

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

May 4, 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 Pyle
Commissioner Wagner

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

COMMISSIONERS ABSENT

Commissioner Hall

CALL TO ORDER

Chair Piro called the regular meeting of the Shoreline Planning Commission to order at 7:02 p.m.

Chair Piro explained that the main item on the agenda is a study session on the Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan. Staff would provide a formal briefing on the issue to the Commission, and no oral comments would be accepted from the public on this item. While the Commissioners would have an opportunity to ask questions related to the briefing, they would not be discussing or deliberating the proposal now. A public hearing on the issue has been scheduled for May 18th.

ROLL CALL

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

Because the meeting was being videotaped for television broadcast, Chair Piro invited the Commissioners to briefly introduce themselves.

APPROVAL OF AGENDA

Chair Piro suggested that they have only a brief Director's Report at the beginning of the meeting to focus on the topic of the study session. The remainder of the report could be provided later on the agenda. He also suggested that Reports from Committees and Commissioners be placed after the study session, as well. The Commission accepted the agenda as amended.

DIRECTOR'S REPORT

Mr. Tovar advised that he would wait until after the study session has been completed to provide his report.

APPROVAL OF MINUTES

The minutes of April 6, 2006 and April 20, 2006 were approved as corrected.

GENERAL PUBLIC COMMENT

Chair Piro acknowledged the presence of Council Members Way and McGlashan.

There was no one in the audience who expressed a desire to address the Commission during this portion of the hearing.

STAFF REPORTS

Study Session on Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan

Mr. Tovar briefly explained the working relationship and roles of the City Council, Planning Commission and City Staff. He said it is important for the public to understand that the staff works with the City Council and Planning Commission as a team to accomplish the shared mission of serving the citizens of Shoreline and protecting their quality of life. The City Council members have been elected by the citizens to adopt plans, budgets, and regulations. They are the policy makers. The Planning Commissioners are the policy advisors and have been appointed by the City Council to serve the function of reviewing materials, listening to public comments, deliberating on the issues and making recommendations to the City Council. Staff is charged with the responsibility of making recommendations to the Planning Commission. Once the Planning Commission forwards a recommendation to the City Council and a final decision has been made, staff becomes the administrator of the adopted policy.

Mr. Tovar advised that staff has an obligation to provide the Commission with their best professional recommendation, keep them apprised of what is going on in the community, etc. While the Commission

does not have to agree with the staff's recommendation, they have an obligation to consider it, along with all other input from applicants, the public, and others. The Commission has an obligation to provide a timely, thorough recommendation to the City Council, and the City Council has an obligation to give fair and full consideration to the Commission's recommendation and then make a decision. The City Council is not obligated to agree with a Commission recommendation.

Mr. Tovar provided a chart to illustrate the differences between administrative actions, quasi-judicial actions, and legislative actions. Administrative actions such as short plats, building and grading permits, etc. are reviewed by staff using the existing codes. For quasi-judicial land use actions such as site-specific rezones, conditional or special use permits, etc. a public hearing is conducted by the Planning Commission. The Planning Commission reviews all of the codes and policies and all of the evidence and forwards a recommendation to the City Council, who makes the final decision. Legislative items such as development code and comprehensive plan amendments, rezones, etc. are reviewed by the Planning Commission and a public hearing is held as part of that process. The Planning Commission weighs all of the evidence and forwards a recommendation to the City Council.

Mr. Tovar emphasized that the public only has a limited ability to provide input on administrative actions. For example, the staff's discretion to approve or deny a building application is limited by the current building code requirements, so the impact of public comment would be small. However, the Commission and City Council have more discretion with quasi-judicial matters so the public's input could have more impact on the final decision. Legislative actions allow the most discretion, so the public has the greatest ability to participate in the process and impact the end result. He summarized that the level of public testimony depends upon the nature of the action. He pointed out that the proposal before the Commission at this time (Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan) is a legislative action. Thus, the public has a significant opportunity to provide comments to guide the Commission and City Council's decision.

Mr. Tovar explained that in January of 2006, the City Council adopted a moratorium on the Development Code's hazardous tree regulations. In addition, the Council adopted interim regulations to explain what would happen in hazardous tree situations while the moratorium was in place. The moratorium and interim regulations expires on July 3, 2006. The City Council asked the Planning Commission to consider permanent regulations to replace the interim control and forward a recommendation to them for final adoption. They also asked the Commission to amend the code to provide an opportunity for a Critical Areas Stewardship Plan.

Mr. Tovar announced that a public hearing has been scheduled for May 18th, and citizens have already started providing written comments that would be forwarded to the Commission prior to the public hearing. If the Commission develops a recommendation to the City Council by the end of its meeting on May 18th, the City Council could take final action before the July 3rd deadline. However, if the Commission needs more time, they could direct staff to approach the City Council with a request that the moratorium be extended.

Mr. Tovar displayed the text contained in the draft ordinance (Attachment 2 of Staff Report). He noted that the proposed ordinance would repeal the existing language and adopt new language for the

Hazardous Tree Regulations found in Section 20.50.310 of the Shoreline Municipal Code (SMC). It would also add a new section SMC 20.80.087 that would provide for City review and approval of Critical Areas Stewardship Plans. The new language for 20.50.310 is modeled after the interim control. The City Council conducted a public hearing regarding the interim ordinance, and staff has received comments from a number of citizens, as well. Mr. Tovar briefly reviewed the proposed language for this section regarding hazardous trees (Pages 2 through 4 on Attachment 2 of the Staff Report) and invited the Commission to ask questions.

Commissioner McClelland suggested that the language provide a definition of the word “abatement,” which is used in Section 1.e. Mr. Torpey referred to SMC 20.20.010, where the word “abate” is defined. Next, Commissioner McClelland referred to Section 1.i and asked if the term “vegetation” includes trees, too. Mr. Tovar agreed that “trees” should be added to this section. Commissioner McClelland also suggested it would be helpful to provide a definition for the word “vegetation.”

Commissioner Broili referred to Section 1.i and suggested that the term “recreational trails” be defined. Mr. Tovar agreed that staff would come up with a definition for this term.

Commissioner Wagner asked how many hazardous tree forms the staff anticipates receiving each year. Mr. Torpey said that under the old regulations, the staff processed over 100 hazardous tree forms in an 8-month period. However, since the interim control went into effect on January 3rd, they have only processed two. Commissioner Wagner asked how much time staff anticipates the Director would spend on site visits, and suggested the issue of time be part of the Commission’s consideration.

Commissioner Wagner referred to Section 1.j and asked if there is a set standard to enable the City to make sure a property owner used hand-held equipment. Mr. Tovar explained that if a property owner requested to use something other than hand-held equipment, staff would expect him/her to explain where the larger equipment would be placed, why it must be used, and what the impacts would be to the surrounding area. These situations would be determined on a case-by-case basis.

Commissioner Wagner asked if the City has a definition for the term “significant trees,” which is used in Section 1.j. Mr. Torpey shared the City’s current definition for “significant trees.”

Commissioner Pyle asked that staff provide the Commissioners with a copy of the hazardous tree form, which is mentioned in several places in the proposed language. He also requested a copy of the code section that discusses code enforcement. Mr. Tovar agreed that staff could provide more information about code enforcement at the next meeting. The Commission could then decide if additional language regarding code enforcement would be necessary.

Commissioner Pyle questioned why Section 1.j would only require the replacement of significant trees and not significant vegetation, too. He pointed out that, in many cases, the under story canopy is as important as the primary canopy.

Vice Chair Kuboi agreed that the term “recreational trail” should be better defined. He would like the definition to identify how long a trail must exist before it could obtain the status of “recreational trail.”

He expressed his concern that if the term “recreational trail” could be used as a definition for creating a hazard, it would be simple for a property owner to put in a trail, and the intent of the language could be distorted.

Vice Chair Kuboi referred to Section 1.g, which lists a “registered landscape architect” as a person who could address whether a tree is hazardous or not. He asked staff to research whether the typical landscape architect would have this particular professional judgment. Commissioner Broili agreed with Vice Chair Kuboi’s concern about whether or not a landscape architect would be qualified to conduct risk assessment on potentially hazardous trees.

Vice Chair Kuboi pointed out that the proposed language would not provide any avenue for a citizen with a precarious tree in a hazardous area to “cut first and ask questions later.” At the very minimum, the citizen would have to contact the Customer Response Team, and obtain verbal approval. Mr. Tovar pointed out that this would only be true for hazardous trees within a critical area. Vice Chair Kuboi asked how the average citizen would know that he/she must get permission to cut a tree in a critical area. Mr. Tovar recalled that staff has talked with the Commission and City Council about the concept of developing a greater awareness amongst the public about the natural systems in the City. The goal would be to cultivate a stewardship for the community through activities and programs, but even that would not provide citizens with a perfect knowledge of what the rules are.

Mr. Tovar said Vice Chair Kuboi raised the question of why the Critical Areas Stewardship Plan language specifies the Olympic Mountains and Puget Sound views as opposed to other types of views. Mr. Tovar reminded the Commission that last year they received a recommendation from an organization asking that the Commission specifically acknowledge the views of the Olympic Mountains and the Sound. The Commission would have to make a policy decision on whether or not views should be limited to just these two views.

Mr. Tovar briefly reviewed the proposed language for SMC 20.80.87 regarding Critical Areas Stewardship Plans. He explained that the purpose of a stewardship plan is to provide a mechanism for the City to comprehensively review and approve, deny, or approve with conditions, private proposals to manage, maintain, cut and/or restore trees, other vegetation, natural resources and trails in large critical areas of the City. The proposed language would also provide a regulatory tool for the City to make a reasonable accommodation for private view rights in view-covenanted communities while still meeting the over-arching statutory mandate to protect critical areas.

Mr. Tovar said that up to this point, the cutting of trees in critical areas has not been permitted by the City unless they are considered hazardous, which is fairly consistent with the critical areas regulations adopted by other jurisdictions in the area. He recalled that last August, the Innis Arden Club submitted a recommendation that would allow non-hazardous trees to be cut to preserve views if certain conditions and requirements could be met. However, the Commission chose not to forward the recommendation on to the City Council for consideration.

Mr. Tovar said it is important for the Commission to carefully sort out the purpose of having a Critical Areas Stewardship Plan Ordinance, since it would drive the details of what would be required to be

submitted, how proposed plans would be evaluated, etc. He emphasized that it is not mandatory that the Commission forward a recommendation regarding the stewardship plan language to the City Council at the same time as the hazardous tree ordinance language.

Mr. Tovar reviewed the proposed language for SMC 20.80.87 (Pages 4 and 5 on Attachment 2 of Staff Report) and invited the Commissioners to ask questions. He particularly referred to Sections 3.a, 3.b and 3.c and explained that the Critical Areas Ordinance does not require that critical areas be left untouched. Instead, it requires that there be no net loss to the functions and values of the critical areas. He explained that the definition of a critical area is an “ecosystem,” which is defined as a system made up of a number of pieces that interrelate. When determining the function and value of an ecosystem, the larger the area considered, the greater chance of accounting for all of the parts of the ecosystem. He noted that Section 3.d refers to the interplay between the water, soil, plant materials, habitat value, etc. Section 3.e provides a mechanism for ensuring compliance with the provisions and that the information submitted is accurate.

Mr. Tovar referred to Section 5, which lists the items that must be included in a Critical Areas Stewardship Plan. He specifically referred to Section 5.c which would require an applicant to break up the property into logical sub units and provide a narrative description about how they would manage each one. He also referred to Section 5.f, which he discussed significantly with the City Attorney. He explained that under the provisions of the stewardship plan, certain representations are being made about how plans would be managed, what would happen to the lay of the land, plant materials, circulation on the site, and other details. These issues merit some type of ongoing review; and at some point, it might be warranted for the City to go onto the property to make sure all is going per the approved conditions and approved plan. Section 5.f would grant the City this legal authority.

Commissioner Phisuthikul referred to Section 5.a, which uses the term “known watercourses.” He noted that many important watercourses and wetlands might not be known. He suggested that this language be clarified using terms that have already been defined in the code. Also in this section, in accordance with the Commission’s previous discussion, Commissioner Wagner asked that the term “significant vegetation” be changed to “significant trees and/or vegetation.”

Commissioner Broili said he would like staff to create a definition for view, even though it might be difficult to do. Also, instead of just an inventory of significant vegetation, he would like Section 5.a to require an inventory of all existing vegetation. He pointed out that there might be some undesirable vegetation that should be removed and/or replaced. In addition, he asked if the scientific assessment by a qualified professional (Section 5.d) would be peer reviewed.

Commissioner Broili said he would like the language to include some provision for an adaptive management strategy so that plans could become better in the future. He agreed to work with staff to define the term “adaptive management strategy” and consider how it could be incorporated into the proposed language.

Mr. Tovar cautioned that defining the word “view” is difficult to address in regulations and permits. If the Commission talks about views, they must seek help from the public to understand exactly what views the public is talking about. This is a policy issue the Commission must grapple with.

Commissioner Pyle asked if it would be possible for people to register their views as a benchmark. He noted that the Department of Ecology has developed a number of tools that document functions and values. He suggested that adopting a formal system for assigning, assessing or valuing the landscape would enable the City to stay on track as far as target results.

Commissioner Pyle said that while he understands the benefits of “native vegetation,” (Section 3.d) the City is working in very specific circumstances where native vegetation would never really be allowed to mature. Views are being blocked as a result of growth of the native vegetation. He explained that there are quite a few species that could provide the same functions, but mature at a level that won’t block views in the future. Mr. Tovar advised that the Commission is likely to receive a lot of public testimony regarding the issue of native vegetation, and they would be required to make a policy decision about what the standard of vegetation should be and how it should be managed.

Commissioner Pyle referred to Section 5.a and asked if the dated inventory would require a survey. Mr. Tovar said they need a document that is empirically correct and reflects reality, but he is not sure a survey should be required. He said staff would consider the matter further and provide a response later.

Commissioner McClelland asked if it would be possible for Section 5.a to require a data inventory of known critical areas. The language could then list the five types of critical areas. She recalled that when this issue was reviewed last year, a concern was raised that anything such as a stewardship plan should be within the context of the state’s definition of a critical area. She also asked if it would be possible to make reference to “best available science” in Section 5.d. She stressed the importance of emphasizing throughout the document that the provisions deal with critical areas. She asked if the proposed ordinance could include language to describe what would happen if a stewardship plan failed to perform. Mr. Tovar said staff would provide further information and recommendations at the next meeting regarding enforcement of the ordinance language.

Commissioner McClelland suggested that the word “submittal” in Section 2 be changed to “approval.” She noted that there could be a time lag between when a plan is submitted and when it is approved. Mr. Tovar said the Commission will likely hear testimony that the City should consider views from the remote past out to the remote future and all points in between. The Commission will have to make a policy decision on this matter.

Commissioner McClelland asked if staff has a copy of the Department of Ecology’s outline for preparing restoration plans. She suggested that this document could be extremely useful. Mr. Tovar agreed.

Vice Chair Kuboi pointed out that the purpose statement implies that the ordinance would only apply to view covenanted properties. Mr. Tovar agreed. Vice Chair Kuboi asked if it would be possible for a

person to create a single-lot, view covenanted community. He questioned whether it would be appropriate for the City to treat a community that has covenants differently than one that does not.

Vice Chair Kuboi referred to Section 3.a and inquired if the 10 acres would have to be contiguous. Chair Piro pointed out that Section 3.b states that stewardship plans may include non-contiguous parcels under the same ownership. Vice Chair Kuboi asked if it would be possible for an owner to have parcels fragmented throughout the City that aggregate to 10 acres. Mr. Tovar answered affirmatively, but explained that if such a plan were submitted, it would be difficult for the applicant to describe the ecosystem.

If the proposed language were adopted, Vice Chair Kuboi questioned if an approved stewardship plan would be effective in perpetuity. Mr. Tovar clarified that while they call it a plan, it is really a permit or regulatory tool that authorizes or controls certain activities into the future. As proposed, the plan would have an infinite life, unless conditioned otherwise. Vice Chair Kuboi expressed his concern that once the City approves a stewardship plan and the party implements the plan, there would be no avenue for the City or the property owner to get out of the deal. He pointed out that, in most cases, the applicants would receive the immediate benefit and the payback to the City would occur over a long-period of time. Therefore, it would be important to have a mechanism in place to make sure that all parties in the plan follow through with their obligations. Mr. Tovar asked that staff be allowed to consider these concerns and provide some different scenarios for the Commission to consider as part of the Staff Report for May 18th.

Vice Chair Kuboi pointed out that Section 5 only describes what information is to be included in the submittal package for application. It does not identify the elements that must be included in the actual stewardship plan, itself. Mr. Tovar agreed that more language could be provided to describe what must be included in the approved plan. His understanding is that the approved plan would be based on the information that is submitted, as well as any additional conditions or modifications that might be imposed by the City.

Commissioner Broili recalled that he and Commissioners Hall and Phisuthikul toured the Reserves during a major rainstorm. There was a significant amount of runoff coming from the streets and other properties into the reserves. While Sections 3.b and 5.a address the issue of hydrology, he suggested they must also address the impacts from the built environment surrounding or adjacent to the critical areas.

Commissioner Broili suggested that instead of outlining the elements that must be included in a stewardship plan, the language should state the desired outcome of a plan. Just stating what must be included in the plan does not allow for more creative solutions as best available science improves or adaptive management comes into play. Mr. Tovar suggested that a new Section 6 be added to explain what an approved stewardship plan must include, including how surface water would be managed.

Commissioner Pyle suggested that Section 1 be clarified to identify who would be able to apply for a stewardship plan. As written, no one would be prohibited from applying for a stewardship plan. Mr. Tovar agreed to rework the purpose statement. Commissioner Pyle asked how the City properties have

been impacted by the regulation that only allows six significant trees to be removed during any three-year period. He questioned if a stewardship plan could be utilized by the City's Parks Department as a tool to manage their critical areas, as well.

Chair Piro referred to Section 4 and asked if a distinction could be made between parcels in a covenanted community that are held in private ownership as opposed to joint community ownership. Mr. Tovar said the way the language has been proposed, it would not matter who owns the property, as long as everyone who has some ownership interest signs as an applicant.

Chair Piro asked if the term 'view-covenanted communities' would refer to only view covenanted communities that have provisions in their covenant that define view. Mr. Tovar agreed that a definition for "view" must be discussed further by the staff and Commission. They would also need to discuss the concept of covenants further.

Commissioner Wagner referred to Section 4. She asked if the permit would stay with the property if ownership changed. Mr. Tovar answered affirmatively.

Because the language would allow stewardship plans for non-contiguous parcels, Commissioner Wagner asked if the ecosystem on the properties lying between the parcels that are part of the permit would have to be addressed, as well. Mr. Tovar referred to Item 3.d, which would mandate that all of the significant attributes on properties immediately adjacent to the subject property be disclosed and evaluated, as well. Not only must applicants describe the properties they own that would be part of the permit, they must also describe the ecosystem on adjacent critical areas.

Mr. Tovar said that if the Commissioners have additional questions they would like staff to answer on May 18th, they should forward them to Mr. Torpey by May 10th. Mr. Torpey would also collect all written public comments submitted prior to the hearing. In addition, a separate web page has been established for this particular item, and comments could be forwarded to him via this website. He also provided his mailing address.

Vice Chair Kuboi asked if all of the property within the minimum 10 acres included as part of the permit must be critical areas. Mr. Tovar agreed that the proposed language does not make this clear. Vice Chair Kuboi inquired if part of the property included as part of the application could be located outside of the City of Shoreline. Mr. Tovar answered that the City would not be able to issue a permit for property outside of Shoreline. However, a SEPA review would be required for any stewardship management plan permit. If the subject property is located along the City boundary, the SEPA review would include an analysis of impacts to the ecosystem outside of the City's jurisdiction, as well. He said staff could attempt to make this language clearer.

Vice Chair Kuboi asked if a plan would have to be reevaluated if the functions and values of a parcel outside of the area covered by the stewardship plan changed. Mr. Tovar said this would all depend on the type of change. In some cases, practices and requirements that were in place prior to the change might no longer make sense, and it might be appropriate to come up with some other provisions or

requirements. He suggested that the Commission must discuss how and if the plan could be adapted in the future, if necessary.

Vice Chair Piro reminded the public and Commissioners that the May 18th meeting would be a formal public hearing on the proposals relating to the Hazardous Tree Regulations and Critical Areas Stewardship Plans. He emphasized that the Commission welcomes both written and oral comments from the citizens, and written comments should be submitted by May 10th, if possible, so they can be included in the Commission's packets. Written comments that are received after May 10th would also be shared with the Commission, but not before the hearing starts.

CONTINUED DIRECTOR'S REPORT

Mr. Tovar reported on the City Council's recent retreat, where they reviewed their goals for the City. They started with about 30 potential goals, and narrowed the number down to 17. They are planning to schedule two public town hall meetings in June to solicit public input regarding the potential goals. The City Council's intent is to create a revised set of goals for 2006 and 2007.

Vice Chair Kuboi asked if the City Council provided any amended direction regarding the City's future effort to create a comprehensive housing strategy. Mr. Tovar said the development of a housing strategy was included on the City Council's list of 17 potential goals. Whether identified as a goal or not, comprehensive housing strategies would still be considered part of the staff and Commission's work program. The City Council did not specifically discuss details surrounding this effort, so staff must still seek further direction from them on how to proceed.

Mr. Tovar referred to the Commission Agenda Planner. He noted that a public hearing and additional Commission discussion on the Hazardous Tree Regulations and Critical Areas Stewardship Plans has been scheduled for May 18th. If the Commission needs more time to make a recommendation to the City Council, they could discuss the issue further in June and staff could ask the City Council to extend the moratorium. He reviewed that the June 1st meeting has been scheduled as a joint meeting with the Parks Board to discuss the concept of Urban Forest Management. A speaker from Cascade Land Conservancy would also provide a presentation on June 1st to discuss how activities in Shoreline might relate to what is going on in the region. If time allows, he would also provide a report on "form-based zoning."

Mr. Tovar further reported that two site-specific rezone public hearings have been scheduled for June 15th. In addition, the Assistant City Manager would be present to speak to the Commission regarding their July 20th retreat agenda. A joint Planning Commission/City Council/Park Board meeting has been scheduled for June 29th. At that meeting, the Assistant City Manager and Human Resources Manager would provide training on the "communication styles methodology" that is used within the City organization. Two rezone public hearings have tentatively been scheduled for July 6th, as well as a tentative workshop on potential development code amendments. No meetings have been scheduled for the month of August.

REPORTS OF COMMITTEES AND COMMISSIONERS

Chair Piro announced that the Puget Sound Regional Council is working on an update of the Vision 20/20 document, which is the growth, transportation and economic development strategy for the four-county region. A public event has been scheduled for May 23rd in McCaw Hall at the Seattle Center to kick off the release of a draft Environmental Impact Statement that provides four different alternatives for how the region, including the City of Shoreline, King County and neighboring cities, would accommodate the 1.6 million additional people that are anticipated by the year 2040. More information is available at www.psrc.org. He advised that the Planning & Development Services and Public Works Directors are receiving direct information regarding this event, as are the elected officials. He encouraged Commissioners and fellow citizens to participate, as well.

UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

NEW BUSINESS

Chair Piro noted that the City Council would formally acknowledge the service of two former Planning Commissioners (Don Sands and Bill MacCully) at their meeting on May 8th. He encouraged the Commissioners to notify the staff of their plans to attend.

AGENDA FOR NEXT MEETING

The Commissioners had no additional comments to make regarding the agenda for the next meeting.

ADJOURNMENT

The meeting was adjourned at 9:35 p.m.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission