

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

October 10, 2012  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chairman Carlson, Commissioners Ferris, Hamlin, Laing, Sheffels, Turner

COMMISSIONERS ABSENT: Commissioner Tebelius

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development;

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:34 p.m. by Chairman Carlson who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Ferris, who arrived at 6:43 p.m., and Commissioner Tebelius, who was excused.

3. PUBLIC COMMENT

Mr. Tom Hayward, attorney for Cole Sherwood, whose property has been involuntarily included in the Lorge-Benis application for a Comprehensive Plan amendment, said Mr. Sherwood is not in favor of the proposal. Dr. Sherwood's property is geographically below the other two properties and will become invisible to the street should the other two sites be permitted to redevelop to the limits of the proposed amendment. The Lorge and Sherwood properties share a mutual parking arrangement; they were permitted with a ten percent reduction in the parking requirement by King County pursuant to an agreement in 1982. Should an office or other non-medical use be allowed, parking will be a challenge for Dr. Sherwood's property. The Bellevue School District allows parking on their property, but they can rescind that practice at any time. The shared parking agreement is not recorded, but it has been followed for 30 years. Access to Dr. Sherwood's property entails crossing the Lorge property via deed reservation that was part of the original purchase, which in itself presents a challenge to development of the Lorge site. If the Comprehensive Plan amendment is approved, and if the buildings that have been suggested are permitted, Dr. Sherwood believes his building will become isolated, and the two dental practices on the site will be impacted. The staff have stated that they have found no significantly changed conditions on which to justify the proposed Comprehensive Plan amendment. The only changes are the more intensive commercial use of the Factoria Mall site, and additional residential areas to the east, south and west. The Sherwood property is a classic transition zone property. The proposed Comprehensive Plan amendment should be denied.

Commissioner Laing asked if staff has been supplied with a copy of the 1982 parking agreement. Mr. Hayward allowed that a copy was provided to Senior Planner Nicholas Matz several months ago. The agreement is between the property owners.

Commissioner Laing asked if there would still be an objection to the proposed amendment if parking and access were to be maintained as they are currently. Mr. Hayward said if new buildings are constructed on the property, parking will be eliminated, and it will be difficult for emergency vehicles to access the Sherwood property.

Mr. Chris Benis, son of the owner of the Benis property, shared with the Commissioners historic photos of the property, including the 1927 farm house that survived the construction of Newport High School in the early 1960s. He said the home was turned into a real estate office in 1969. Since that time there have been eight remodels carried out, but the core of the building on the Benis site is the old farm house and it is at the very end of its lifespan. The Benis property was originally part of the same parcel on which Newport High School stands. Over time, the majority of the uses housed in the building on the Benis property have served the high school. The proposed amendment will allow that tradition to be carried on. Before the high school was redeveloped, consideration was given to a full take of the Benis property and putting the school entrance through the site given its strategic location at the intersection of Newport Way and Factoria Boulevard. Ultimately access to the school was created further to the north and the Benis property is no longer necessary for that purpose, clearing the way for the Benis site to be redeveloped. The easement and parking agreements between the Lorge and Sherwood properties do not affect the Benis property in any way.

Mr. Robert Thorpe with RW Thorpe and Associates, planners of record for the Lorge and Benis properties, shared with the Commissioners photos of the subject properties taken from Newport High School. He noted how steep the property is leading up from the football field. The preliminary designs produced in setting forth the contract rezone retains the driveway and all of the parking, and tucks the building on the Lorge site up on the south line. The only property that might have the same characteristic is just to the north where there is a one-story building housing a veterinary business. Across the street from that there is three-story multifamily and the new four-story housing on the church property, all of which represents a change in circumstance. From the driveway just to the south of SE 43<sup>rd</sup> Street, the subject property cannot even be seen; it certainly should not be required to serve as a transition. Redevelopment with two office stories below and two residential stories above will rise only two and a half stories above the parkway, which is less than the four stories across the street and the three stories to the north. The proposal includes a height limit of 45 feet, conditioned on having office on the first two floors and residential on the top two floors. The opening of the new Wal-Mart at Factoria Mall will have a profound impact on traffic, a variety of traffic improvements have been implemented, all of which constitute changed circumstance.

Commissioner Laing said the argument lodged by Mr. Hayward is that redevelopment of the Lorge and Benis sites under the proposed rezone would result in tall buildings that would make the buildings on the Sherwood site invisible from the street. He asked if the Sherwood buildings are invisible as things stand currently given the grade. Mr. Thorpe said there is a peek-a-boo view of the Sherwood buildings down the driveway that would not change if the building footprint on the Lorge property was kept to the north. He suggested that the agreement in place between the Sherwood and Lorge properties would need to be honored in all respects.

#### 4. APPROVAL OF AGENDA

A motion to approve the agenda was made by Commissioner Laing. The motion was seconded by Commissioner Turner and it carried unanimously.

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

## 6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reported that the South Kirkland park and ride project is partly in Bellevue and partly in Kirkland. ~~In a previous action, the Commission elected not to rezone the Bellevue part of the parcel.~~ The project is moving ahead, with a parking garage expansion on the Bellevue side and a housing project and parking on the Kirkland side. A ground breaking ceremony for the project is scheduled for October 24.

Mr. Inghram informed the Commission that at the October 15 City Council meeting staff will present a management brief asking for initiation of the Comprehensive Plan update process, which will take approximately two years to complete.

The Commissioners were reminded that the annual Commission retreat is slated for October 24. ~~The city has the opportunity to have~~ Rhonda Hilyer ~~has offered to make a presentation at the retreat about process, team building, communicating, and increasing productivity.~~ Ms. Hillier Hilyer is in demand across the nation and works with both dysfunctional groups and groups that want to grow from good to great.

There was consensus in favor of asking Ms. Hillier Hilyer to make the presentation.

## 7. STUDY SESSION

### A. Meeting Protocol Presentation

Chairman Carlson introduced Matt Segal with Pacifica Law Group and noted that the same presentation is to be made to all of the city boards and commissions to make sure everyone is operating from the same base of information.

Mr. Inghram said all of the city's boards and commissions do a good job, but each operates somewhat differently. While to some degree it is good for each body to have a unique approach, there is also a need for commissions to be relatively consistent ~~to present to the public a relative consistent front~~ to avoid confusions. Additionally, the legal aspects on which each board and commission acts are the same for each body.

Mr. Segal said he is a founding partner of the Pacifica Law Group which was launched about a year and a half ago substantially to serve public clients. He said the series that will be presented to all of the city's boards and commissions is intended to highlight best practices upon which to operate. He stressed that the presentation would be informational and apolitical.

Jessica Skeldon, also with Pacifica Law Group, acknowledged that the responsibilities of those involved with a commission depends on their particular role. As such, the responsibilities of the chair differ somewhat from those of the commission members, the commission liaison, and those who serve as staff to the commission. The way those individuals interact with the procedures that govern the study sessions and public meetings is of vital importance.

Ms. Skeldon said it can sometimes be confusing to determine what particular procedure applies in a particular circumstance. The first step for the Commission should be its bylaws. The bylaws are drafted to be consistent with Bellevue city code, which provides that the Commission can adopt bylaws that are consistent with City Council procedures. The bylaws themselves provide that where there is no specific bylaw provision that governs a particular scenario, the Commission is to look to Roberts Rules of Order, which govern the conduct of meetings generally. Where a procedure is not covered by the bylaws or Roberts Rules of Order, the next step is the City Council procedures.

As a public body, the Commission is also subject to Washington state law. Bylaws and procedures that apply to meetings that are in conflict with state law are always trumped by state law.

Henry Robert was an army officer who was asked to preside over a community meeting. The meeting proved to be a huge embarrassment to him because he was not equipped to handle the task. Over the course of the rest of his life, he made a study of parliamentary procedure and began writing his own crib sheet for how to run meetings. Eventually he turned his notes into what has come to be called Roberts Rules of Order. His daughter took over the effort and continued to edit the volume after his death, and currently his grandson is involved. The rules are very helpful. In addition to including procedures for how to run meetingsthings, they include advice on diplomacy in various situations.

Ms. Skeldon said the purpose of Roberts Rules of Order is to provide rules and procedures for deliberation and debate that is designed to put all members of a body on the same footing. Decisions are made by the majority at the majority's will, but equally important is the right of a strong majority to make its voice heard. That is manifested in the procedures in that any motion to cut off or limit debate requires a two-thirds vote. After full discussion, the majority vote wins the day. The procedures also provide structure for assuring constructive and democratic meetings, and ensure the efficient and fair conduct of all decisions.

It is clear from the rules and the way they are set up that the purpose is to assure that the public knows their business is being conducted fairly, and that they can have confidence in the decisions made by deliberative bodies. A lack of decorum in the way decisions are made reflects poorly on deliberative bodies and suggests to the public that procedures are being ignored. Additionally, the appearance of favoritism can undermine a commission's recommendations and thus the decisions ultimately made by the City Council.

The basic procedures outline that all statements must be addressed through the chair. Members can direct questions to the public only with the chair's permission, and accordingly members may not directly address or debate with the public. Mr. Segal said the temptation is always there for the members of a body to address or debate the public, and the rule is often broken, particularly where there are heated discussions and passions are enflamed. There are, however, legal pitfalls involved in overreaching the rule, not the least of which is the appearance of impropriety, unfairness or bias.

Commissioner Sheffels noted that the Commission has in the past been told that Commissioners can ask direct questions of members of the public who are providing public testimony during a meeting, though primarily for purposes of clarification. The practice has been not to ask substantive questions that would lead to answers that could appear to be unfair. Ms. Skeldon said under the rules, a member of a body can ask a question of another individual or entity with the chair's permission. Certainly any leading or politically charged questions should be addressed with the chair first. Mr. Segal added that where questions are run through the chair, and where the focus is on making sure everyone has equal and appropriate time, asking questions of the public is allowable. It is the manner in which it is done that is important. The basic rule is a speaker obtains the floor by being recognized by the chair.

Ms. Skeldon said the bylaws address the issue of quorum, which is the number of members necessary to transact official business. The Commission's bylaws provide that four of the seven commissioners constitutes a quorum. The bylaws provide that once a quorum exists, it continues to exist even if members leave the meeting. While the bylaws include that provision, there is a conflict with state law which require a majority to be present in order to make deliberative decisions or to take action. The Open Public Meetings Act requires a majority of the body to be present in order for decisions to be made. Any actions taken with less than a majority present

may be subject to scrutiny and should be avoided.

Chairman Carlson said he would not call for a vote with less than a quorum present.

Commissioner Ferris asked what difference it makes whether or not a quorum is present for a vote when in fact all of the Commission's actions are advisory and formal actions are taken by the Council. Mr. Segal said in a legal context the word "action" goes beyond making decisions and includes deliberation, investigation and discussion. Any recommendation made by the Commission on the strength of less than a quorum could be used to call into question a decision made by the Council. As a practical matter, the Commission would be in a much better place to avoid making decisions absent a quorum.

Ms. Skeldon explained that any member can move to amend the agenda, but the amendment will only be valid if there is a unanimous vote of the membership. That is a provision of both Roberts Rules and the Commission's bylaws.

Ms. Skeldon said the rules are built on the basic procedures for making a motion. There are 12 basic motions and a number of incidental motions allowed under the rules. The maker of a motion must be recognized by the chair. In most cases a motion must be seconded, though there are some non-substantive motions that do not require a second. For motions that need to be seconded, absence of a second means the motion is rejected. At the point a motion is made, any member, including the one who made the motion, can ask to have the motion changed without having to go through the formal amendment process. However, once the chair takes the step of stating the motion for the body to discuss, the motion can only be changed through the amendment process.

The process for discussing a motion is at the heart of the way the rules work. Once a motion is stated by the chair, it can be voted on directly, particularly where there does not appear to be opposition to the motion. Where there is discussion or debate, the maker of the motion is usually allowed to speak first before the chair recognizes all others who wish to speak to the motion. The rules provide that if the chair happens to know the leanings of a particular member, an effort should be made to alternate between sides to keep the debate balanced. The rules and the bylaws agree that members are only allowed to speak twice on a particular issue, and the second time is to be allowed only after everyone else has had an opportunity to speak to the motion. There should be no interruptions or sidebar discussions when someone has the floor. All comments and debate is to be directed through the chair.

Commissioner Ferris asked how the process relates to discussions during a study session when there is no formal motion on the floor. He also asked where the chair's voice is to enter into the discussion. Ms. Skeldon said specific procedures have been adopted by the Commission for study sessions. They provide for public comments at the beginning and end of each meeting. The rules contemplate the need to adapt them to other situations where they do not necessarily apply. To the extent they do apply, such as where in a study session there is a lively debate, the chair should make an effort to hear arguments both for and against. The chair can comment just as any member can, and he or she is limited to the same number of opportunities. The chair also can vote, though the rules provide that the chair should not vote unless necessary to decide an issue. That rule is intended to maintain the appearance of fairness.

Mr. Inghram asked if a unanimous vote of the Commission on a particular motion be recorded as 6-0, or if the chair's vote would be included making it a 7-0 vote. Ms. Skeldon said the provision that says the chair should not vote is for the purposes of appearing to be fair, but the Commission is free to make a determination relative to whether the chair should vote or not. If the chair does not vote, however, no vote should be recorded for the chair. Mr. Segal said it is more of an issue during the discussion phase leading up to a vote on a motion. In all cases, the

main objective is for the chair to not give the impression of favoritism one way or another.

Ms. Skeldon said a motion to limit or extend debate, and a motion to call the previous question, which essentially is aimed at ending all debate and taking a vote on the motion, both require a two-thirds majority. The process of taking a vote is fairly simple: the chair asks if the members are ready to vote. If they are not, the discussion continues absent a motion to terminate discussion. If there is no more discussion, the vote is taken and a majority is all that is required to approve the motion. The rules provide in the first instance for an oral vote and in the second instance for a vote that includes raising of hands or written ballot.

Commissioner Sheffels asked if a proxy vote is ever in order for the Planning Commission. She gave as an example a member participating in the discussion of the vote who for some reason must leave the meeting before the vote but takes the time to write down his or her preference on the motion to be recorded as part of the vote. Mr. Segal said much would depend on how much of the discussion the absent member was party to. A person not privy to an additional hour of discussion after they leave a meeting may not be fully informed and may have made a different decision had they been present. Whether or not a proxy vote satisfies both the bylaws and state law is something that should be researched a little deeper. Typically, proxy votes are not permitted unless authorized by the bylaws.

Ms. Skeldon said the bylaws set out procedures, and there are adopted procedures available with the Commission's materials for study sessions. The primary limitations are with regard to when the public can speak and for how long they can speak. The procedures say that only the chair can ask attendees a question, and all comments at study sessions must be routed through the chair.

Commissioner Ferris asked how the public comment time period is affected if the person offering testimony is asked a question by a Commissioner. Ms. Skeldon said the procedures say the public is allowed five minutes at the beginning of the meeting and three minutes at the end. A motion or request could be made through the chair to extend the discussion. The purpose for the time limit is to keep the Commission on track and to ensure fairness. Chairman Carlson observed that the practice of the Commission has been to stop the clock whenever questions are asked of a member of the public. Commissioner Hamlin commented that in some cases persons have been allowed to talk for quite some time. Mr. Segal said whatever approach is taken should be applied uniformly.

Mr. Segal said RCW 42.23, the Ethics in Public Service Act, is incorporated through the Bellevue city code and applies to all municipal officers, including the members of all boards and commissions. The statute contains general prohibitions on conflicts of interest, including interested contracts, not granting improper privileges or exemptions, not accepting gratuities, and not disclosing confidential information. Article V of the bylaws contains a provision that says not only will the Commission avoid actual conflicts of interest but it will avoid the appearance of unfairness. That is consistent with the Appearance of Fairness doctrine which says that meetings should be not only actually fair but should appear to be fair at all times. If the appearance is given that one side is being given more time to present their arguments than the other, or that certain people appear to have more access than others, the Commission could open itself to claims that they are not being consistent with Article V of the bylaws. There could also be a situation where a decision is in fact completely fair and yet someone from the public could challenge it because of the appearance of impropriety. The best remedy is to conduct meetings at all times consistent with the rules.

Commissioner Laing said some ethical issues were raised about a year ago involving four of the Councilmembers. One of the things that came out of that process was that contrary to the comments of some Councilmembers, the city has an ethics code, though it needs to be updated in

that it refers to a statute that was appealed. There continues to be a debate relative to what applies to Councilmembers and what applies to the members of all boards and commissions that serve in an advisory capacity. Mr. Segal said under state law the appearance of fairness doctrine would not apply to decisions made by the city's boards and commissions because they are not quasi-judicial. Article V of the Planning Commission's bylaws, however, is clear in stating that the Commission is to avoid any possible conflict of interest, and is to avoid violating the Appearance of Fairness Act. The Ethics in Public Service Act, which covers actual conflicts, clearly applies to all boards and commissions.

Chairman Carlson said he was not a member of the Commission at the time the Commission discussed and made recommendations to the City Council regarding the Bel-Red corridor. He said his home is not in the corridor but is near enough that the value of the property likely will be enhanced as a result of the decisions made. He asked if, had he been on the Commission at the time, he would need to have divulged that fact. Mr. Segal said the applicable rule would be that there is not to be any grant of a privilege or exemption. A lot of people own property in the city and the question comes down to what the distinction is between members of the Commission and members of the public generally. If there are questions about possible conflicts of interest, advice from the city attorney should be sought in advance.

Commissioner Ferris said the Commission has followed the practice of allowing members of the public with a common opinion to cede their speaking time to another. He asked if that is an allowable approach. Ms. Skeldon said the adopted procedures do not provide for that approach. The Commission could, going forward, choose to revise the procedures to allow the practice. Mr. Segal said state law does not dictate an approach one way or another but is clear about applying the rules uniformly.

Commissioner Hamlin pointed out that the practice of allowing members of the public to cede their time to another really came about during the work to update the Shoreline Master Program. He suggested the Commission may want to discuss whether or not the practice should be continued or be considered something that was unique to the Shoreline Master Program update.

Mr. Segal explained that the Open Public Meetings Act is a state law that applies to how meetings are to be conducted and actions taken by all councils, boards and commissions. The statute dictates that all meetings must be open to the public, except for executive sessions which are limited to specific subject matters. Notice of all meetings must be given, and agendas and materials must be published. Groups must act with a quorum present during the course of a meeting. Anything carried out within the formal conduct of the Commission's business is considered to constitute a meeting, including discussing, debating, reviewing, evaluating and voting. No action can be taken by a board or commission unless there is a formal meeting.

Absent a quorum, no meeting can take place. In the broad definition of the law, action taken by a quorum of members outside of a public meeting is a violation of the statute; such actions include debate and discussion, taking straw votes, and the like. The current level of technology makes it easy for groups to meet in ways that were never contemplated at the time the law was passed. Several years ago a quorum of school board members emailed each other about an issue that was before the board, and the appellate court ruled the approach taken in fact constituted a meeting, and because it was not held in public and was not properly noticed it violated the Open Public Meeting Act. Violation of the law can trigger the assessment of civil penalties against individual members. Actions taken that are inconsistent with the Act can be voided.

Mr. Inghram said that is why Commissioners are encouraged not to reply to all when responding to emails. Staff in fact strenuously avoids sending emails to Commissioners on topics other than scheduling and reminders. All communications made available to Commissioners are also made available to the public.

Commissioner Laing asked if an email from city staff asking Commissioners if they plan to attend an upcoming meeting are in fact public records that must be retained by the Commissioners. Mr. Segal allowed that they are. The Public Record Act addresses all actions that have to do with the conduct of government. Public records include all forms of written and electronic communications. Public records generally have to be retained in accord with a schedule issued by the state archivist. Clearly the state has little interest in preserving for posterity emails of members indicating they are going to be ten minutes late to a meeting, but has a great interest in retaining more substantive communications.

Mr. Inghram asked if there is any reason for Commissioners to retain communications that the city retains as a matter of course. Mr. Segal said sometimes the answer is yes and sometimes it is no. He noted that the city of Shoreline had a major issue on the topic that ended up before the state supreme court. The issue involved a Councilmember having one version of an email that differed from the version provided by the city as part of a records request. By all accounts there was nothing in the different versions that had any real impact, yet the supreme court ruled that records that are different in any degree are different records. He said the city staff will be the point of contact for determining if records are being retained in the right way.

Commissioner Laing asked what approach is to be taken where a member of the public sends an email to one but not all members of the Commission, particularly where the subject of the email touches on a topic that is before the Commission. Mr. Segal said it was his understanding that Commissioners use their own email accounts rather than a city email account. Each Commissioner should act to segregate from personal communications all communications having to do with the work of the Commission. The mere reading of an email can mean in the broadest sense that the email was used as part of the deliberation process and as such is a public record. It is always better to err on the side of caution and retain all such records. There should be a plan in place as to how to deal with such communications so decisions do not have to be made on the fly, and to avoid having different people making decisions in different ways.

Mr. Segal stressed that anything prepared, used, owned or retained by any state or local agency constitutes a public record. Where requests for records are received, Commissioners should communicate with the staff person assigned to help deal with such requests. The state statute has a number of traps in it for the unwary, so the best approach will always be to work with staff in responding to requests, as well as in retaining and searching for information that might be responsive. Ms. Skeldon stressed that the city has its own public record policy and staff available to answer questions.

Mr. Segal said how records are categorized determines how they are to be treated for retention value purposes. Some things have to be kept in perpetuity, others are kept for between six months and three years, and still others fall into the category of office files and memoranda and have no retention value at all and can be deleted. The schedule from the state archivist makes those determinations.

Mr. Segal asked the Commissioners to keep in mind the need to segregate records that have to do with duties as a Commissioner from private and personal records. There are cases in which the line between the two has become blurred; having a system in place will make life much easier. During the Seattle monorail project, board members did not use official city email accounts and potentially had records on their personal computers. Strong testimony was given that the members had provided copies of everything to the city, nevertheless the King County superior court ordered that a mirror image be made of the hard drives of each board member. That ruling was ultimately reversed, and the appeal was filed under the Fourth Amendment as an overintrusive search and seizure. The case could have been averted in the first place had the board members been able to indicate that they had a process for segregating records and an

understanding of which records were to be retained and for how long.

Meta data is a public record, so in preserving emails and other electronic communications they must be kept in their native format, not just printed out and filed away.

Mr. Segal said where the Public Records and Open Meetings acts are involved, the courts have not been shy about imposing enormous penalties. The courts have in fact been told by the supreme court to be very aggressive in enforcing the statutes. That argues in favor of being proactive and knowing in advance how to retain records and what records need to be retained, and always erring on the side of caution.

Ms. Skeldon said social media is a cutting edge issue under the Public Records Act, and the more the technology gets used in the course of conducting public business the more important it becomes to think about the issues. The bottom line is that the use of social media implicates both the Open Public Meetings Act and the Public Records Act. Texting, emails or blogging between members can constitute a public meeting under the law. The city has a policy regarding the use of social media, and the focus is on restricting the use of social media. The state archivist has determined that emails, web pages, scanned images, electronic files, tweets, Facebook posts and blogs all constitute records where they touch on the transaction of commission business. There are retention schedules that apply to each of the various types of social media records. Public entities are required to use security procedures to prevent additions or modifications to records, and that is a complicating factor for the use of social media.

Mr. Segal said the bottom line is that many social media programs include elements that are outside the control of the individuals using them. Posts on Twitter or Facebook cannot be retained the same way a personal email can, though there are ways to keep the data. Most cities are implementing those types of programs to make sure the use of social media for city business will include a mechanism for retaining the records.

Mr. Segal stressed the need for board and commission members to separate their official business from any electoral politics. The same issues apply to elected bodies. In no case can city resources be used to conduct campaign activities.

## B. Annual Comprehensive Plan Amendments

Mr. Inghram noted that the Commission earlier in the year forwarded to the Council recommendations regarding the list of privately initiated Comprehensive Plan amendments. The only proposal that survived was the Lorge-Benis application for a site adjacent to Newport High School in Factoria. The two-part Comprehensive Plan review process begins with a threshold review during which a determination is made as to whether a particular request should be made part of the work program. During the final review phase the focus is on the specifics of the proposal and how it would fit with the local subarea plan. A public hearing will be held on the Commission's recommendation prior to forwarding it on to the City Council for final action.

Answering a question asked by Commissioner Hamlin, Mr. Inghram said the Council on September 4 discussed the Lorge-Benis proposal in general before concluding it meets the threshold review criteria.

Senior Planner Nicholas Matz said the Council's action to initiate the Lorge-Benis proposal puts the matter back before the Commission for final review. He said the original application involved only the Lorge and Benis parcels at 4307 and 4317 Factoria Boulevard SE, but the recommendation of the Commission and the staff was to geographically expand the focus to include the Sherwood property at 4301 Factoria Boulevard SE. The Sherwood property is similarly situated and shares characteristics of access, use and dimensional redevelopment issues.

The uses on the sites include small office buildings and a dental office. The subject properties are surrounded on three sides by Newport High School and abuts Factoria Boulevard on the fourth side. The existing designation is Professional Office and the application seeks a change to Community Business.

Mr. Matz said annexation of the Factoria area in 1993 gave the city the opportunity to have a much more focused conversation about what the subarea should be. Efforts in 1996 and again in 2005 resulted in a Comprehensive Plan vision of a well-integrated, transit-supportive, pedestrian-oriented, mixed use urban neighborhood. The key elements of the subarea plan are the Factoria Mall site as well as some of the more core areas of the Office/Limited Business, Community Business, General Commercial and Office districts. The dense core areas all serve the community. The subarea plan is split into District 1, the areas to the east, south and west where there is single family residential, and District 2, which does not include single family residential. The multifamily layered areas have densities as high as R-30. Community Business districts typically serve community markets; Professional Office normally sits on the edge of such areas and exist to provide for low-intensity offices. The staff report will look at issues of consistency between Professional Office and Community Business with the vision for the area.

The three subject properties total just over three-quarters of an acre; the Lorge and Sherwood properties are 9000 square feet, and the Benis property is 18,000 square feet. The driveway providing access to the Lorge and Sherwood properties is located on the north, and the Benis driveway is on the south. The Benis property has both northbound and southbound access from Factoria Boulevard, but the Lorge and Sherwood properties do not have northbound access from Factoria Boulevard. The parking stalls located just north of the subject properties are on Newport High School property and are available to Dr. Lorge based on a memorandum of understanding with the Bellevue School District. Staff has obtained a copy of the parking agreement and will address it more specifically in the staff report and recommendation. In short the agreement runs with the land and recognizes that the two properties individually under the King County codes could not meet their parking requirements, but collectively they could. There is underbuilding parking for both the Benis and Sherwood buildings.

Answering a question asked by Commissioner Laing, Mr. Matz said staff has asked the City Attorney to comment on the role the parking agreement plays in assessing redevelopment of the site. The parking agreement will not be viewed as the defining standard for how many parking spaces a redevelopment of the site should provide under either Professional Office or Community Business. He added that no conclusion has been reached as yet with regard to the nonconformity status of the existing structures.

Commissioner Ferris noted that the Sherwood property has no access to the right-of-way except for across the Lorge property. He said it was his understanding that any redevelopment of the Lorge property would carry with it requirements for how wide the access would need to be and what setbacks and buffering would be imposed. He said it would be helpful to know how that issue would play out. Mr. Matz said the staff report would include a response regarding that issue. He added that there is at present no access between the Benis property and the Lorge and Sherwood properties.

Mr. Matz said Professional Office allows for a narrow band of allowed low-intensity businesses compatible with surrounding residential developments. The most intense commercial and office uses are located in the core of the Factoria subarea, and radiating out from there are varying levels of density, both residential and commercial. Community Business is designed to accommodate convenient sales of comparison goods and services for the community.

Community Business allows attached residential structures and conditionally allows group quarters and hotels; Professional Office does not permit those uses. Some manufacturing is

allowed in Community Business, but only as a subordinate use to an allowed primary use; Professional Office does not permit any manufacturing. Community Business conditionally permits transportation parking garages; Professional Office does not. Community Business permits a full range of retail uses; Professional Office permits no retail uses at all. Community Business allows personal services uses. Community Business and Professional Office both allow for a range of professional and governmental services. Professional Office permits computer-related and research and development services; Community Business does not. Community Business allows public assemblies, theaters and other recreational activities. Both Community Business and Professional Office conditionally permit mining, quarrying and oil and gas extraction, but only Professional Office allows funeral and crematory services.

Mr. Matz said translating the allowed uses into a dimensional capacity for the site necessarily involves setbacks and required parking. Under the floor-area ratio approach used by the city, there is also a limitation on the total amount of office that can be allowed on sites outside of the downtown; an FAR of 0.5 is the maximum amount allowed outside of the downtown. The FAR limit and the ability to park cars will affect the development of the site. The subject properties are not located adjacent to single family, so the intensity of use argument does not apply. However, for purposes of the Land Use Code the site is located adjacent to an R-5 zone, which is a residential district, and that means there is a transition zone that requires increased mitigation through larger setbacks and lower building heights.

Commissioner Laing asked if either Community Business or Professional Office allows for residential uses. Mr. Matz said Professional Office allows single family attached residential but does not allow for attached residential. Community Business allows for attached residential but does not allow for single family development. Commissioner Laing asked if the three properties taken as a whole and zoned Professional Office would allow for both professional offices and single family detached homes. Mr. Matz said the existing vision does not contemplate the site as being in a mixed use area. Collectively the site is 27,000 square feet, which is not large enough to put single family homes on it. The subarea plan envisions mixed use developments occurring in the core area.

Chairman Carlson said a lot of development north and south along Factoria Boulevard has kept up with the times. The Lorge-Benis-Sherwood developments, however, evoke images of a much earlier time. It does not look charming, it just looks unusually and it looks as though the buildings are being kept from making common sense updates.

Commissioner Turner noted that the Lorge property appears to have parking in the Factoria Boulevard right-of-way outside of the property line. Mr. Matz said two of the parking areas for the Lorge property are not in fact on the property. Should the properties redevelopment, the city will look to require all necessary parking to be accommodated on site. Mr. Inghram allowed that where the property owners can show they have secured parking, that may be taken into consideration during the permitting process.

Commissioner Turner suggested it might make sense, should the properties redevelop, to combine the ingress and egress on the Benis property.

Commissioner Hamlin said he could see how the Sherwood property could face a difficult parking situation should the zoning be changed and the other properties redevelop. That would be particularly true should the school district parking be taken away and the parking in front of the Sherwood property be removed with development of the Benis site. That would potentially leave the Sherwood property with underbuilding parking only.

Commissioner Laing said the access and parking issues do not concern him in any way in the context of a potential rezone Comprehensive Plan amendment. The city could zone the property

in any way without impacting anyone's vested property rights. If there is a parking agreement in place currently, a change in zoning alone will not obviate the contract rights.

Having been given permission from the chair to speak, Dr. Sherwood commented that long before the parking agreement between the school district and Dr. Lorge, the parking area was graveled and easily eroded during the wet months. The school district put down the asphalt and agreed that the parking area could be used by the adjacent businesses so long as the school district did not need the parking.

Commissioner Ferris said he would like the staff report to address whether or not the current accesses in and out of the site are adequate to serve high-intensity retail uses under Community Business. He noted that there has also been talk of having two levels of office and two levels of affordable housing and suggested that affordable housing is narrowly defined and the definition should be included as a condition if things go in that direction.

Commissioner Hamlin pointed out that the Commission previously turned down a Comprehensive Plan amendment for affordable housing across the street. Should the Commission decide a rezone of the Lorge-Benis-Sherwood site is appropriate, a changed circumstance will be created and the church may come back seeking reconsideration.

Mr. Inghram said the proposal on the table is a Comprehensive Plan amendment to change the designation from Professional Office to Community Business. The applicant has repeatedly talked about the potential of having conditions placed on the zoning change, but that issue is not currently before the Commission. Zoning changes go through a completely different process from the Comprehensive Plan amendment process. Should the Commission ultimately recommend a change to Community Business, it could outline in the transmittal memo to the Council a proposed list of conditions to be considered by the Council and hearing examiner during the rezone review process. The Commission could also suggest a policy change to be added to the Factoria subarea plan to clarify the intent for the area in which the subject properties are located.

Commissioner Laing said he would like to have a better understanding of the access and parking issues that would appear should the properties elect to redevelop under the existing zoning. Mr. Matz said under the current regulations, the Lorge-Benis property could under a Professional Office designation produce a maximum of 19,200 square feet of building space in two stories up to the height limit of 30 feet. Within that box, the FAR limit on office is 13,500 square feet. The development which would trigger a requirement for 90 stalls of parking under the highest intensity use, which would need 33,000 square feet of space. Maximizing the site would require a couple of layers of underbuilding parking, and at some point the point of economic viability will be crossed.

Commissioner Turner asked if, under a scenario in which all three properties redevelop, the single driveway to the south could be used. Mr. Matz said the transportation department will offer an analysis in the staff report. They will not necessarily conclude that one of the two access points should be eliminated, but they undoubtedly would like to see access occur closer to the intersection.

Answering a question asked by Commissioner Ferris, Mr. Matz said the Community Business designation could at the high end produce as much as 43,000 square feet of building space in three stories up to 45 feet high. The FAR limit would continue to apply, so only 13,500 square feet of the total could be for office. If the non-office uses are retail, 209 parking stalls would be required. If the non-office space were all residential, a total of 83 parking spaces would be needed.

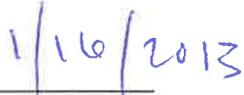
- 8. OTHER BUSINESS – None
- 9. PUBLIC COMMENT – None
- 10. APPROVAL OF MINUTES
  - A. September 12, 2012

A motion to approve the minutes as submitted was made by Commissioner Hamlin. The motion was seconded by Commissioner Laing and it carried unanimously.

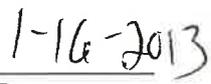
- 11. NEXT PLANNING COMMISSION MEETING
  - A. October 24, 2012
- 12. ADJOURN

Chairman Carlson adjourned the meeting at 9:22 p.m.

  
\_\_\_\_\_  
Paul Inghram  
Staff to the Planning Commission

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John Carlson  
Chairman of the Planning Commission

  
\_\_\_\_\_  
Date

\* Approved and corrected November 28, 2012