coca Cola Bottling Northwest offered a number of different comments, some of which resulted in modifications to specific code provisions. Their concern continues to be the specific details of the code provisions and how they would apply in the future as upgrades are made to the plant, not about being permitted to continue their operations.

6. STAFF REPORTS

7. STUDY SESSION

A. Neighborhood Character Phase Two

Neighborhood Outreach Manager Cheryl Kuhn introduced Julie Ellenhorn who has been with the Neighborhood Outreach team for more than a year.

Ms. Kuhn reminded the Commission that it had been just short of two years since the Commission first began working on ways to address the wave of community interest in addressing redevelopment impacts in neighborhoods. She briefly reviewed the process to date and the balanced solutions that were developed by the Commission and presented to the City Council and the public during Phase One where the focus was on loss of trees and greenscape, size and scale of homes, and the impacts of construction activity on neighborhood livability. The Commission's recommendations were adopted by the Council in December 2007.

Ms. Kuhn said the feedback received so far is that the public is generally pleased with the results

of Phase One. Very little negative feedback or concern has been voiced regarding the limitations the restrictions have placed on building in Bellevue.

Phase Two addresses some of the more challenging impacts of redevelopment. The initial recommendations of the Commission were presented to the Council in December 2008. The Council proposed some revisions and passed the issue back to the Commission for public hearing. The proposals would establish maintenance standards for abandoned building sites and vacant houses; increase the tree retention requirements in subdivisions from 15 to 30 percent; revise noise construction hours for remodels and additions; reduce the lifespan of building permits from three years to two years; modify the setback requirements for mechanical equipment installed with new single family residences; and establish development standards for homes that exceed an FAR of 0.5.

The City Council directed staff and the Commission to add the option of height limitations on single family buildings. Ms. Kuhn said to that end two items have been added to the list of proposals under which single family building height would be limited to 35 feet from the average existing grade to the highest point of a pitched roof, or 30 feet to the top of a flat roof; or limit the highest façade of a single family building to 40 feet from the ground to the top of the roof. The measures could be considered as part of a package in conjunction with the FAR threshold or separately as options.

Ms. Kuhn said the staff research aimed at gauging the impacts of some of the proposals on new single family homes concluded that the FAR threshold would have affected about ten percent of the new homes for which permits were issued during 2008. About eight percent would have been affected by the 35-foot height limit, and about five percent would have been affected by the 40-foot maximum façade height.

Ms. Kuhn said prior to bringing the proposals forward to the Commission, stakeholders were notified; letters were sent to the development community, real estate community, all of the neighborhood associations, and everyone on the interested parties list. In the coming days staff will be casting the widest possible net to make sure there is a broad range of public comments at the public hearing.

Legal Planner Catherine Drews said her focus has been on the proposed city code amendments. She first discussed amendments to the city's noise code, chapter 9.18 BCC., which would limit the hours of construction noise to 8:00 p.m. Commissioner Sheffels pointed out that nothing is said about emergency repairs that might need to be made in the middle of the night; she suggested that some language should be added to exempt activities of that kind. Ms. Drews stated that those types of activities are already exempted under the code.

Commissioner Sheffels also noted that throughout the document a number of acronyms are used; she proposed spelling out the first instance of each to add clarity.

Commissioner Robertson asked if the construction noise restriction applies to homeowners who are remodeling as well as contractors who are doing the work. Ms. Drews said the restriction would apply equally to all. There is a difference for new construction versus remodels, however.

Ms. Drews said the proposed city code amendments include the addition of a new chapter, 9.13, to Title IX, which is the health and safety provisions of the Bellevue City Code. She explained that the new chapter addresses minimum maintenance standards for vacant residences and abandoned construction sites. She said the language was drafted after researching code language from other jurisdictions and reviewing the International Property Maintenance Code.

Commissioner Robertson called attention to the definition for abandoned construction site and asked what “a certain application” means and what it applies to. Ms. Drews said she would verify and if necessary, amend the definition accordingly.

Commissioner Robertson also noted that “premise” in the definition should read “premises.” She also referred to the definition of “vacant residence” and said she was unclear what “unused” means. Regarding the definition for “weeds” she asked who makes the decision as to which plants are considered unwanted, undesirable, or troublesome. Ms. Drews said there are some references to noxious weeds in the city code, but they are not regulated other than for critical areas.

Commissioner Lai asked if the definition of “building” applies solely to structures for use by humans or would also apply to other structures, such as a barn. Ms. Drews said it applies to any building, so that would include a stable or a barn.

Commissioner Robertson asked if someone with a decaying old barn on their property, even though their primary home is well maintained and occupied, would fall under the section. Ms. Drews said she would consider that possibility.

Commissioner Sheffels pointed out that with the economic downturn there will be more foreclosed properties in the city technically owned by lending institutions. She asked if banks typically seek to maintain properties they have foreclosed on. Ms. Drews, stated that based on her experience with code enforcement cases involving foreclosed properties, when a bank takes over a property its goal is to sell the property, and to do so, banks will take the necessary steps to correct code violations to avoid clouds on the property’s title. Commissioner Sheffels suggested that it may require good code enforcement to make sure that is the case. Ms. Drews said the section is written to apply to whoever is legally responsible for a property, including banks.

Ms. Drews said proposed section 9.13.040 addresses the minimum maintenance standards for vacant residences and abandoned construction sites. She said the focus is on aesthetics and safety, so the language is specific to the exterior of structures.

Commissioner Sheffels called attention to paragraph “B” and asked what “imposed dead and live loads” means. Ms. Drews said that is a direct reference back to the building code. She allowed that including a reference would be helpful. Commissioner Ferris offered that a dead load is the weight of a building without anything or anyone in it, whereas a live load includes those.

Commissioner Sheffels commented that the section meets the qualifications of what the Commission was looking for but questioned whether any owner-occupied house could meet the standards, and stated there should be a reasonableness clause included. Neighborhood Development Planning Manager Matthews Jackson asked the Commissioners to keep in mind that all enforcement actions in the city are complaint driven. Those who feel they are being impacted by a vacant or rundown property would be the ones making contact with the city. He agreed that some of the standards are strict, but the city will only get involved where there is a reasonable judgment by a neighbor that there is a problem.

Chair Orrico said nothing should be written into code that would end up encouraging neighbors to fight one another using extreme provisions in the code. Mr. Jackson said staff will monitor the provisions of Phase One and Phase Two over time to see if they are achieving the desired goal. If problems are identified, the provisions can be brought back for fine tuning.

Commissioner Robertson pointed out that there are some things the city is not able to require occupying homeowners do relative to maintenance and suggested that requiring the same of the owner of a vacant property could be problematic. She said there must be a reasonable basis for all requirements, such as controlling vermin or noxious weeds.

Commissioner Lai asked how the International Property Maintenance Code is used by other jurisdictions. Ms. Drews said it is used in the same way other international codes are used, such as the International Building Code. The provisions apply equally to vacant and non-vacant homes. Bellevue's Building Official is considering whether the city should adopt the International Property Maintenance Code.

Commissioner Lai suggested that a threshold should be established and crossed before the code provisions kick in given how strict the standard is.

Commissioner Robertson commented that if the city is considering adoption of the International Property Maintenance Code, action to adopt the proposed provisions would be getting ahead of the game too far, especially given that the city already has a code that applies to unsafe buildings. Ms. Drews said it will be up to the Building Official to determine when and if the International Property Maintenance Code should be adopted. She said it is her understanding that adoption of that code is not on the immediate horizon. The Building Official has reviewed the proposed code provisions and found them acceptable in lieu of having the International Property Management Code on the books.

Answering a question asked by Chair Orrico, Ms. Drews said the Uniform Abatement of Dangerous Buildings code is still on the books.

Commissioner Sheffels asked what would happen in the case of an abandoned building about which no neighbor ever files a complaint. Ms. Kuhn answered that building and life/safety issues are enforced on a proactive basis by the city. As soon as they are noticed, code compliance requires enforcement of the building safety codes. Code compliance officers in their circuits around the city do take notice of building safety issues; building inspectors also file reports when they observe building safety or life issues while conducting their regular duties.

Ms. Drews said the last proposed amendment reduces the duration of single-family residential building permits. Because phased commercial projects take longer to complete, the provisions do not seek to change the duration for those permits. As drafted, only a single one-year extension would be allowed for single-family residential building permits.

Chair Orrico asked if the Mayor's concerns with the provision were limited to residential permits. Ms. Kuhn allowed that they were.

Commissioner Robertson asked how often more than two years is needed to complete a residential project. Ms. Kuhn admitted that it is rare for construction to continue for up to three years. The vast majority of projects are completed within two years. Generally, once permits expire, a new permit must be obtained.

Ms. Drews called attention to Attachment A of the packet, which she noted constituted the proposed amendments to the city code. She said the section will not be part of the public hearing before the Planning Commission, and was provided for information only.

Ms. Kuhn asked if the Commission can take testimony on the city code provisions. Mr. Inghram said those who participate in the public hearing are free to talk about anything they want. The public hearing will not be advertised as anything other than covering the Land Use Code,

however.

Mr. Jackson said the land use code amendments entail issues previously recommended by the Commission, beginning with modifications to the requirements for the location of mechanical equipment in residential land use districts. The concern initially raised was that the noise from equipment located in side yards can impact neighboring residents. The proposal clarifies the requirements for the placement of mechanical equipment in single family land use districts and requires new construction and those constructing an addition of 1000 square feet or greater to place the equipment in the rear yard. If for some reason the rear yard location is impractical, equipment placed in a side yard must be outside the minimum setback and include sound attenuation screening. The provision also disallows new mechanical equipment from being within five feet of the property line in a rear yard setback.

Commissioner Robertson said the language of 20.20.525.C.1 would seem to preclude the placement of a new air conditioner unit in a side yard, whereas paragraph C.2 does not seem to address the issue at all. Mr. Jackson said if no changes are planned to the building itself, mechanical equipment can be placed in the side yard provided it is outside the setback. For new construction or in cases of remodels that will add 1000 square feet or more, the mechanical equipment cannot be in the side yard at all. Flexibility is included for emerging technologies and what the notion of mechanical equipment might encompass in the future.

Commissioner Robertson asked where mechanical equipment could be placed for a lot that has two front yard setbacks and two side yard setbacks, such as a corner lot. Mr. Jackson said corner lots with two front yards will also have one side yard and one rear yard in which the equipment could be placed. Commissioner Robertson asked if there are any lots that do not have a rear yard. Mr. Jackson said the portion of a lot that is directly opposite the front yard is the rear yard. He said he could not think of a case in which there is no rear yard. Where there are two front yards, the rear yard is typically the one furthest away from one of the fronts.

Commissioner Sheffels said she lives in a multifamily area that has a backyard that abuts single family. There is a common area as well. She said if she were to install an air conditioning unit right next to the townhouse attached to hers, it would be too noisy; the problem is it would not be possible because of the development configuration to place it far enough away that it will not be too noisy. She noted that her side yard is on a street, but her neighbor does not have that same situation. Mr. Jackson allowed that such situations are difficult to address. He pointed out that even with screening it may not be possible to meet the maximum decibel levels for sound at the property line. There are many existing units that do not meet the current code, which makes enforcement situations difficult. The enforcement officers can take decibel readings and make judgments about how effective noise attenuation will be, and can offer suggestions about purchasing units that make less noise. The city has not yet denied someone the right to have an air conditioner unit installed.

Mr. Jackson turned next to the FAR threshold issue as outlined in Note 42. He noted that several different alternatives were considered, including the application of a standard maximum to each of the districts; that idea was refuted by the Commission given the overriding theme of taking a more targeted approach. For those properties that exceed 0.5 FAR, the proposal requires a minimum setback of 7.5 feet on each side yard and a choice of either providing for a daylight plane, which would be a maximum roof pitch of 45 degrees beginning ten feet above the property line, or a minimum second story stepback of five feet on the side that encroaches into a daylight plane. The Commission and the Council agreed that the new regulations should not be imposed on neighborhoods where the existing character already exceeds the proposed numbers. Where there are existing homes on adjacent properties that exceed 0.5 FAR and that are already built to

a setback that is less than 7.5 feet, or which do not have a second story articulation, staff can administratively determine that the regulations are not applicable on one or both sides.

Mr. Jackson said the tree retention provision extends the minimum tree retention from 15 percent of the diameter inches to 30 percent to all new subdivisions and short plats. The same provision was initiated as part of Phase One and applied to new single family individual lots and significant additions exceeding 20 percent of the existing structure.

Commissioner Sheffels said she would like to see alders and cottonwoods discounted to where they are not counted at all in the total diameter inches calculation. Mr. Jackson pointed out that the current code discounts those species by 50 percent, but added that from a scientific standpoint alders and cottonwoods play important functions in the environment. He said staff was not recommending any additional discounting.

Chair Orrico agreed that while alders and cottonwoods are not fully appreciated by everyone and are not the prettiest trees around, they do serve an ecologic function.

Commissioner Lai asked what steps are taken to enforce the tree retention provisions of the code. Mr. Jackson said the city regularly receives calls from citizens who see trees coming down and they want to know what is going on. He said it is difficult to judge where boundary lines are when driving by, so it might be that all the trees from one section are being removed and all the trees from another are being preserved. The city actively enforces with regard to trees because not to do so is to risk the total loss of the trees.

Commissioner Robertson referred to page 19 and the issue of alternative tree retention. She said she remembered previously voicing a desire not to force people to keep trees in neighborhoods where the neighborhood character has views or covenants protecting views. She suggested revising paragraph G.2.b.ii to add at the end "or for the purpose of retaining views for the property owner or neighboring property owners when such views are part of neighborhood character or protected by covenants, conditions and restrictions." Replacement of taller trees with smaller more appropriate vegetation might do just as good for the environment.

Commissioner Sheffels commented that regulating view preservation is a very slippery slope. One person's well-loved view could be a neighbor's view that is not liked at all. Covenants, conditions and restrictions can rightly address views, but it should not be the responsibility of the city to preserve views regardless of the character of the neighborhood, other than from public rights-of-way. Commissioner Robertson said she would not be in favor of legislating view protection citywide. However, the property owner who wants to cut the tree is the one who must apply. The argument brought forward might be that the local covenants require the removal of the tree. In those cases the city could allow for flexibility without regulating view preservation.

Answering a question asked by Commissioner Lai, Mr. Jackson said there are covenants in place in Somerset that speak to preserving views from adjacent properties. Many of the remaining undeveloped lots that have taller trees have steep slopes, and the critical areas code allows for the implementation of vegetation management plans. The approach allows for the removal of trees if replaced by species that will maintain the function. Most of the lots not already developed and without critical areas have no particular tree retention restrictions absent a specific land use action, which means property owners are allowed to take out trees without obtaining a clearing and grading permit; up to 20 trees can be removed from flat lots that have no restrictions without obtaining a clearing and grading permit. Tree pruning of up to 25 percent of the tree canopy is allowed and is not considered to be tree removal.

Chair Orrico suggested that the language as proposed by staff captures the idea of replacement vegetation. The references to pasture and agriculture are not exclusive.

Mr. Jackson said the Council directed staff to bring to the Commission a couple of provisions that were not part of the original package. One is the issue of building height regardless of what is done with the FAR threshold and second story setbacks. One option would be to change the way building height is measured in single family land use districts to maintain the 30-foot limit from existing grade to the top of a flat roof and to restrict the maximum height for a pitched roof to 35 feet to the peak. The current practice is to measure to the mid-point of the highest ridge. A second option would be to limit the maximum façade of a building on any side to 40 feet measured from the base of the face from existing grade to the peak of the face.

Mr. Jackson explained that the code requires height measurements taken from the average existing grade. On a sloped site, measurements are taken around the building footprint and are then averaged. That can result in a building that meets the overall average but has one face that is much taller than 35 feet. Staff has not done an analysis to determine what the unintended impacts could be.

Answering a question asked by Chair Orrico, Mr. Jackson said that averaging measurements around the perimeter of a structure on a slope yields less of a visual impact on the upslope properties. He allowed that in practice it likely would be a challenge to attempt to restrict façade heights; no other jurisdictions take that tack.

With regard to the maximum height issue, Commissioner Ferris observed that there are examples in which a 40-foot façade would create no problems, while in other cases it would. He suggested it would be impossible to draft legislation that would differentiate between the two. Architectural design can have a big influence on visual aesthetics that could make the taller wall more pleasing.

Commissioner Robertson said she would like to see an analysis by staff showing how short the uphill part of a house would have to be in order to make the downhill side 40 feet or less. She said she would like to see both graphics and photos.

The public hearing was scheduled for May 13.

9. OTHER BUSINESS – None

10. APPROVAL OF MINUTES

A. February 25, 2009

Motion to approve the minutes as submitted was made by Commissioner Robertson. Second was by Commissioner Hamlin and the motion carried without dissent; Commissioner Lai abstained from voting.

11. PUBLIC COMMENT

Mr. Roger Macpherson, 21626 SE 28th Street, Sammamish, said he works as a general contractor and architect. He said he currently has one client whose home burned down, and one whose home was flooded. In both cases, the insurance company has yet to settle, which means the 90-day vacancy rule has kicked in. Once the settlements kick in, permits will be obtained, which can occur quickly if a straight rebuild is considered, but which will take another 60 days

minimum if changes are contemplated. An emergency provision for such cases would be appropriate. With regard to noise screening, he suggested simply incorporating a set decibel reading at the property line. The FAR issue has come up in both Mercer Island and Kirkland, and in both jurisdictions the reasoning behind the FAR approach is totally understandable but flawed. The concept is to avoid massive houses that do not fit well in a neighborhood. What really matters is volume. A two-story living room will calculate out the same as a single-story living room. If the homeowner wants to add a playroom above the family room, the FAR could be exceeded without impacting the neighbors at all or changing the way the home looks from the outside. Areas below grade certainly have no visual impacts and should not necessarily be counted in the FAR calculation.

Mr. Bob Sorensen, 22609 NE 2nd Street, Sammamish, pointed out that FAR is particularly punitive on smaller lots. He suggested that a threshold lot size below which an exemption could be allowed would be a good thing to include. With regard to the 40-foot façade, he said measuring from the ground to the peak of the roof would be extremely onerous. Mercer Island has a 45-foot limit but they measure to the plate line. A requirement to break up the façade with stepbacks might work.

Commissioner Ferris asked staff to bring to the next discussion of the topic a synopsis of the answers given to many of those questions when the Commission previously reviewed the issue. He added that during the public hearing it would be good to have the full code on hand so people will be able to see how the bits that fall under Phase Two fit in the overall scheme of things.

12. NEXT PLANNING COMMISSION MEETING

The next meeting was scheduled for April 22.

13. ADJOURNMENT

Chair Orrico adjourned the meeting at 7:58 p.m.



Paul Inghram
Staff to the Planning Commission

5/13/09

Date



Vicki Orrico
Chair of the Planning Commission

5/13/09

Date