

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

May 16, 2012  
7:15 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Turner, Commissioners Carlson, Ferris, Hamlin, Laing, Sheffels, Tebelius

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Nicholas Matz, Janet Lewine, Department of Planning and Community Development

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 7:22 p.m. by Chair Turner who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present.

3. PUBLIC COMMENT

Mr. Norm Slader, 13150 SE 47<sup>th</sup> Street, said he passes by the Holy Cross Lutheran Church on a daily basis. He said it is the responsibility of the Planning Commission to determine if the proposed amendment to the Comprehensive Plan meets the threshold review decision criteria. Criterion E refers to significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. The application offers two substantive and specific changes, including the zoning change to R-30 for the property to the north and on the other side of Newport Way, and the construction of the Andrews Glen housing project on that property. The property that was rezoned is part of Factoria subarea District 2. The land use plan for District 2 calls for commercial, office and multifamily housing developments. The rezoning of the Andrews Glen site fits with the intent of the subarea plan for District 2 and does not, therefore, represent a significantly changed circumstance. Zoning in District 2 should not be considered for properties in District 1.

Ms. Lori Wheatley, 13132 SE 47<sup>th</sup> Street, said Holy Cross has made the claim that since the last Comprehensive Plan changes for the Factoria area was enacted the church has become more than just a place of worship and is in fact a community outreach center, which itself represents a significantly changed condition. The property is in District 1, yet even so the church believes it is entitled to receive a rezone from R-5 to R-20. The subarea plan specifically calls for protecting single family neighborhoods to the east of Factoria Boulevard and south of Newport Way from encroachment by more intense uses. The Commission should recognize that a high-density multifamily rezone would be undeniably contrary to established city policy. Any change to District 1 as proposed would undermine the Comprehensive Plan purpose of preserving quiet, tranquil neighborhoods. If the rezone is allowed, area homeowners will suffer from the impacts.

The church membership is small and appears to be about evenly split regarding the proposed housing project on the church property; that could make it difficult for the church to actively manage the project. The church should reevaluate the scope of its vision and find ways to support the homeless within the current neighborhood R-5 zoning. The Commission should not vote to advance the application to the City Council.

Mr. Arnie Brandon, 12839 SE 45<sup>th</sup> Place, urged the Commission not to cross the line that currently exists in the Factoria subarea. On one side of the line there are commercial establishments, and on the other side is housing. If the request is granted, others will follow. No one knows when the Holy Cross buildings will be erected, where they will be built on the property, what the height of the proposed building will be, the size of the proposed building, or where the ingress and egress will be located. No one knows if there is sufficient room on the property for a multistory building as well as the current pea patch and orchard. It appears the only place for the housing units would be on the site of the current church building and related outbuildings facing 129<sup>th</sup> Place SE. The building could impact the shared property lines immediately adjoining the long series of single family homes on two sides. The adjacent intersection is already over-congested. The rezone request should not be allowed.

Answering a question asked by Commissioner Carlson, Mr. Brandon said the church during meetings with the neighborhood already succeeded in saying that they would not impact 129<sup>th</sup> Place SE after seeing the level of opposition to impacting that street.

Ms. Karen Wimberley, congregation president of Holy Cross Lutheran Church, said the church made its position clear during the public hearing on May 9 and also made the case in favor of the proposed Comprehensive Plan amendment. She said church representatives were present and ready to answer any questions asked.

Mr. Woody Hazelip, 4540 130<sup>th</sup> Avenue SE, said he was convinced that he if owned the Holy Cross property instead of the church, the city would not even consider an application to put a multifamily development on it. That is according to the threshold review criteria, such an application would change the area significantly contrary to the Comprehensive Plan. The shared characteristics would be changed drastically. The proposal should not be looked at as a request from a church. Under the Comprehensive Plan the Commission is obligated the keep the residential community zoned at R-5.

Mr. James Sanderson spoke as a homeless person who came out of the Eastside shelter program in April. He said approximately 12,000 Washington families across the state cannot find affordable housing. The city's 2012 human services Needs Update affirms that there is not enough affordable housing on the Eastside or in King County. Holy Cross is trying to do the right thing for low-income and homeless people, and they will do everything in their power to work with the neighbors to bring about the best resolution possible. There is a spiritual mission that the city should support.

Ms. Irene Leggate, 325 105<sup>th</sup> Avenue SE, read into the record a statement submitted by Kevin and Mary Chu, neighbors who are impacted by the request she has made for a Comprehensive Plan amendment. In the statement the Chu's indicated they are both owners and residents of their home at 310 105<sup>th</sup> Avenue SE and noted that they are acquainted with the request to rezone the four homes across the street from their property. The statement indicated the Chu's share the wishes of the owners of the subject properties.

Mr. Joe Tovar spoke representing the Leggate family. He noted that contained in the email sent to the Commission earlier in the day was an outline of where the sidewalk currently exists on

105<sup>th</sup> Avenue SE and where the sidewalk would be constructed with redevelopment of the Leggate-Balwada site.

Mr. Robert Thorpe, 7438 SE 27<sup>th</sup> Street, Mercer Island, spoke regarding the Lorge-Benis/Newport Professional Comprehensive Plan amendment. He stressed that the proposal is not a retread of previously submitted rezone proposals. The Lorge property is 35 feet lower in elevation than the church property, and the Benis property is 50 feet lower. Should a 45-foot building be constructed on the properties, only one or two stories will be visible from adjacent properties. The property abuts the Newport High School parking lot and is clearly not a single family site. The Comprehensive Plan calls for mixed use on the site, and currently in favor with developers is small mixed use complexes with office on the first floor and residential above; mega complexes are not being constructed in the current economic climate. The significantly changed conditions in the surrounding area include Andrews Glen, Walmart, the retail uses, the Magnet school, and changes relating to the map or text across the street. The owners of the buildings on the subject property have testified that they cannot rebuild them and they are already 50 years old. There are significant changes relative to transportation in the immediate vicinity which calls for constructing well-integrated mixed use structures that are transit supportive. The code looks backward rather than forward, and the Commission should seek to be creative and ask if there could be something better.

Commissioner Tebelius asked if any effort has been made to talk to people in the community about the proposal. Mr. Thorpe said contact was made with the church in support of its efforts, and there have been talks with property owners in the general area. He said he has not sought out people living in District 1.

Mr. Chris Benis, 4315 Factoria Boulevard, said his family purchased the property in 1970. At that time it still had the old farmhouse on it and it was converted into a real estate office, and later into professional offices. There have been at least six extensions and remodels to the buildings over the years. The original farmhouse predates Newport High School. The buildings are finally at the end of their useful lives. There has always been a good connection between the property and the school. There have been counselors using the building, as well as an eye clinic, a driving school, and other professional offices. Currently there is an art education program on the site that draws students from the school. If redeveloped, the property could continue to house uses that will benefit the school and the local community.

Ms. Dena Fantle, 4722 130<sup>th</sup> Avenue SE, spoke as vice-president of the Lower Somerset Homeowners Association. She said the area covered by the Association has over 260 single family homes, and all but one active member of the Association opposes the Holy Cross proposal to rezone from R-5 to R-20. She said she attended a number of the Holy Cross Working to End Homelessness Committee meetings over the last year and a half. From the start the Committee members understood their plans would be preliminary until contracting with a partner. Even so, from the first meeting the goals set by the Committee were to replace the church building as part of the proposed homeless apartment complex. The Board noted that the church buildings are in need of repairs and they do not have the necessary funds to cover all the repairs needed. Richard Wagner of Baylis Architects presented preliminary sketches at a Committee meeting in the fall of 2011, and he pointed out that in order to retain as much of the orchard, pea patch and amphitheater as possible, and to meet the proposed partner criteria of constructing 50 to 60 units, the church and daycare buildings would need to be demolished and reconstructed within the apartment complex. There was an understanding that the number of units would be prescribed by the project partner, and studies have shown that 50 to 60 units is the minimum number that will make the project financially feasible. The church has a wish list about the type of housing, number of units and target tenants, but the project partner will ultimately have the final say, and

may change things to suit them at their whim. Such changes that have impacted the local neighborhood have already been seen at the St. Madeline Sophie School project. Approval by the Commission will set a precedent for the Lower Somerset neighborhood as well as every neighborhood in the city where religious properties exist alongside single family properties. There are plenty of other areas in the city where homeless housing can be built.

Mr. Bob Sternoff, 255 7<sup>th</sup> Avenue South, Kirkland, spoke as the owner of the property on which the Banner Bank building is located in the Bel-Red area. He explained that his property is a gateway location for traffic heading east on Bel-Red Road. He noted that he had battled hard to get the area included in the Bel-Red corridor plan, which it was, the result of which was a small upzone. The upzone is not, however, sufficient to trigger redevelopment. There has been a significant change, namely that in the time it took to get the Bel-Red plan together and subsequently RapidRide has begun serving the area, and the location of the East Link rail line in the corridor has been determined, which is within less than a quarter mile of the subject property. It is very difficult for anyone to meet the more stringent requirements now in place, as evidenced during the public hearing by Mr. Springman whose building burned down. The buildings are nearly 40 years old and have been bandaged together to remain operational, but they are certainly not up to speed with what the demand is in the market. More density and a much larger floor plate is needed.

Commissioner Carlson asked Mr. Sternoff how much height he would like to see allowed on his property. The answer he gave was 70 feet, noting that the current height limit is 45 feet. The additional height will give flexibility in positioning the building footprint, and to create a live/work/play use. He reiterated that the property does not abut any residential properties.

Commissioner Carlson noted that screening between commercial and residential uses is required and asked how a building that rises to 70 feet could be screened from nearby uses, particularly the apartment complexes directly across NE 10<sup>th</sup> Street. Mr. Sternoff said there is a natural barrier between his property and the one on the corner. The apartment complexes are further down and their orientation is primarily to the other side. Landscaping and other mitigation measures can be utilized, but it is never possible to completely screen one use from another.

#### 4. APPROVAL OF AGENDA

Commissioner Ferris suggested the discussion on agenda item 7-A may take the longest and as such should be addressed last.

There was consensus to make that agenda change.

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

#### 6. STAFF REPORTS – None

#### 7. STUDY SESSION

##### A. 2012 Site-Specific Annual Comprehensive Plan Amendment Threshold Review and Geographic Scoping

By way of background, Comprehensive Planning Manager Paul Inghram explained that the city has both a Comprehensive Plan amendment process and a rezone process. Applicants are allowed to apply for both at the same time, but each is treated individually, beginning with the

Comprehensive Plan amendment. No rezone action is before the Commission and cannot be considered by the City until such time as the City Council approves the Comprehensive Plan amendment.

Continuing, Mr. Inghram said Comprehensive Plan amendments undergo a two-step review. The formal review of the merits of each amendment is the second step, called Final Review; questions about traffic, height and screening are all addressed during the final review. In the first step, called Threshold Review, a number of decision criteria are examined; projects that meet all the decision criteria can be recommended for Final Review. In Threshold Review Criterion E, which deals with significantly changed conditions, is by its very nature somewhat subjective. At issue then for Criterion E is not whether the city has changed or whether there have been specific changes to the proposed CPA site, but rather whether there have been significant changes since the portion of the Comprehensive Plan relative to the subject site was last adopted. Significant changes are primarily those that trigger the need to look at a site differently from how it was viewed when the Comprehensive Plan was last adopted. A determination to include a proposed amendment in the work program is not approval of the amendment; amendments can be found to meet all of the Threshold Review criteria and be moved to Final Review only to be deemed a bad idea at that stage. Another public hearing is conducted as part of Final Review, and ultimately the City Council makes the decision to adopt or not adopt a proposed amendment.

Answering a question asked by Commissioner Tebelius, Mr. Inghram said the Growth Management Act requires periodic major updates of the Comprehensive Plan; the next major update for Bellevue is scheduled to be done over the next two years and being completed in 2014. During the major update anyone can suggest an amendment to the plan.

Mr. Inghram also noted that the City Council can initiate a CPA at the request of property owners, and the Council can also initiate a Subarea Plan review for purposes of including site issues.

Commissioner Tebelius then noted that the staff recommendation for three of the four proposed Comprehensive Plan amendments is to not move them beyond Threshold Review, primarily based on the changed circumstance criterion. She then asked what the property owners could do if the staff recommendation carried through to Council decision. Mr. Inghram said should the Commission concur with the staff recommendation and make that recommendation to the Council, and should the Council agree with the Commission's recommendation, the Land Use Code's three-year limitation on making the same CPA application would apply.

Answering a question asked by Commissioner Tebelius specific to the Lorge-Benis/Newport Professional amendment, Mr. Inghram said the staff did not see any significantly changed conditions in the area that suggest a need to reconsider the land use for the properties. Wal-Mart is a new commercial use but is sited in an established commercial area; one commercial use is simply replacing another commercial use. St. Margaret's redeveloped its property, which certainly is a change, but one that has not significantly affected the two parcels across the street from it. The proposal for the Lorge-Benis/Newport Professional site is different from what has been submitted before, but whether or not it meets the criteria it still is the same as the previous proposals in regard to significantly changed conditions. The Factoria Subarea plan was last updated in 2006. The focus of the 2006 changes was on Factoria Boulevard at the core commercial center, and changes to the subject property were not considered.

B. Leggate-Balwada 12-104612 AC (225, 231, 325 and 335 105<sup>th</sup> Avenue SE)

Commissioner Hamlin agreed with the staff recommendation. He said he could see no

significantly changed circumstance in the area. The application should not move forward.

Commissioner Ferris concurred. He said he saw no significantly changed conditions. The fact that there are two new single family residences, which is the current zoning and use, is proof that the market holds the area to be a single family neighborhood. The threshold criteria are not met.

Commissioner Sheffels agreed as well. She said the neighborhood has not changed that much. There is traffic and noise but the neighborhood has faced those issues for some time. She proposed not moving the application forward.

Answering a question asked by Commissioner Tebelius, Mr. Matz said there are four single family homes on four separate lots covered by the proposed amendment, and if approved the designation would support a zoning of up to R-20. Given the site considerations, it is reasonable to expect as many as 15 dwelling units could be built under that zoning.

Commissioner Tebelius said the testimony provided by the applicant at the public hearing was clear and concise. However, she agreed with the staff, particularly with regard to significantly changed circumstances. The neighborhood continues to have the look and feel of a single family neighborhood and the proposal would change that.

Commissioner Carlson agreed that Mrs. Leggate spoke at the public hearing with great conviction and sincerity, and has a good sense of institutional memory. He said he supported moving the amendment forward. The stretch of properties will work better and the community will be incrementally improved by the changes.

Commissioner Laing said the presentation received, particularly that received from the applicant, was compelling. He noted that one thing about changed circumstance is that it is bracketed from the last time the relevant plan affecting the subject property was adopted. In the case of Leggate-Balwada, the plan was last adopted in 1996. Things within the Bellevue Way corridor have indeed changed since then. Much of the change has been consistent with the Comprehensive Plan, but there has been an intensification of the land uses moving from the Downtown core outward. Commissioner Laing also said that there is in the neighborhood in which the subject properties are located a logical breakpoint. Notwithstanding the two new single family homes, the neighborhood has changed significantly since the subarea plan was last adopted. He indicated his support for moving the application forward and expanding the geographic scope to include the properties along 105<sup>th</sup> Avenue NE to SE Cliff Place where there is Multifamily Medium zoning in place.

Chair Turner agreed with Commissioner Laing. There has been change in the Downtown area and the intensity of uses is creeping south from the Downtown. Eventually the area is going to be upzoned.

Commissioner Tebelius asked if the issues articulated by Commissioner Laing are the kinds of things the Commission should share with the Council in order to encourage them to take a general look at the area in its entirety. Mr. Inghram said if the Commission feels the area needs further scrutiny, the Commission can certainly indicate that to the Council.

Commissioner Laing pointed out that the South Bellevue Subarea plan describes an intensification of uses along the Bellevue Way corridor. As the uses along Bellevue Way intensify, there will be a logical intensification of uses abutting those properties. However, he thought that what the neighborhood in which the subject properties are located is facing is intensification from two directions, from Bellevue Way and from the Downtown. The result is

commercial-related traffic passing through the neighborhood. The neighborhood is clearly not the same it was 25 years ago. The question before the Commission is whether or not the applicant has met the threshold criteria necessary to move the application to the next step. He said in his view the application has indeed met the threshold.

Commissioner Sheffels pointed out that geographically the neighborhood is not part of the Bellevue Way corridor. There is in fact a significant elevation change between them. The neighborhood is currently very much a single family neighborhood; to allow multifamily to be developed in the middle of the neighborhood will significantly impact the single family homes. Multifamily along Bellevue Way makes sense, but not for the subject properties at this time.

Commissioner Ferris commented that a number of property owners along Bellevue Way have asked for Comprehensive Plan amendments citing intensification of use. He said he has argued in the past that there is a fundamental flaw in the threshold criterion of significantly changed circumstance, but every time the Commission has asked the Council to consider changing it, the request has been turned down. Since that is the case, the criterion stands and must be applied accordingly.

Chair Turner suggested that because so many properties are falling into the gray area created by the criteria, the argument could be made that the criteria need to be changed. He said he could support moving the application forward and to include a note for the Council saying the Commission sees change in the general land use for the area, and would like to see some of the criteria revised.

Commissioner Carlson said there are single family neighborhoods that would be up in arms should the Commission suggest that a multifamily development be allowed. The Leggate-Balwada proposal, however, has generated very little opposition and has enjoyed quite a lot of support. With amenities such as sidewalks, it could be argued that the neighborhood would be a better and more pleasant place.

Commissioner Laing pointed out that criterion G requires a finding that the proposed amendment is consistent with the current general policies in the Comprehensive Plan. The work submitted by the applicant's consultant, Mr. Tovar, was on point. The subject properties are literally surrounded by Office, Multifamily Medium, and a de facto boarding house across the street in the Single Family High zone. From purely a threshold standpoint, the application meets the test of significantly changed conditions since 1996.

Commissioner Tebelius said she came to the Commission with a concern for neighborhoods because it is the neighborhoods that make the city wonderful. The unique neighborhoods are the most interesting. Where changes are contemplated, the overall impact must be carefully considered.

A motion to recommend no further consideration of the Leggate-Balwada Comprehensive Plan amendment for the 2012 annual Comprehensive Plan work program, and to not expand the geographic scope, was made by Commissioner Hamlin. The motion was seconded by Commissioner Tebelius and the motion carried 4-3, with Commissioners Ferris, Sheffels, Tebelius and Hamlin voting yes, and Chair Turner and Commissioners Carlson and Laing voting no.

#### C. Banner Bank 12-104617 AC (12433-12443-12453 Bel-Red Road NE)

Commissioner Hamlin allowed that there are a variety of reasons why the proposed amendment

should be considered, but he said in his opinion the significantly changed circumstance criterion was not met. The site was taken into account when the Bel-Red subarea planning was done. He added, however, that if the Commission elects to move the application forward, the geographic scope should be expanded to include the four properties noted in the staff recommendation.

Commissioner Sheffels said she served on the Bel-Red steering committee. One of the primary considerations of the group was to avoid zoning out a lot of the service and retail businesses that exist in the corridor. She agreed that the subject property is a good location for something new and different that would benefit the corridor. The Bel-Red study process did result in a higher zone and higher density on the subject property, with a higher allowable building height. A four-story building on the site, which is allowed under the Bel-Red subarea designation and zoning, would not overshadow the adjacent residential. The amendment should not be moved forward.

Commissioner Laing said he disagreed with the staff report on the threshold question of significantly changed circumstances. Commissioner Laing felt that the staff report talks about the severity of the economic downturn and claims it is not a changed circumstance, but the Washington courts have consistently recognized changing economic circumstances affecting a property as a substantial change in circumstances sufficient to support a rezone. Two cases in Kittitas County are exactly on point, Mr. Laing noted. The commissioner also noted that from the applicant and the adjacent property owners who may or may not end up being included in the action, the Commission learned that the current zoning for the property does not pencil out. Commissioner Laing felt that there was no more compelling testimony about the inefficacy of the current zoning to stimulate redevelopment or to allow economically feasible redevelopment than the fact that the adjacent property, which has been burned to the ground, will not take advantage of the zoning it has in trying to redevelop. The issues facing the subject property are not unlike those facing the Newport Hills Shopping Center. A lot of effort goes into good planning, but it is always looking backwards. If the zoning is insufficient to make it economically viable to redevelop in the wake of the economic turndown, the zoning is broken.

Commissioner Laing said he was professionally bothered by the statement in the staff report that says edge site properties designated BR-ORT are not a catalyst to the redevelopment growth planned for Bel-Red. Neither the Commission nor the Council as a legislative body is acting in the role of deciding who gets to go first. It would be an absolute abuse of police power to try to set things up so that someone else would get to go first. The Commission should not even consider holding back the proposed amendment on the basis of expecting some other area to be the catalyst and go first. The proposed amendment meets the threshold for further study and should be moved forward. Additionally, the geographic scoping should be expanded.

Commissioner Carlson noted that he lives in proximity to the subject property. He said a new medical/dental building that was constructed about five years ago was allowed a little more height when it included below-building parking. The developer of that site was happy to include additional screening to protect the residential areas. The area up to 148<sup>th</sup> Avenue NE is supposed to be residential. Obviously the sites fronting Bel-Red Road should have commercial uses, though they should be adequately screened from residential developments, and that is one reason why there should be height restrictions. On one side of the Sternoff property is a business park, but some of the properties in question abut apartment complexes. If allowed building height of up to 70 feet, the commercial development would be looking down on the adjacent apartments, and objections from the residents could be expected. He said he did not support moving the amendment forward.

Commissioner Tebelius agreed with Commissioner Laing and suggested the application does meet the Threshold Review criteria. It should not matter who goes first in the Bel-Red corridor.

She said she understands the concerns regarding height outlined by Commissioner Carlson, but that issue can be dealt with. The testimony provided by the various property owners indicated that there have been changed circumstances. She said she would not expand the geographic scoping to include all seven of the properties but would support expanding it to include the four properties. She said the amendment should be advanced.

Commissioner Ferris supported the position of staff not to move the amendment forward. The Comprehensive Plan for the Bel-Red area was updated just a few years ago. The pieces needed for the anticipated redevelopment have not fallen into place yet, but it cannot be argued that circumstances have changed. He did not agree with Commissioner Laing that a change in economic conditions is sufficient to support a rezone. Many developers would love to come in after a recession and seek a rezone to go higher and denser and argue that the recession is the reason for the requested zoning, but the fact is economic conditions do not represent a changed condition to support a rezone. He said he would not vote to move the amendment forward.

Chair Turner noted his support for moving the amendment forward. If the current zoning does not work, it should be changed. The light rail line set to come through the corridor is an important consideration. It is significant that the building that burned down cannot be reconstructed under the current zoning. Height is a potential issue but one that can be addressed in the next phase.

Commissioner Carlson commented that he opposed raising building heights for any of the parcels adjacent to a residential development. He noted, though, that the westernmost property, and Mr. Sternoff's property next to it, do not border residential. There is a senior living facility across the street but it faces 124<sup>th</sup> Avenue NE. A business park exists adjacent to Mr. Sternoff's property. The standard of allowing more height on those two properties is reasonable. For that reason, Mr. Carlson indicated that he could support a motion to raise heights for those parcels only. The medical/dental building, to the east, appears to be doing quite well under the existing zoning.

A motion to recommend no further consideration of the Banner Bank Comprehensive Plan amendment application for the 2012 Comprehensive Plan work program, and to not expand the geographic scoping to include the other properties, was made by Commissioner Hamlin. The motion was seconded by Commissioner Ferris and the motion carried 4-3, with Commissioners Hamlin, Sheffels, Carlson and Ferris voting yes, and Chair Turner and Commissioner Laing and Tebelius voting no.

D. Lorge-Benis/Newport Professional 12-104629 AC (4307 and 4317 Factoria Boulevard SE)

Commissioner Hamlin concurred with the recommendation of the staff not to move the application forward. He said the development of the church property does not represent a significantly changed condition, and the arguments made by the applicant regarding other changed conditions did not carry the day. He said he would not support moving the amendment forward.

Commissioner Carlson said in the early 1990s he worked for an Internet startup in one of the buildings on the subject properties. He suggested that the testimony offered by Mr. Thorpe representing the applicant was persuasive, namely that if the amendment is not approved the properties will not redevelop and the existing buildings will remain as they are. It would not be economically feasible under the current zoning to remodel them in any significant manner. He differed with the recommendation of staff and said he would vote to move the amendment

forward.

Commissioner Tebelius concurred with Commissioner Carlson. She said she found the testimony of Mr. Thorpe to be clear and concise. She did not agree, however, with the argument that the church development is a changed circumstance given that it is in a different district. On balance, though, the arguments offered do show there have been changed circumstances, and the amendment should be allowed to go forward.

Commissioner Sheffels agreed that the St. Margaret's development is not a significant change. The subject property is located very near to the high school and there are uses on site that are tied to the high school, which is a more persuasive argument. She indicated her support for forwarding the amendment for further consideration.

Commissioner Ferris concurred. He said for the reasons previously cited he would recommend moving the amendment forward.

Commissioner Laing agreed as well. He agreed with the point made in the staff report which stated there is no basis for amending the Comprehensive Plan on a site simply because the designation was changed on other sites in the subarea. However, the application materials and the testimony offered are evidence that the threshold criteria are met.

Chair Turner added his concurrence and noted his desire to see the amendment moved forward.

A motion to move the Comprehensive Plan amendment forward and to expand the geographic scope to include the third parcel was made by Commissioner Tebelius. The motion was seconded by Commissioner Laing and the motion carried 6-1, with Commissioner Hamlin voting no.

(BREAK)

A. Holy Cross Lutheran Church 12-104583 AC (4315 129<sup>th</sup> Place SE)

Commissioner Ferris brought to the floor a question regarding the mission of the church, the separation of church and state, and the right of the city to regulate the church in fulfilling its mission. He asked if there are restrictions the city can apply toward a church or if it is exempted from rules that apply to other property owners.

Mr. Inghram allowed that there are constitutional aspects to the separation of church and state. More recently both federal and state laws have been enacted that provide for certain freedoms for religious land uses, those there has been only a limited amount of testing of those laws. It would be difficult to say to what extent the laws provide protections for religious uses in considering the legislative act of a proposed Comprehensive Plan amendment. The Land Use Code allows churches in any zone with a conditional use permit. That does not mean that a church use is exempted from setbacks, landscaping provisions, and all dimensional standards, unless a variance is sought and permitted. The Land Use Code would also permit residential uses on the property used for the church because of its underlying residential zoning, subject to the zone's density limits, and provided the residential sites were properly platted.

Commissioner Sheffels said it was her understanding that the church intends to remain operating on the site as a church. She said it was also her understanding that the church use is required to provide a set amount of parking for the congregation. She asked if the housing component would take away some of the parking, leaving the church with less than the required amount.

Mr. Inghram said any project going forward would be reviewed as to the applicable parking standards, and the applicant would have to demonstrate that the standards can be met both for the church use and the residential use.

Commissioner Carlson asked what the church could do under the current zoning in terms of helping the homeless. Associate Planner Janet Lewine said the site is just over three acres in size and the underlying R-5 zoning could support a maximum of 15 housing units; the available affordable housing bonus would increase the total maximum to 18 units.

Commissioner Carlson asked if the church had given consideration to simply constructing a small shelter on its property to serve the homeless. Mr. Lee Wimberley, a member of Holy Cross Lutheran Church, said the members have been involved with homeless issues for the past seven or eight years. A part of that involvement was spent in learning what it will take to end homelessness. All of the agencies talked with have indicated that providing shelters will not end homelessness; what the homeless need is a safe place to live in conjunction with wraparound services, and the breakeven point for housing with the associated services is on the order of 40 to 50 units. The need is great in east King County and King County at large, and that is the primary reason the church is seeking the larger number. Compass Housing Alliance, Imagine Housing, and A Regional Coalition for Housing (ARCH) have all recommended taking the same approach.

Commissioner Carlson asked if a more modest-sized number of housing units within the existing zoning be more manageable for the congregation the size of Holy Cross Lutheran. Mr. Wimberley said there has never been an intent for the church to go it alone. From the start the church has intended to be a part of the larger conversation within the Ten Year Plan to End Homelessness. Holy Cross intends to seek a housing partner to assist in the design work and in putting together a support services plan. Commissioner Carlson said it has been his experience in working with organizations that help the homeless that smaller shelters allow for more individual attention and better targeting of help to those who need it, and they are considerably easier to manage.

Mr. Wimberley said different stories will be heard from different people.

The church has relied a great deal on the information received from Arthur Sullivan with ARCH. He said if it were possible he would see the church construct housing for 300 given the number of persons living without shelter on the Eastside. He said if asked to choose between providing shelter for those living under a bridge and having to put up with traffic, providing for the homeless would win out.

Commissioner Sheffels asked how ARCH reacted to the suggestion to put affordable housing units on the Holy Cross site. Mr. Wimberley said ARCH provided a great deal of technical expertise and data regarding the need for affordable housing on the Eastside. He said they did not offer an opinion one way or another on the question of whether or not they favor the Holy Cross project specifically, though they were very straightforward in highlighting the issues that will be faced, including the fact that the property is adjacent to single family neighborhoods.

Commissioner Hamlin asked if expansion of the role of churches to use their properties to provide multifamily affordable housing has been used previously as an argument in favor of a Comprehensive Plan amendment, either in Bellevue or in another jurisdiction. Ms. Lewine said the argument was voiced to some extent in regard to the St. Margaret's project. That project, however, was not subjected to threshold review given that the amendment was initiated by the Council, but the Council spoke to the expanding role of the church as a changed circumstance.

Mr. Inghram said St. Margaret's came in late in the process; they missed the application deadline of January 30 and so they appealed directly to the City Council to initiate an amendment. There was, however, some discussion about the role of the church and its use as a residential site as something that had not previously been considered, and was therefore a changed circumstance. The concept of churches having available property and looking at housing as a part of their missions is something that is gaining traction nationally, but the changed circumstance criterion is a Bellevue-specific issue.

Commissioner Hamlin said he did not see anything in the staff report about the single family nature of District 1. Ms. Lewine said the portion of the Factoria Subarea plan that addresses protections for single family districts applies to the entire subarea as a general policy. She allowed that the land use in District 1 is preponderantly single family, and that is something would be given more scrutiny in the next phase. The staff recommendation to consider a range of different zoning categories was made in part to address the compatibility issue.

Commissioner Laing said the idea of taking care of the least of these jumped out at him from the staff report. That part of the church's mission has been around for some 2000 years and really cannot be considered to be a changed circumstance. He asked why it should be considered a new idea that a church would provide shelter for less fortunate individuals in the community. Mr. Inghram said over the past several years there have been a number of examples of churches looking more expansively at their mission in regard to how they use their properties. The expanded use of the church properties is not something that was contemplated 20 years ago. The St. Margaret's project underscored the fact that the underlying zoning was R-5, even though the surrounding zoning was all multifamily. The city had simply applied the single family zoning because the use was a church; no thought was given to the notion that some other activity might be added in the future. The Comprehensive Plan process is one way to ask the questions that were not asked originally.

Chair Turner said Holy Cross is saying it has a new mission to provide housing for the homeless. However, in 2005 and 2006 there was a proposal to have Tent City right next to the Mustard Seed, so that would seem to indicate serving the homeless has been part of the mission of the church for some time. Mr. Inghram reminded him that the criterion regarding changed circumstance refers specifically back to the last time the Comprehensive Plan was adopted for the area in which the applicant property is located, which for the Factoria subarea was 1996.

Commissioner Laing suggested that rather than a change to the subject property or surrounding area, or changes related to the pertinent plan or map text, what is in evidence is a change in the way the property owner wants to use the property. That argument is in fact the case every single time a property owner comes to the city with a request for a rezone to allow for a different use. Mr. Inghram said the point is not that the applicant has simply decided they want to change, but rather that there is a change in how churches generally are using their land in the city. The city would not see an individual property owner touting a different idea for his property as a changed circumstance.

Commissioner Ferris suggested that there are plenty of precedents for treating churches differently from a business or any other property owner. The Bethel church that was at Lenora and Second in Seattle is now the home of the Cristalla condominiums. The site originally housed a salt water swimming pool. That was converted to the church use which existed for some time before the church sought a developer to convert the site to condominiums. The city claimed the building on the site to be historic, which suppressed the land value. The church argued that because they were a church the city could not suppress its land value by claiming historic preservation, and the church won in court. The church was in effect given an exception

from what other private landowners would have to follow by reason of its being a church. In Bellevue when the city wanted to change 148<sup>th</sup> Avenue SE just past Bellevue College, the city wanted to take a portion of the land on which St. Andrew's Lutheran Church stood. The research done turned up the fact that the city had to consider every other option available, and economics could not be a consideration for the other choices. The city chose to go a different direction as a result. The fact is churches have exceptions that are not applicable to other landowners when it comes to land use and their values. If the Holy Cross site was owned by a private landowner seeking a change from single family to multifamily, the current conversation would not be under way. The church representatives have come before the Commission and have explained that their vision for using their property is part of the mission of the congregation, and therefore have the right to see the issue moved forward. Issues of height, traffic and views will all be considered in the next phase. The fact is the need is great, the church has made its case as to why it wants to address the need, and a church is different from other property owners. He indicated his support for the recommendation of the staff to move the amendment forward.

Commissioner Tebelius agreed that homelessness is a concern facing the community, and there is an insufficient supply of affordable housing in King County generally. She agreed that the mission of the church to care for the disadvantaged has always been part of the Christian faith. That is in fact why so many around the table are people of faith. However, the church cannot argue that its new focus toward the homeless is a changed circumstance warranting a Comprehensive Plan amendment. HB-1956 is not a changed condition either; all that legislation did was provide for tent cities to situate on properties of churches. The applicant cites as a changed condition the voter initiative regarding taxes and reductions to the Housing Trust Fund, but that is not a changed condition specifically relating the subject property. She voiced concern that the Factoria area of Bellevue has taken on low-income affordable housing to a greater degree compared to what other areas of the city have done, and questioned whether another such project should be allowed to locate in the area. While churches do have expanded rights, they do not have unlimited latitude to do whatever they deem to be part of their missions. Communities do need to step up in finding ways to care for the homeless, but the Holy Cross site is not the right place. She said she would not support the staff recommendation.

Commissioner Hamlin said he understands that churches enjoy some special privileges. However, the subarea plan is specific with regard to District 1 and District 2 and the substantial nature of the uses in each. District 1 is substantially single family, and the overall policy in the Factoria subarea is to protect single family neighborhoods. In that light, criterion G is not met by the application. He said he would not support moving the amendment forward.

Commissioner Carlson said he also would oppose the staff recommendation. He said churches can do all manner of things to help the homeless using their properties, including operating food banks, soup kitchens, clothing banks, and even homeless shelters. Whatever project undertaken, however, needs to be in scope with the capabilities of the congregation. Under the current designation, the church could build a homeless shelter with as many as 18 units, and the chances of success under that model would be much greater than under the proposed approach. The plans brought to the table have entirely too many unanswered questions. The concern to house the homeless should not trump the concerns of the neighbors who will be on the receiving end of the associated impacts. The church says it intends to be a good neighbor, but the neighbors have voiced their opinions and they differ from those of the church.

Commissioner Laing said the staff statement that whether or not a proposal is a good idea is not sufficient to find significantly changed conditions under the test is on point. He said housing the homeless is indeed a worthy and important cause. The staff report also states that utilizing

church property for affordable housing provides another facility that benefits the community, but under the threshold criteria that is not a legitimate basis for finding there are changed conditions. There is an obvious and important benefit the affordable housing units would provide, but the ends do not justify the means. He said a change in the mission of the church is also not sufficient to meet the criterion of changed circumstances relative to amending the code. The law does indeed treat religious institutions differently, but it does not exempt them from complying with setbacks and zoning. The law does oppose the imposition of restrictions on property that interferes with religious uses. He concurred with Commissioner Hamlin with regard to criterion G not being met by the application. The subarea policy that calls for protecting single family neighborhoods from encroachment by more intense uses could not be more plain. There is a clear and meaningful difference between the zoning in District 1 and District 2. He said for those reasons he would not support moving the application forward.

Commissioner Sheffels said the need for affordable housing in the community is clear. She said she has been associated with one church and a United Way agency that provided housing, including subsidized, transitional, affordable and market rate units. It is unbelievably complicated and difficult to finance and construct such units and to operate them. She agreed with Commissioner Carlson that there are too many unanswered questions with regard to the Holy Cross proposal. She said she hoped that the church can find a way to fulfill its mission, but said she would not be able to support the staff recommendation to move the application forward.

Chair Turner said he also would not be able to support the staff recommendation. He suggested the changed circumstance criterion was not met by the proposal, and he also agreed that criterion G had not been met in terms of how the surrounding single family uses would be protected. The rights and responsibilities of the church must be balanced against the rights and responsibilities of the surrounding community, which is all single family. The notion of providing for the needs of the homeless is noble in every respect, but the Holy Cross site is not the right place for what has been proposed.

A motion to recommend no further consideration for the Holy Cross Comprehensive Plan amendment application for the annual 2012 Comprehensive Plan work program, and to not expand the geographic scoping, was made by Commissioner Hamlin. The motion was seconded by Commissioner Laing and the motion carried 6-1, with Commissioner Ferris casting the only no vote.

A motion to adjourn the meeting and carry forward all remaining agenda items to a future Commission meeting was made by Commissioner Tebelius. The motion was seconded by Commissioner Ferris and the motion carried unanimously.

8. OTHER BUSINESS

9. PUBLIC COMMENT

10. APPROVAL OF MINUTES

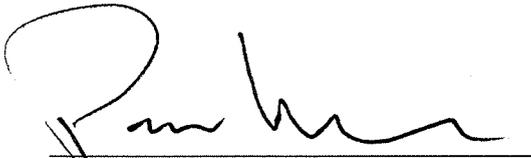
- A. January 11, 2012
- B. March 28, 2012
- C. April 11, 2012

11. NEXT PLANNING COMMISSION MEETING

- A. May 23, 2012

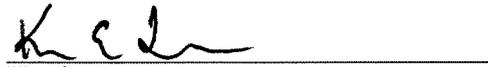
12. ADJOURN

Chair Turner adjourned the meeting at 10:15 p.m.



Paul Inghram  
Staff to the Planning Commission

6/19/2012  
Date



Kevin Turner  
Chair of the Planning Commission

6/18/2012  
Date