

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

June 1, 2006
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

COMMISSIONERS PRESENT

Chair Piro
Vice Chair Kuboi
Commissioner Broili
Commissioner Harris
Commissioner Phisuthikul
Commissioner McClelland
Commissioner Hall
Commissioner Wagner
Commissioner Pyle

STAFF PRESENT

Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Jessica Simulcik Smith, Planning Commission Clerk

CALL TO ORDER

Chair Piro called the regular meeting of the Shoreline Planning Commission to order at 7:05 p.m.

ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Piro, Vice Chair Kuboi, Commissioners Broili, Harris, Phisuthikul, McClelland, Pyle, Hall and Wagner.

APPROVAL OF AGENDA

The agenda was approved as submitted.

DIRECTOR'S REPORT

Mr. Tovar said he would like to discuss the Commission's agenda planner at some point, but he suggested that this discussion be postponed until after the public hearing and Commission deliberation on the Hazardous Tree Ordinance and Critical Areas Stewardship Plan have been completed.

Mr. Tovar announced that the joint City Council/Park Board/Library Board/Planning Commission meeting has been scheduled for Tuesday, June 27th instead of Thursday, June 29th. Therefore, the Commission could decide to schedule a special meeting on the fifth Thursday (June 29th) if need be.

APPROVAL OF MINUTES

The minutes of May 18, 2006 were approved as submitted.

GENERAL PUBLIC COMMENT

Bob Barta, 15703 – 1st Avenue Northwest, pointed out that when any of the plans (Development Code, Shoreline Municipal Code, and Comprehensive Plan) are incongruous with the intent of Shoreline's policy to promote public health, safety and general welfare, corrections must be made as soon as possible. Secondly, Mr. Barta suggested the Commission hold a discussion at a future meeting to determine at what point a City representative or employee would be required to represent or assist the public at neighborhood meetings when land use development projects are being considered. He suggested that one attendee from the neighborhood should be designated as a contact person so the City could verify how an issue was settled. He also suggested that a video or tape recording be made. He said that, in his experience with neighborhood meetings, the public tends to be aced out of the process. Lastly, Mr. Barta encouraged the Commission to schedule a future discussion about ways to accommodate affordable housing in Shoreline, especially for younger couples. The City needs to have children in the community to keep the schools full. He submitted documents regarding the concept of community land use trusts (Exhibit 3) for the Commission's consideration.

Dennis Lee, 14547 – 26th Avenue Northeast, reminded the Commission of the concept of "neighborhood sub area planning" which is called out in the Comprehensive Plan. This concept was designed to protect the character of the existing neighborhoods. He briefly reviewed recent issues that have come up in the City regarding minimum lot size, cottage housing, multi-family residential housing, etc. He also reminded the Commission of a previous suggestion that the City create design standards to prevent developers from taking advantage of the intention of cottage housing (smaller units with lots of open space). Mr. Lee asked the Commission to consider the opportunity to complete a sub area plan for the Briarcrest Neighborhood. This would be a neighborhood driven development process, and the end result would have to be consistent with the Comprehensive Plan. He pointed out that there are some 2 and 3 bedroom starter homes on 7,200 square foot lots in the Briarcrest Neighborhood, but these would likely be replaced in the future with larger homes. The properties along 145th would likely be developed as multi-family units. A neighborhood sub area planning process would allow them to balance the uses, preserve the neighborhood character, and offer home ownership opportunities.

Chair Piro asked staff to contact Mr. Lee and advise him about what is currently happening with sub area neighborhood planning in the City. Mr. Tovar said staff recently discussed the concept of neighborhood planning with the City Council, and they plan to give a short report to the Commission on June 15th. Chair Piro also requested that staff provide an update on the City's progress in reviewing housing issues. Mr. Tovar reminded the Commission that the City Council has scheduled two town hall meetings to solicit public input regarding their 16 draft goals, including the issue of housing choices,

neighborhood planning, etc. The meetings are scheduled for June 6th at 6:30 p.m. at the Historic Museum and June 14th at 6:30 p.m. at the Shoreline Center.

CONTINUED PUBLIC HEARING ON PERMANENT HAZARDOUS TREES REGULATIONS AND CRITICAL AREAS STEWARDSHIP PLAN

Chair Piro reviewed the rules and procedures for the continued public hearing. He explained that, typically, oral comment would only be accepted from those who did not testify on May 18th. However, because revised provisions have been offered that were not included in the May 18th draft, oral comment would be accepted from people who previously testified, as well. He asked that they limit their testimony to the new provisions, only. He noted that previous comments have already been included as part of the record.

Staff Briefing

Mr. Tovar referred to a memorandum from staff dated May 25, 2006, and reviewed the four attachments as follows:

- Attachment A – Proposed text showing staff recommended revisions in strikeout/underline format.

Mr. Tovar referred to Item “h” and explained that the proposed new language would require the director to establish a list of arborists, and persons seeking an exemption would have to choose one of the arborists from the list. The arborist would make a professional recommendation in accordance with the standards of the International Society of Arboriculture, and the Director would make the final determination. He noted that changes were also made in Items “i” and “j” to reference the list.

Mr. Tovar referred to Item “i” and recalled that issues were raised about whether walkways, trails, and sidewalks should be identified in the text of the code. He said it is clear that approved paths made of asphalt or concrete are places where people would walk. However, the issue is not so clear with unimproved trails. Rather than redefining “trails,” staff has proposed language in the code provisions for trees that would give the Director the discretion to determine whether or not a trail is a designated trail for purposes of constituting a target. Mr. Tovar also reviewed the minor changes that have been proposed for Item “j”.

- Attachment B – City of Shoreline Trails Information

Mr. Tovar pointed out that the Shoreline Municipal Code’s definition for trails might be useful for describing where some trails in the City might be, but it does not describe all trails. Again, he reviewed that the recommended changes to Item “i” of Attachment A would allow the Director the discretion to determine whether a trail is a designated trail for purposes of constituting a target.

- Attachment C – Memorandum from City Attorney and Planning Director

Mr. Tovar said this memorandum was written in response to public comments regarding the relevance and effect of prior litigation, including Viking versus Holm, on the City's authority and discretion to craft the proposed regulations.

▪ Attachment D – Additional Public Comment Letters

Mr. Tovar advised that the Planning and Development Services Department has received a number of additional written comments, which were included as Attachment D.

Mr. Tovar advised that since the staff report was written, the City Attorney received additional correspondence on a number of subjects, including the relevance of the Viking versus Holm decision and the City's right to pass critical areas regulations that might conflict with the Innis Arden Covenants. He read the additional memorandum that was provided by the City Attorney to supplement his earlier response to this concern.

Mr. Torpey provided two maps. One identifies the critical areas within the City, including streams, lakes and wetlands and slopes. The other map shows the location of the Innis Arden Reserves. He noted that Reserve M is a City-owned property, although it is contained within the Innis Arden neighborhood. In response to a question from the Commission, he said staff could provide, on a request basis, a map of critical areas for any area of town.

Continued Public Testimony or Comment

Beverly Meln, 1440 Northwest 186th Street, said she would like to address the preservation of the Innis Arden Reserves, which comprise much of the sensitive critical areas in Innis Arden. Some have suggested that strict preservation of these areas would violate the property owners' "right to a view." She expressed her belief that the City cannot violate rights that do not exist. She explained that in 1992, the King County Superior Court mandated that the Reserves are not governed by the view amendment and trees in the Reserves cannot be cut for views under that amendment. She concluded that only residential lots could be cut for views. She emphasized that all the Reserves were, and still are subject to the enforcement of the Critical Areas Ordinance. She urged the Commission to do all they can to protect and preserve all of the sensitive critical areas in Shoreline. They are important to ensuring a healthy quality of life in the City. She submitted legal documents to support her statement, which were identified as Exhibit 4.

Wayne Cottingham 17228 – 10th Northwest, said he has lived in Innis Arden for the past 41 years. He pointed out that there are no Innis Arden Covenants, and they are not a covenanted community. They have restrictive mutual easements that were impressed on the land by Mr. Boeing through the first master deed for each of the three subdivisions. As Mr. Boeing addressed the restrictive mutual easements, his operative words were "subject to." When subsequent lots were sold, they referred back to the master deed and made each lot "subject to." Mr. Cottingham explained that in 1949, when Mr. Boeing wrote the restrictive mutual easements for Innis Arden 3, addressing Section 13 of Paragraph 13, he wrote "Reserve M may be divided into residential lots at which time they shall become subject in all respects to the restrictive mutual easements of Innis Arden 3 in the same manner as all of the other

residential lots.” That was the only tract that could be divided and the only one that was not given to the Innis Arden Club. It was the only tract that could be amended. Thirteen months after Mr. Boeing wrote the deeds, he offered to purchase stock in the Innis Arden Club, Inc. and asked that they be bound by the restrictive mutual easements. Upon receiving that assurance, he quickly deeded the Reserves to the Innis Arden Club, but not subject to those certain restrictive mutual easements.

Art Wright, 1304 Northwest 8th Street, said he is a 20-year resident of Innis Arden. When his lot was first developed, it was not clear cut. It was a wooded lot. In his deed, the word “covenant” does not appear. Instead, the words “restrictive mutual easements” was used. The Commission should understand there is a distinction between a covenant and an easement as far as property rights are concerned. Likewise, the word “view” does not appear in the papers drawn up by Mr. Boeing in the 1940’s. There is a paragraph concerning fences, hedges and walls and the noxious use of property. In this day and age, the public does not consider trees to be a nuisance. The only nuisance in Innis Arden might be said to be the club house because of the noise it creates. Trees absorb carbon dioxide to help the atmosphere, and most cities are working hard to get greenbelts. However, the Innis Arden Board wants to eliminate their greenbelt. Mr. Wright said he supports the proposed ordinance, which would help preserve the greenbelts within the City.

Mike Jacobs, 18301 – 8th Northwest, Innis Arden Club President, advised that Mr. Cottingham, Ms. Meln, Ms. Phelps and a few other residents have sued the club. They have some unique ideas as to what the covenants consist of and require. This matter is in King County Superior Court. To date, they have filed a number of motions, but they have yet to be successful with any of them.

Mr. Jacobs referred to Attachment C (the memorandum submitted by the Planning Director and City Attorney) and said the club is very concerned about its content. The memorandum suggests that the Innis Arden Club representatives have overstated the effects of prior litigation. Mr. Jacobs specifically referred to the Viking Decision (August 2005), and said the court concluded that the City has no authority to invalidate restrictive covenants. Yet, that is essentially what the City is proposing to do now.

Mr. Jacobs pointed out that, as proposed, the Stewardship Plan would prevent Innis Arden residents from removing any trees within critical areas that are less than 10 acres in size, and this includes all private properties. It also limits the removal of trees to the view that existed at the time the plan was submitted. He suggested that this would result in an arbitrary and capricious taking situation. The City Attorney states in his June 1st memorandum, that “The right to have trees cut for view and the owner’s right to cut for view on his or her own property are both subject to local land use regulations, which are not arbitrary or capricious.”

Mr. Jacobs pointed out that in 2002, the club presented a vegetation management plan to the City for Grouse Reserve, which is a critical area. As per the approved plan, the City permitted the club to remove approximately 70 trees in the critical area. He submitted a copy of the vegetation management plan, which was identified as Exhibit 6. He questioned why it was permissible in 2002 to remove trees within a critical area and now it is not. He questioned the science that would support the proposed prohibition of even one tree being removed from a critical area. He asked that the Commission reject

the proposal and allow the club to work further with staff to come up with a plan that is mutually acceptable and beneficial to all.

Fran Lilleniss, 17730 – 14th Avenue Northwest, referred to the list of invasive species that were reviewed at the last meeting and noted that the list did not include human beings, even though they are the most invasive species on the planet. Humans have chosen to live the way they want to without regard to the environment and habitat. She referred to Mr. Ellison's comments at the last meeting that property owners along Boeing Creek are not controlling the invasive species, and this is devastating the habitat. She provided a pictures of an invasive species property that is not being cared for, and asked what the City intends to do about the situation. The pictures were entered into the record as Exhibit 7. She said she does not feel that property with trees cut down would be ugly.

Ms. Lilleniss pointed out that Mr. Boeing paid extra money to give Innis Arden property owners protective mutual easements, which they call covenants. Legally, she suggested that protective mutual easements are actually stronger than covenants. She noted that the Reserves were not included in Judge Ellington's lawsuit because, at the time, the property owners adjacent to the Reserves dealt with trees that were growing in their views.

Harley O'Neil, 18645 – 17th Avenue Northwest, said he is a resident of Innis Arden. He pointed out that when Mr. Boeing sold the lots, he specified which ones were view lots and they were sold for a higher price. Secondly, Mr. O'Neil expressed his belief that the majority of Innis Arden residents are concerned about the critical areas. However, he is not convinced that some of the trees in question are doing a better job than another type of tree that could be used for soil stability, water absorption, etc. He urged the Commission to review best available science to determine what could be done to secure and protect the critical areas and, at the same time, provide the views people were given when they purchased properties. It is sad to see what has happened to the views over the years.

Pam Smit, 18229 – 13th Avenue Northwest, said she also lives in Innis Arden. She said she is confused about the process for reviewing the proposal. She asked why the City didn't use more of a collaborative effort. Since the Innis Arden community would be most impacted, she suggested the City should have held a meeting with the people living in that neighborhood. She urged the Commission to stop the debate about whether or not the covenants should be valued. Since the critical areas stewardship plan provision would only apply to properties that are 10 acres or larger, she questioned how the City would deal with trees being cut from individual private properties within critical areas.

Commission Deliberation and Final Recommendation on Proposed Hazardous Tree Ordinance

Chair Piro reminded the Commission that a motion was put on the floor at the last meeting that still needs to be voted on at some point. He also reminded the Commission that new language was proposed by staff subsequent to the motion on the floor.

Commissioner Broili referred to Item "i" on Attachment A and asked staff to explain how the City would track improved trails over time, and at what point the process would take place. Would the City keep a permanent record of trails? Mr. Tovar said that a trail could be identified at the time an

application for a stewardship plan is submitted. While property owners could wait until they have a hazardous tree situation, he would encourage them to let the City know about trails as soon as possible. Once information has been submitted to the City, it would be digitized and identified on the City's base map as a recognized trail.

Commissioner Wagner suggested that the list of targets contained in the proposed ordinance seems redundant since the same information is included on the Tree Evaluation Form. Mr. Tovar said that many citizens have raised questions about what portions of a larger critical area would be considered a "target."

Commissioner Hall pointed out that the revised proposal would require an arborist to conduct an evaluation of a tree. It would also give the Director the discretion to make the determination on whether or not it is a hazard. He asked if the proposal includes any guidelines or provisions to indicate the required level of evaluation, and how the Director would ensure the consistent application of his discretion over time. Mr. Tovar explained that all the arborists on the City's list would likely interpret the facts somewhat differently. But if all the reports are submitted to the same decision maker, there would be a consistent control point.

Commissioner Wagner suggested that instead of the Director making a final call and having the City take on the liability, it would be more appropriate to have a second arborist evaluate the situation. Mr. Tovar recalled that citizens expressed a concern that the review process not be redundant. Therefore, staff recommends that a second arborist opinion only be required if the Director deems it necessary.

Vice Chair Kuboi pointed out that there are still elements of the proposed language that are not clear, such as how trails can be defined and how the approved arborist list would be created and maintained. He asked at what point in the process these additional elements would be defined. Mr. Tovar said the Commission could decide they want all of the details worked out before making a recommendation to the City Council or they could forward a recommendation on the proposed language and rely on the City administrators to address the details. He pointed out that staff creates a number of forms, procedures and checklists administratively to enforce other parts of the codes where there is no specific statutory direction.

Commissioner Broili referred to Item "h" of Attachment A and asked if it would be appropriate to include language to make it clear that payment for the arborist would be made by the City and reimbursed by the property owner. This would make it clear that the arborist is responsible to report to the City and not the applicant. Mr. Tovar advised that, typically, when cities use a consultant as part of a three-part contract, the applicant would pay the City, the City would pay the consultant and the consultant would report to the City.

COMMISSIONER HALL WITHDREW HIS MAIN MOTION FROM MAY 18TH TO RECOMMEND APPROVAL OF THE PROPOSED CODE AMENDMENT LANGUAGE REGARDING HAZARDOUS TREES. COMMISSIONER BROILI WITHDREW HIS SECOND.

Commissioner Pyle referred to Items “h” and “i” on Attachment A, and suggested that the two items conflict with each other as to who would have the ultimate authority to grant approval for removal of a tree. Item “h” implies that the final determination would be granted to the Director, but Item “i” alludes to the fact that the city-approved arborist would have the ultimate authority. Mr. Tovar agreed and suggested that Item “i” be revised to read, “Approval to cut or prune vegetation may only be given if the Director, upon the recommendation of the city-approved arborist concludes that . . .” The Commission agreed this would be an appropriate change.

Commissioner Wagner questioned if it would be appropriate to replace the word “vegetation” with “trees” to be consistent with the other sections of the proposed language. Commissioner Broili expressed his belief that the underbrush and other vegetation could be just as important as trees to the functionality of a slope in a critical area. Commissioner Hall agreed and pointed out that the hazardous tree provisions are intended to apply citywide to all hazardous trees inside or outside of critical areas and would not alter the protection of critical areas as provided for in the Critical Areas Ordinance. Mr. Torpey agreed that nothing in the hazardous tree provisions would override the protections identified in the Critical Areas Ordinance. The Commission agreed that “vegetation” should be replaced with “tree” in Item “i” of Attachment A.

COMMISSIONER HALL MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE CITY COUNCIL STAFF’S JUNE 1ST RECOMMENDED PROPOSED CODE LANGUAGE REGARDING HAZARDOUS TREES (20.50.310) WITH THE FOLLOWING AMENDMENTS TO SECTION 20.50.310.a.1.I: STRIKE “VEGETATION” AND INSERT “TREES;” UN-STRIKE “DIRECTOR” AND INSERT “UPON THE RECOMMENDATION OF THE” [upon the recommendation of the City approved arborist]. COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall emphasized the importance of having the Planning Commission enter their findings and conclusions into the record to support their motions. He suggested the following findings:

- Some members of the public expressed support of the staff proposal, and some opposed it. Some indicated they would support the proposal if it had more stringent conditions for removal of a hazardous tree. Others indicated they would support it if it had less stringent conditions.
- The record supports the finding that removing hazardous trees has the potential to reduce hazards to human life, health and property.
- The record also supports the finding that cutting trees in steep slopes has the potential to reduce slope stability and possibly create a hazard to human life, health and property.
- Cutting trees anywhere in the City, inside or outside of critical areas, has the potential to degrade ecosystems and the natural environment and to alter the character of Shoreline and its treescape.

Commissioner Hall concluded that the staff’s proposal strikes a careful balance between the goal of protecting human life, health and property from the hazards of falling trees and the goal of protecting

human life, health and property, as well as the natural environment, from the consequences of cutting trees both inside and outside of critical areas in the City of Shoreline.

Commissioner Pyle indicated his support of Commissioner Hall's findings and conclusions. However, the proposed language does not address circumstances where a hazardous tree becomes a serious threat and the property owner does not have time to contact the City's Customer Response Team and go through the process of obtaining the necessary approval to remove the tree. Commissioner Harris suggested that if there were a significant storm, a property owner would likely experience a delay in finding someone to cut the tree down, as well.

Commissioner McClelland said it is important for the City to make an effort to inform the residents of Shoreline of the new Hazardous Tree Ordinance. This could be as simple as a brochure or information on the City's website. They should not just assume that most people would know about the ordinance without being specifically informed.

Commissioner Phisuthikul reminded the Commission that the provision would only apply to properties where six significant trees have already been removed within a three-year period. Commissioner Hall agreed, but pointed out that the "six tree" provision would only apply to properties that are outside of critical areas.

Commissioner Harris clarified that, as per the proposed language, the City would provide a list of numerous arborists. Mr. Tovar said he anticipates the staff would use a recruitment process to identify qualified arborists. This would likely include an interview process to find out about their qualifications, their availability and their experience. The City's Forester would likely participate in the selection process. Commissioner Harris asked if the City would establish a pre-set fee with each of the arborists on the list. Mr. Tovar said this would likely be spelled out in a three-party contract that all of the arborists on the list would sign. Commissioner Harris said he would prefer that the issue of monetary compensation be between the arborist and the applicant rather than mandated by the City. Mr. Tovar said he would prefer a set fee so an arborist would not be influenced by how much he/she is getting paid.

Closure of Public Hearing on Proposed Hazardous Tree Ordinance

COMMISSIONER BROILI MOVED THAT THE COMMISSION CLOSE THE PUBLIC HEARING ON THE HAZARDOUS TREES PORTION OF THE HEARING. COMMISSIONER HARRIS SECONDED THE MOTION.

Commissioner Hall asked that when the staff prepares findings and conclusions for the City Council's review, they should add the finding that public notice was provided, that the proposed amendments were consistent with the topical area that was discussed and properly publicly noticed, that the changes made by the Commission were designed as improvements, and that there would be adequate opportunity for additional public comment and notice when the item comes before the City Council in a legislative public hearing.

Vice Chair Kuboi pointed out that if the Commission were to close the hearing for the proposed Hazardous Tree Ordinance, they would not be able to further direct staff to craft specific language about how arborist lists or trails would be defined. These details would have to be developed after the fact, with no involvement from the Commission. Chair Piro said his interpretation is that after the public hearing is closed, the Commission would still have the ability to direct staff to do additional work.

THE MOTION TO CLOSE THE PUBLIC HEARING CARRIED UNANIMOUSLY.

Continued Commission Deliberation and Recommendation on Proposed Hazardous Tree Ordinance

COMMISSIONER WAGNER MOVED THAT THE COMMISSION STRIKE ALL OF “c” IN 20.50.310.a.1 AND STRIKE “OR CLEARING VEGETATION” FROM “d.” COMMISSIONER PYLE SECONDED THE MOTION.

Mr. Tovar pointed out that if Item “c” were removed, he would not necessarily have the authority to require that a report be done by the City’s forester. He added that the term “peer review” does not appear in the draft Hazardous Tree Ordinance, but it is used in the draft language for Critical Area Stewardship Plans. He recommended that if the Commission takes Item “c” out of the draft Hazardous Tree Ordinance, they should place it in the draft Critical Area Stewardship Plan Ordinance, instead.

Commissioner Phisuthikul said he would be in favor of retaining Item “c”, as written, since this would allow the Director to use peer review (a third party), if necessary, when making final decisions regarding hazardous trees, as well. Commissioner Harris recalled that the intent of creating a list of approved arborists was to eliminate the City’s need for additional peer review. Commissioner Pyle said his understanding of the proposed language is that the Director could go to a third party (the City’s forester or another arborist on the approved list) to review the submitted application. However, the cost of the third party review would be the City’s responsibility. Commissioner McClelland reminded the Commission that the term “peer review” is no longer included in the proposed Hazardous Tree Ordinance, so there is no need to retain Item “c”.

CHAIR PIRO PROPOSED A FRIENDLY AMENDMENT TO STRIKE ALL OF “c” FROM 20.50.310.a.1 AND INSERT THE LANGUAGE INTO 20.80.087, THE CRITICAL AREAS STEWARDSHIP PLAN SECTION OF THE DEVELOPMENT CODE. COMMISSIONERS WAGNER AND PYLE ACCEPTED THE FRIENDLY AMENDMENT.

THE MOTION, AS AMENDED, WAS APPROVED 8-1, WITH COMMISSIONER PHISUTHIKUL VOTING IN OPPOSITION.

Vice Chair Kuboi asked staff to explain how a trail would be documented for the purpose of applying the proposed language. Mr. Tovar explained that if the proposed language were adopted by the City Council, staff would develop a form for this purpose. An applicant would be asked to submit a scale drawing or map, indicating the location and alignment of the trail. Once a trail has been approved by staff, it would be identified on the City’s digitized GIS map as an improved trail. Staff could consult the

map whenever someone submits a Hazardous Tree Form. Vice Chair Kuboi said that, in theory, it would be possible for someone to construct a trail near a tree that has some hazardous conditions just to create a target situation that would allow them to cut the tree down. There is nothing in the proposed language that would enable the City to establish whether or not the trail was in place before the tree reached a hazardous situation. Mr. Tovar said that when reviewing trail forms, he would require a property owner to demonstrate that the trail is used on a frequent basis.

Commissioner Pyle cautioned against adding improved trails to the City's GIS mapping system, since this could end up degrading the quality of the GIS system. However, GPS mapping or legal descriptions of the trails might be useful. It would also be useful to hand sketch the trails and attach the drawings to titles.

Commissioner Wagner expressed her concern with the language regarding "recreational trails." She suggested that it would be duplicative to identify the target as part of the tree evaluation form, and then have separate language in the proposed language to define what a target is. She suggested that the language in the regulation should be illustrative and the determination should be based on the risk assessment form.

The Commission discussed the idea of eliminating the list in Item "i" of Attachment A. It was suggested that, instead, the section should refer to the Tree Evaluation Form, which is straight forward. Mr. Torpey said that, from an administrative perspective, without listing the actual targets, anything could be considered a target. Chair Piro cautioned against referencing a form in the code language. The majority of the Commission concurred.

COMMISSIONER WAGNER MOVED TO UN-STRIKE "RECREATIONAL TRAILS" FROM 20.50.310.A.1.i AND STRIKE THE STAFF'S INSERTED LANGUAGE "AND ANY TRAIL AS PROPOSED BY THE PROPERTY OWNER AND APPROVED BY THE DIRECTOR FOR PURPOSES OF THIS SECTION." COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Hall noted that on May 18th, he made a motion to strike "recreational trails," but the motion failed unanimously. He took that as the Commission's intent to retain the term. In the staff report, it was noted that trails are defined elsewhere in the code and are used in the Parks and Recreation Comprehensive Plan.

THE MOTION CARRIED 5-2-2, WITH COMMISSIONERS HALL, HARRIS, MCCLELLAND, WAGNER AND PIRO VOTING IN FAVOR AND COMMISSIONERS PHISUTHIKUL AND PYLE VOTING AGAINST. COMMISSIONERS BROILI AND KUBOI ABSTAINED FROM VOTING.

Commissioner Pyle said his understanding of the motion is that Item "i" would revert back to the original text. Commissioner Wagner explained the intent of her motion.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECONSIDER THEIR VOTE ON THE PREVIOUS MOTION. COMMISSIONER PYLE SECONDED THE MOTION. THE MOTION TO RECONSIDER WAS APPROVED UNANIMOUSLY.

COMMISSIONER WAGNER MOVED THAT THE COMMISSION UN-STRIKE “RECREATIONAL TRAILS” FROM 20.50.310.A.1.i. COMMISSIONER PYLE SECONDED THE MOTION. THE MOTION CARRIED, 6-2-1, WITH COMMISSIONERS HARRIS, MCCLELLAND, PHISUTHIKUL, PYLE, WAGNER AND PIRO VOTING IN FAVOR AND COMMISSIONERS HALL AND KUBOI VOTING AGAINST. COMMISSIONER BROILI ABSTAINED.

THE MAIN MOTION TO RECOMMEND APPROVAL OF STAFF’S JUNE 1ST RECOMMENDED PROPOSED CODE LANGUAGE REGARDING HAZARDOUS TREES (20.50.310) WAS UNANIMOUSLY APPROVED AS AMENDED.

Commission Deliberation and Final Recommendation on Proposed Critical Areas Stewardship Plans

COMMISSIONER HALL MOVED TO RECOMMEND DENIAL OF STAFF’S PROPOSED CRITICAL AREAS STEWARDSHIP PLAN IN SECTION 20.80.087 OF THE DEVELOPMENT CODE. COMMISSIONER WAGNER SECONDED THE MOTION.

Commissioner Hall pointed out that a lot of work has occurred regarding the issue of “Critical Areas Stewardship Plans.” However, testimony from both sides indicates that neither side supports the current proposal. The Innis Arden Club has encouraged the Commission to send the issue back to staff for additional work with the help of club representatives. The Innis Arden Club expressed their opinion that the proposed language would make it too difficult to cut trees to protect views. Other citizens expressed opposition to the staff’s proposal because it would make it too easy to cut trees in critical areas and that the proposal would create an undue hardship on the City’s critical areas and ecosystems. While he doesn’t know what the right answer is, he concluded that they did not hear overwhelming support from either side regarding the current proposal.

Commissioner Pyle asked regarding the current mechanism for removing trees within critical areas, aside from a critical areas reasonable use permit. Mr. Tovar said that is the only option available for removing trees in critical areas.

Chair Piro commended the staff and citizens for their hard work on the issue. However, he said he has significant concerns about the proposed language because the definition for “view” is too open ended. Therefore, he would not support bringing the issue of “view” into the Critical Areas Ordinance at this time. He concluded that he would support the motion to deny the proposed language for Critical Areas Stewardship Plans.

Commissioner Harris said he would support the motion to deny the proposed language, as well. Because the stewardship plan could be applied for various reasons throughout the City, he suggested

that the issue of view be removed. Instead, the concept should rely on science and require applicants to prove that critical areas would not be impacted. Rather than focusing on the covenants, the issue should be about whether or not critical areas could be protected and/or improved on a basis of science.

Commissioner Pyle agreed with Mr. Crook's testimony from the May 18th meeting in which he cautioned the Commission to craft an ordinance that does not attempt to resolve an internal dispute. He said he would vote against the proposed language because it has "view" strictly identified as a trigger mechanism for approaching a Critical Areas Stewardship Plan.

Commissioner McClelland expressed her concern that much of the testimony offered to the Commission was not on point with regard to the Commission's responsibility. She reminded the Commission that the City is required by law to adopt and enforce a Critical Areas Ordinance. The Commission is in a difficult and unique situation of trying to figure out how to abide by the law and still allow covenants to be effective. She expressed her belief that the proposed language does not resolve this issue. She suggested there must be some method that would allow the staff, the community and the Commission to work together to develop a solution so that it does not end up in an expensive court battle.

Commissioner Broili said he would also support the motion to deny the proposed stewardship plan language. He said he is in favor of the disparate parties coming together under the umbrella of the City to devise some type of management strategy for the reserves. He said he would not be in favor of the Commission getting involved in the middle of the dispute. Another option would be to form a group, similar to the Economic Development Task Force, to create criteria for a Critical Areas Stewardship Plan.

The Commission discussed whether it was their job to reflect state law or the community values and concerns. Commissioner McClelland said she feels the Commission's responsibility is to find the nexus between what the State law requires of the City's government and what the community feels they are entitled to. Chair Piro agreed that their job is to try to do both. Commissioner Hall pointed out that while State law requires the City to protect critical areas, it does not say how or to what extent they must do so. While the City's Critical Areas Ordinance must meet the test of best available science, state law allows communities to consider what the proper balance should be. He summarized that it is the Commission's job to reflect the values of the local community and do the best they can to make recommendations that are consistent with these values.

Chair Piro summarized that the Commission has a responsibility to deal with the issue of critical areas, and he commended the staff for trying to create ordinance language that would balance the state requirements, as well as the community values. However, it appears the Commission does not feel the proposed language is ready to move forward to the City Council for consideration.

Commissioner Phisuthikul applauded the staff for creating an excellent draft ordinance, which provides and adequate opportunity for check and balance. It also allows flexibility to the applicants to propose certain concepts if they are concerned about view protection. The proposal would not be a blanket "view protection" ordinance, but it would offer property owners an opportunity to present plans that

would result in no net loss to the critical area. If no net loss would result from the removal of a tree, the City should have some mechanism to allow this to occur.

Closure of Public Hearing on Proposed Critical Areas Stewardship Plans

COMMISSIONER HALL MOVED TO CLOSE THE PUBLIC HEARING ON CRITICAL AREAS STEWARDSHIP PLANS. COMMISSIONER BROILI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Continued Commission Deliberation and Final Recommendation on Proposed Critical Areas Stewardship Plans

Commissioner Hall pointed out that the City's current Critical Areas Ordinance is intended to protect all critical areas throughout the City, and not just Innis Arden. He further pointed out that most of the testimony provided was not really on point with the decision before the Commission. He noted that neither the current regulations nor the proposed regulations would likely end the controversy or litigation between private parties within the community. He did not feel the proposed motion would either hinder or further any of the current private litigation.

Commissioner Pyle asked if the Commissioners would be more willing to support the draft language if the section pertaining to "views" was deleted from the proposal. The ordinance could then be applied unilaterally throughout the City. This would allow a property owner to alter a critical area if they could put together a plan that proves there would be no net loss of function or values. He noted that, with the exception of the section related to views, the remainder of the proposal is positive and would provide the staff with a tool to adequately deal with tree removal and tree management on properties regardless of use.

Commissioner Hall agreed that the "view" section is a significant challenge, but removing it would not likely resolve the issues raised by the community. Most of the opposition was against cutting trees in critical areas regardless of the purpose. He concluded that it would be difficult to craft stewardship plan language until the community is ready to accept that active management of critical areas might be acceptable.

Commissioner Pyle pointed out that one of the requirements of a critical areas reasonable use permit is actually proving there would be no net loss of functions and values. All the proposed language would do is change the process a little. It would take the Hearing Examiner out of the process and make it an administrative decision, but it would still require the same documentation. Anyone could apply for a critical areas reasonable use permit because they are under a hardship, and they would have an opportunity to present their case to the Hearing Examiner. As long as they could prove a hardship and that there would be no net loss in functions or values, their application would be approved.

Commissioner Broili expressed his belief that the City needs to do something. They need a strategy that would allow for no net loss or improve the existing functions and values. He noted that the functions and values of the City's wetlands have been badly degraded and need to be improved. He said that while they cannot get back to an old growth forest, they can obtain an urban forest that functions the

same as an old growth forest but looks different. He urged the City to take the lead and develop an Urban Forest Management Strategy that would restore the functional qualities of both the critical areas and the forested areas. Mr. Tovar invited the Commissioners to attend the town hall meetings that are scheduled of June 6th and June 14th, where the issue of Urban Forest Management would be discussed.

THE MOTION TO DENY THE STAFF'S PROPOSED CRITICAL AREAS STEWARDSHIP PLAN IN SECTION 20.80.087 OF THE DEVELOPMENT CODE WAS APPROVED 8-1, WITH COMMISSIONER PHISUTHIKUL VOTING IN OPPOSITION.

Commissioner Hall asked if the approved motion would preclude the staff from taking the proposal to the City Council for consideration. Mr. Tovar answered that because the Planning Department initiated the proposal, he would expect them to, at the very least, report to the City Council and explain how the process moved forward. The Commission's recommendation would be provided to the City Council, and the City Council would be asked to provide staff with direction on how they want them to proceed.

REPORTS OF COMMITTEES AND COMMISSIONERS

Chair Piro announced that the Puget Sound Regional Council (PSRC) is actively engaged in the public comment period for the four-county regional strategy revision of the Vision 20/20 Plan. He noted that several Commissioners attended the kick-off event. He said citizens could access and provide comments on the four alternatives being proposed by visiting the PSRC's website at www.psrc.org.

UNFINISHED BUSINESS

Mr. Tovar noted that the special meeting that was tentatively scheduled for June 29th would not be necessary.

NEW BUSINESS

There was no new business scheduled on the agenda.

ANNOUNCEMENTS

There were no additional announcements provided during this portion of the meeting.

AGENDA FOR NEXT MEETING

Chair Piro reviewed that the June 15th agenda would include two public hearings. Mr. Tovar said the hearings would be regarding two site-specific rezones. In addition, the Assistant City Manager would be present to talk to the Commission about their retreat agenda.

Commissioner Hall reminded staff that a joint meeting with the Parks Board is a priority of the Commission. Mr. Tovar suggested that the joint meeting would likely be scheduled for September 7th.

ADJOURNMENT

The meeting was adjourned at 9:52 p.m.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission