These Minutes Approved
June 2nd, 2005

CITY OF SHORELINE

SUMMARY MINUTES OF
SHORELINE PLANNING COMMISSION
SPECIAL MEETING

May 4, 2005 Shoreline Conference Center
7:00 P.M. Board Room

PRESENT
Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili (arrived at 8:10 p.m.)

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Kim Lehmberg, Planner II, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT
Commissioner Sands
Commissioner MacCully

1. CALL TO ORDER

Chair Harris called the meeting to order at 7:03 p.m.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners Kuboi, Hall, McClelland and Phisuthikul. Commissioner MacCully and Sands were excused. Commissioner Broili arrived at 8:10 p.m.

3. TYPE C QUASI-JUDICIAL PUBLIC HEARING ON THE ECHO LAKE CONTRACT REZONE APPLICATION (FILE NUMBER 201372)

Chair Harris reviewed the rules and procedures for the public hearing. He emphasized that the Commission would only accept general testimony regarding the rezone application and not the SEPA appeal. The hearing regarding the SEPA appeal is scheduled to take place on May 5th. He reminded the

Commissioners of the rules regarding the Appearance of Fairness Law and also briefly reviewed the agenda for the hearing.

Chair Harris opened the public hearing and asked the Commissioners to disclose any communications they may have received about the subject of the hearing outside the hearing. Commissioner Hall disclosed that several weeks ago, prior to the Commission's deliberation on the site-specific Comprehensive Plan amendment for the subject property, he had dinner at Spiro's. While there, he asked the owner, Evan Volts, about the Fred Meyer remodel project and the impact it would have to his business. They also discussed the Gateway Project, and at that point Mr. Volts indicated that he was a partner with Harley O'Neil on the Echo Lake proposal. Commissioner Hall said at that point he indicated to Mr. Volts that this was the subject of a pending quasi-judicial hearing and he could not discuss the issue any further. No substantive discussion regarding the Echo Lake application took place. Members of the audience raised no Appearance of Fairness concerns.

Staff Report

Ms. Lehmberg reviewed the staff report for the proposed contract rezone for property on the south shore of Echo Lake from High Density Residential, R-48, and Regional Business (RB) to Regional Business with Contract Zone (RB-CZ), allowing for a mixed-use development. She provided a map illustrating the topography and location of the 30-inch drainage pipe that is about 20 feet deep on the subject property. She noted where the pipe discharges water into the lake. She also pointed out the location of a catch basin system that flows south through the subject property, catching site drainage and hooking up with the larger pipe that drains into the lake.

Ms. Lehmberg advised that the current zoning would allow the development of up to 240,000 square feet of commercial space and up to 357 housing units. The proposal for the contract zone would limit the intensity of development to 182,000 square feet of commercial space and 350 housing units. She explained that the purpose of the rezone is to allow for mixed-use development, which would be difficult to do with the split zoning that currently exists on the site.

Ms. Lehmberg referred the Commission to a conceptual site plan of the proposal, which identifies Echo Lake as a Type II Wetland. She noted that the applicant is proposing a 115-foot wetland buffer. Next, she referred to an elevation drawing of the proposed development, which includes structure parking and very little surface parking on the property. She explained that the proposed RB-CZ zone would allow development up to 65 feet in height, and the existing R-48 zone also allows development up to 65 feet in height with a Special Use Permit.

Ms. Lehmberg advised that, currently, the western portion of the site is designated in the Comprehensive Plan as Mixed Use, and the eastern portion as High Density Residential. However, on April 21st the Planning Commission recommended that the City Council approve a proposal to change the land use designation for the High Density Residential portion of the site to Mixed Use. If the City Council approves the change, the rezone would be compatible with the Comprehensive Plan. She pointed out that there is also a strip of property on the site that is designated as Public Open Space. The Planning Commission has recommended that this designation remain as is.

Ms. Lehmberg referred the Commission to the conditions staff is recommending for the rezone. She noted that the applicant's proposals in the initial application included some of the proposed conditions. In addition, the staff reviewed the comments that were voiced by the public and the Planning Commission regarding the proposal.

Ms. Lehmberg reviewed that if the application were approved, the zoning designation would be Regional Business with Contract Zone (RB-CZ). The uses and design of the property, including but not limited to provisions for critical areas, off-site improvements, site grading and tree preservation, landscaping, stormwater control, and dimensional and design standards, shall comply with provisions for mixed-use developments in the RB zoning district as set forth in the Shoreline Municipal Code (SMC). She said staff understands that the proposal has changed since it was originally submitted, and City Hall is no longer a part of the proposal. As a result, the applicant has presented some alternatives to the conditions that have been proposed by staff (Attachment J in the Staff Report). She reviewed the staff's proposed rezone conditions as follows:

A. **Site configuration and uses shall generally comply with the site plan submitted with the application (Attachment C).**
B. **Residential density shall be limited to 350 dwelling units, 40 percent of which shall be affordable to middle and low-income residents.** Ms. Lehmberg noted that this condition was part of the original application, and there were also a lot of public comments about the displacement of the existing trailer park that currently provides low-income housing.
C. **Commercial floor area shall be limited to 182,000 square feet.** Ms. Lehmberg reminded the Commission that this condition was proposed as part of the original application.
D. **The housing development shall be required to provide a minimum of 420 parking spaces within the structures.**
E. **The commercial developments shall be required to provide a minimum of 600 parking spaces within the structures.** Ms. Lehmberg explained that the minimum parking space requirements are intended to encourage structure parking under the buildings. They are also intended to discourage a strip mall type of development.
F. **A parking reduction of up to 20 percent from the maximum required by SMC 20.50.390 would be allowed pursuant to SMC 20.50.400.** Ms. Lehmberg advised that a parking reduction would be allowed because of the site's proximity to transit. The site is less than ½ mile from the Metro Transit Center.
G. **The upper floor "step back" on the north sides of the buildings abutting Echo Lake and the sides of the building facing the common open space shall be required to allow sunlight into the open space. Each floor shall be setback 10 feet further than the floor below.** Ms. Lehmberg said staff proposed this condition to address the concerns that were raised regarding the scale and bulk of the buildings. Concern was expressed that 65-foot high buildings could cast shadows on the open space.
H. **Maximum impervious surface allowed on the site shall not exceed 90 percent. The open space area required for 100 feet of the wetland buffer shall not be included in this calculation.** Ms. Lehmberg said that normally, the City would not exclude a wetland buffer from an impervious surface calculation. However, staff proposed the condition based on a lot of public comment and

concern about the amount of impervious surface that would be allowed in an RB zoning district. Staff felt the proposed restriction would encourage a little more pervious area throughout the development. This is a large site, and tree retention and landscaping is something the City wants to encourage.

I. **The provisions of SMC 20.50.350(B) shall not apply to this site outside of the wetland buffer. An approved habitat restoration plan must be implemented within the wetland buffer prior to Certificate of Occupancy for any of the buildings on the site.** Ms. Lehmberg advised that staff is proposing that the SMC's provisions regarding tree retention not be applied to the site because of the design configuration proposed on the site plan. In exchange for allowing the removal of more trees than normal, a habitat restoration plan would be required for the wetland buffer.

J. **Vermin abatement shall take place prior to and during demolition and decommissioning of current site.**

K. **Stormwater treatment: At a minimum, Level 2 water quality and stormwater detention are required for development, in accordance with the SMC and the King County Surface Water Design Manual, as adopted by the City of Shoreline. Additionally, the developer shall consider working with the City to install an oversized stormwater system to further improve Echo Lake water quality, including the possibility of adding a water feature and open watercourse as the means of discharge into the lake.** Ms. Lehmberg said this condition would require that any surface water on the site be detained and any pollution generating surfaces such as parking lots must have water quality devices installed. Any runoff from impervious surface on the site would be detained and treated before being allowed to run off the site.

L. **Green Buildings: The developers shall consider pursuing a Leadership in Energy and Environmental Design or BuiltGreen certificate for the buildings in the project.** Ms. Lehmberg advised that staff wants to encourage the developer to pursue an environmental design by using low-impact development.

M. **Any SEPA mitigation measure will also be a condition.** Ms. Lehmberg advised that the SEPA threshold determination that was issued by staff was appealed. This determination required screening from the adjacent single-family development on the lake and was based on concerns raised by the public about an increase in the amount of traffic associated with the proposed project.

Ms. Lehmberg reminded the Commission that the purpose of the public hearing is for the Commission to accept public testimony on the rezone application, only. The Hearing Examiner would accept public testimony regarding the SEPA appeal on May 5th. She pointed out that anyone might testify before the Commission regarding the rezone application. However, testimony to the Hearing Examiner regarding the SEPA appeal would be limited to the applicant, appellants, expert witnesses and staff.

Mr. Stewart referred the Commission to the memorandum he forwarded to them dated May 4th. He explained that just this afternoon, Mr. Derdowski, who is a representative of Echo-Par, met with City staff and presented a list of conditions that he stated had been agreed to with the applicant. He emphasized that the conditions would be in addition to those that have been proposed by the staff. Mr. Stewart pointed out that Condition 3 states that the owner intends to apply for a permit to construct a publicly accessible beach and dock, but this would not be allowed under the City's current development code. However, there is a proposal, under the Critical Area Ordinance, to allow for outdoor recreation. He advised that Condition 10 includes a provision that the stormwater plans comply with the

Department of Ecology Stormwater Requirements. He said this would be in addition to the City's stormwater design manual. This condition could result in a complex process to review for compliance with both of the manuals. Mr. Stewart said there are a few other instances in the proposed conditions where language might be considered a bit ambiguous and would probably be difficult to enforce; but on the whole, staff generally concurs with the conditions as outlined by Mr. Derdowski.

Applicant Testimony

Harley O'Neil, 18645 – 17th Avenue Northwest, provided a brief history of the subject property. He said that in the spring of 2002 he learned that the property was for sale, and he was immediately concerned that a developer would purchase the property and close off public access to the waterfront. He contacted several citizens of the community, asking for their help in purchasing and developing the property. Their intent has always been to leave the waterfront open for the public to enjoy. He said the previous property owner had the property for more than 30 years, but he was considered an absentee landlord who completely ignored the property. Mr. O'Neil said they closed on the property in December of 2002, but because of their concern regarding the condition of the property, they received permission from the owner to make some improvements 60 to 90 days before the deal had closed. They replaced roofs, painted all of the building exteriors, etc.

Mr. O'Neil said that after his group purchased the property, he met with representatives from Legacy Partners, a company based out of California, who presented a rendition of the type of development they would like to see on the subject property. Their proposal included condominiums, apartments, two or three retail buildings, a park area and public access to the waterfront. He said this was his first attempt to find someone to purchase the property from the partners. Mr. O'Neil advised that after the partners purchased the property, the County notified them that their taxes would go up $20,000 more than the previous year. This was not expected, and they immediately realized they would not get a return on their investment.

Mr. O'Neil explained that two strong parties (YMCA and City of Shoreline) expressed an interest in relocating to Echo Lake on the subject property. He noted that there was not enough property along Aurora Avenue that was zoned RB to accommodate either of these two party's needs. They conducted a design charette to come up with ideas for placing a City Hall structure on the site if approved by the City Council and community, and the rezone proposal was submitted when the City Hall project was still under consideration for the site. The YMCA is still interested in locating on the subject property, but the current zoning does not provide enough RB zoned property to accommodate their needs. In addition, the applicants had hoped that the proposed rezone would allow them to draw people from the Interurban Trail to use the site. He noted that their goal has been to enlarge the community open space by providing parking structures instead of surface parking. The proposed rezone would also allow them to develop retail space to provide amenities for people using the Interurban Trail. The current R-48 zoning designation would not allow these types of uses. Mr. O'Neil said he also has an interest in trying to attract a nice restaurant to the site. Right now, there are good restaurants in Shoreline, but none that are really special. A restaurant near the lake could serve that need.

H. Troy Romero, Romero Montague P.S., 155 – 108th Avenue Northeast, Suite 202, Bellevue, 98004, said the applicants recently retained his services to review the proposed changes to the rezone

conditions identified by City staff. He said it appears that when the original application was submitted, there was a proposal on the table that included a YMCA, City Hall and other mixed-use development. Obviously, this has changed. He said it is important to note that when the community initially reviewed the proposal during the SEPA process, a particular configuration was proposed. The conditions that are now being recommended by the staff are not necessarily consistent with the initial staff report or the project that was discussed with the community. Mr. Romero reminded the Commission that the issue before the Commission is not whether or not the rezone should be granted since the staff is recommending approval and the community has offered their support.

Mr. Romero noted that the property's current zoning designation would allow 244,000 square feet of commercial and 357 residential units, and the proposed rezone would actually decrease the density of the subject property. This would be advantageous to the community. He pointed out that if his clients cannot make the proposed project financially feasible, they could go back to the existing zoning designation. He reviewed each of the conditions proposed in the Staff Report and provided the applicant's thoughts on each as follows:

A. Mr. Romero said the applicant is recommending that the word "shall" be changed to "may" or "shall use its best efforts." He explained that while the project is well on its way, one of the advantages of the proposed zoning is to allow flexibility for the developer to create a project that is good for the community, economically feasible, etc. Once the word "shall" is attached to the contract rezone, the City would effectively dictate the project. He noted that one of the design architects has come up with a way for creating a view corridor off of Aurora Avenue to Echo Lake. This plan would create more pervious surfaces and open space, as well. If the staff's recommended conditions are approved as written, opportunities such as this might be prevented. He suggested that this would be inconsistent with the proposed zoning.

B. Mr. Romero said the applicant does not have an issue with this condition that would limit the development to 350 residential units. However, concern has been raised about the language that was added to the condition requiring that 40 percent of the units be affordable to middle and low-income residents. He said this requirement could result in the project no longer being feasible. He explained that the original plan was to provide senior housing on the subject property, but it has since been determined that the property would probably not qualify for this type of housing opportunity. He noted that no language was considered in the SEPA review to require the project to have 40 percent low or moderate-income housing. He strongly suggested that this provision be eliminated from the condition. Another option would be to use the words "may" or "seller shall use its best effort." This would allow flexibility for the project to be financially feasible.

C. Again, Mr. Romero suggested that the word "shall" be replaced with "may" or "seller shall use its best effort." He explained that because City Hall is no longer part of the proposed project, there would be potential ebb and flow with respect to the project as staff works with the applicant. There may be a desire to have more commercial than residential, etc. Without flexibility, the applicant and staff would be limited in what they could do with the project.

D. Mr. Romero pointed out that staff's recommendation is based on the original proposal that included City Hall. Perhaps even more difficult, if not financially impossible, is that one could make an argument that all the parking spaces must be constructed before a building permit could be issued. He referred to Attachment J of the staff report, which is a letter from Mr. O'Neil dated March 28th.

In his letter, Mr. O'Neil suggests that rather than binding the City staff and the applicant to a set amount of parking spaces before they know what the final configuration will be, the language in the conditions related to parking should be changed to make the parking requirements consistent with the existing SMC. This would allow the applicant to proceed as would be allowed for any other form of development as long as adequate parking could be provided.

E. See Mr. Romero**'**s comments for Condition D.

F. Mr. Romero indicated that the applicant does not have any concerns related to this proposed condition.

G. Mr. Romero said the concept of this condition is to create ten-foot "step backs" as the development goes up each level. With a five-story building, this condition would effectively create an "Aztec pyramid" design. He suggested that not only would this create an aesthetic issue, but this type of design is not used anywhere else in the City. In addition, this proposed condition was not included as part of the SEPA review process. He suggested that the word "shall" should be replaced with "may" or "applicant shall consider." This would indicate the City's desire, but would not limit the applicant to this design. Again, he reminded the Commission that flexibility is important both to the City and to the applicant.

H. Mr. Romero said the staff correctly pointed out that, normally, the City counts all existing square footage in a project to determine the amount of impervious surface allowed. However, staff is recommending that the contract rezone go against the City's normal practice and exclude the 115-foot buffer area when calculating the amount of impervious surface allowed for the development. He questioned the rational basis for this condition, and he noted that this was not included as part of the original SEPA review process. He noted that even if the City were to count the wetland buffer, the proposed site design would still have about 85 percent impervious surface. Again, he recommended that the word "shall" be changed as previously recommended.

I. Mr. Romero said the applicant does not have any concerns related to this condition.

Mr. Romero thanked the Commission for allowing him to address the conditions that have been proposed by the staff. He said that sometimes wordsmithing can be considered an unimportant exercise, but having spent five years on the City Council of another jurisdiction, he is aware of the challenges that words can sometimes be. In this case, he suggested that if the Commission recommends adoption of the staff's recommended conditions exactly as proposed with the mandatory "shalls," they will run into problems in the future.

Commissioner McClelland asked if Mr. Romero reviewed the 13 new conditions that have been proposed by the staff. Mr. Romero said he did not receive the new document until he arrived at the meeting, so he has not reviewed the final version and cannot provide comments. Commissioner McClelland noted that all of the new proposed conditions start with the words "the owner will," which means the same things as "shall." Mr. Romero pointed out that the word "shall" by itself is not necessarily a bad thing. Terms such as "shall consider" and "shall work together" are appropriate, but if the City dictates that a condition is an absolute requirement, there would be no flexibility allowed.

Vice Chair Piro said he appreciates the applicant's sensitivity to providing some flexibility, particularly since changes have been made to the project over time. However, he said that in his view, the applicant's recommendations would change the staff's recommendations from conditions to mere

guidance and would no longer have the status of what is intended by the City when they place conditions on a rezone application. Mr. Romero explained that the concept behind the proposed RB-CZ zoning recommendation is that the City and the developer could work together to make the project mutually beneficial for everyone. In this case, there is an application for a rezone that has gone through the SEPA process and public hearings. Now new conditions are being attached to the rezone application that would be obligatory. He argued that since these conditions were not subject to public opinion during the SEPA review process, perhaps the Commission should go back to the time of the original application. The conditions that use the word "shall" were never mandatory conditions as part of the SEPA review. The concept of the proposed rezone is to allow flexibility. Once the project design has been approved, then they could work out an agreement on the exact number of stalls, impervious surface, etc. He agreed that the applicant's proposed changes would significantly lessen the mandates found in the conditions, but he pointed out that the staff report already includes recommendations that the applicant consider certain concepts. There is at least some precedence in existing negotiations for the idea of the applicant and the City working together. While his client does not necessarily disagree with the conditions, if they are mandatory there would be no opportunity for flexibility.

Vice Chair Piro inquired if there would be an opportunity for staff to revisit the conditions and come up with something that would allow a range of options and keep to the spirit of what the conditions are intended to do without weakening them to the point of being wholesale and discarded. Mr. Stewart answered that the applicant has provided two responses to date. One was provided on March 28th (Attachment J) in which he suggested alternate language for the conditions proposed by staff. Now the applicant has presented a new proposal to further amend the conditions. He said staff's recommendation of approval was based upon their recommended conditions. If the Commission wants to further amend or adjust the conditions, this would be within their discretion to do during deliberations. However, there would come a point where the project would change so dramatically that it would require a new notice and perhaps a new SEPA review. The other factor the Commission should keep in mind is that the contract rezone is an agreement between the City and the applicant. If the applicant chooses not to agree with the conditions, then the contract rezone would no longer be valid. If that is the case, the applicant might as well withdraw the application at some point and come back in with a new proposal. Mr. Stewart pointed out that the applicant proposed most of the conditions recommended by the staff. The two or three that were added were in response to concerns that were raised by the community in the comment letters or they were intended to make sure that the actual development is close to what is being proposed. He concluded by stating that there comes a point where the balance gets tipped, and they are no longer reviewing the project that has been appropriately noticed.

Chair Harris said that given the new proposals that are being presented to the Commission, he suggested that they move forward with the public hearing. Since the public hearing would be continued to May 5th, perhaps staff could do some investigation of ways to address some of the new proposed conditions that have just been presented to the applicant.

Commissioner Hall noted that Mr. Romero has encouraged the Commission to stick to the standard code requirements in some cases. He asked if this recommendation would also apply to the tree retention ordinance, where staff has proposed that the normal requirements for tree retention be waived. Mr. Romero answered that the code requirements would work fine with regard to tree retention. However,

his understanding is that the community and staff have indicated that there are certain significant trees within the 115-foot buffer. The concept is to allow the applicant to remove certain trees that are located within the buffer.

If the Commission were to change the "shalls" to "should" and the applicant ends up facing financial difficulties or site constraints that were not anticipated, Commissioner Hall asked what assurance the public would have that the conditions would be legally enforceable. Mr. Romero said there is a contractual provision that requires the applicant and the City to work together on the whole design/build process. The applicant would still have to obtain the necessary building permits, etc. so quality control would lie with the staff as they go through the building permit process.

Commissioner Kuboi asked if the YMCA would eventually own their portion of the property. If so, would the terms of the contract rezone be carried forward to subsequent owners of the property? Mr. O'Neil answered that the YMCA would purchase a portion of the property for their building, and an association would be formed of those people that have ownership of parcels. The association would maintain the common areas. Commissioner Kuboi noted that the applicant has offered to guarantee lake access to the public in perpetuity, but he is unclear how the applicant's proposed conditions would accomplish this. Mr. O'Neil said the property identified as public open space would create an access for the public to the waterfront. Development would not be allowed in the open space area. Consequently, the open space would remain open, and their site plans identify an area at least 40 feet wide between the property line and the structure. Their hope is that Stone Avenue could be used to provide handicap access or other access to the subject property and the open space, as well.

Mr. O'Neil emphasized that there is no intent to remove any of the trees from the buffer. Naturally, if there are trees in the location of the proposed YMCA building, they would like to be able to remove them.

Mr. Stewart explained that the subject property is one single parcel and has not been divided. If the applicant were to divide the property, it would either go through site plan process or condominium type regime. Access to the lake is not a condition of staff recommended approval of the rezone application, neither is it proposed as part of the alternate conditions presented by the applicant's representative. If that is the intent, perhaps that should be a new condition added to the contract rezone. Mr. O'Neil said he would be pleased to exchange this condition for the condition that would require him to put in 1,020 parking stalls under a building. He said he looked around Shoreline to determine the number of projects where someone even attempted to put parking under the building. The City believes it would cost $15,000 to $18,000 per stall to construct underground parking. Therefore, the staff's condition would require them to spend $15 to $18 million on parking before they could start building any of the project. If this were a requirement of the rezone, they would sell the property and leave it. Mr. O'Neil said staff has asked him at least three times if he wants to withdraw his application, and this really bothers him. They are trying to do a project for the benefit of the community, and he wished they could get everyone on board to accomplish the task.

Commissioner Kuboi inquired if there is a type of appeal process for the public to follow if they feel that the terms of a contract rezone have been violated. Mr. Stewart said this would be considered a zoning

violation, and there is a legal process for enforcement of the zoning code. Commissioner Kuboi asked if the developer would be required to stop work until the issue has been resolved. Mr. Stewart answered that this would depend on the nature of the zoning violation. If it were a violation of a permit, the permit could be withdrawn. Another option would be for the City to issue a stop work order with penalties assessed.

Commissioner McClelland reminded the Commission that the 50-foot strip of land that is and would continue to be designated and zoned as public open space is privately owned and there is no public access to the property unless the City figures out a way to buy it and grant public access.

Commissioner Kuboi requested a definition for "low to moderate income." Mr. Stewart said this term is defined in the City's development code and has to do with the proportion of income that is spent on housing in relation to housing costs. He pointed out that the proposal for affordable housing was part of the applicant's original submittal and was not proposed by staff.

Vice Chair Piro inquired if there is other instances where the City has calculated the break down of low and moderate-income housing as part of a project review. Mr. Stewart said that since the development code was adopted in 2000, he is not aware of any developments that have utilized this provision, but there have been discussions by other developers about using the affordable provision in the future.

Public Testimony or Comment

Robert Scott, 1132 North 195th Street, said he and his wife own three properties on Echo Lake, two bordering the lake and one set behind the other two. He pointed out that Mr. O'Neil purchased the property knowing what the current zoning was, and he should adhere to the current zoning. If the applicant gets into financial difficulty, the property could be sold. If it is rezoned to regional business, the new property owner would be able to develop anything they want including night clubs, casinos, etc. There is business zoning along Highway 99 and approval of the proposed rezone would be a disservice to the surrounding property owners because, with the exception of a few small offices, all development on the lake is either single-family or multi-family residential. He said that while they are glad to see that the trailer park would be eliminated, they would like the property to remain for residential uses.

Pat Scott, 1132 North 195th Street, said she and her husband have lived on Echo Lake for 60 years, and her grandparents bought the property in 1912. She loves the lake and feels that it is a wonderful, natural resource. She said she does not want development around the lake to cause further deterioration of the lake. The more building that goes on, the more damage is done to the quality of the water. She said she is concerned about the proposed high-rise structure that would be built on the site. While it is good that the buffer area would remain, it saddens her to see what has taken place in the last ten years as a result of stormwater runoff. She pointed out that Echo Lake is a "dumping ground" for everything off the roads and parking lots. They have a little island on the southwest corner of the lake as a result of the debris that filters in this location. Whatever is developed on the site, all projects should be considerate, since everyone should be a steward of the City's natural resources.

Virginia Paulsen, 16238 – 12th Northeast, said she just learned about the agreement that Brian Derdowski and Harley O'Neil negotiated when she arrived at the meeting. She said there is too much in the document for her to comment on all of her issues. She said Mr. O'Neil indicated that he purchased the property in the spring of 2002 because he was afraid that developers would build in such a way that the site would be destroyed. She pointed out that Mr. O'Neil is a developer, and there have been a great deal of comments, both positive and negative, about his development proposals. She suggested that the Commissioners ask themselves why Echo Lake is being called Echo Lake. It is because it sits in an amphitheatre. Therefore, the area on the north boundary (192nd Street) looks down on the subject property. This means there would be a lot of noise created by the proposed project. She said the proposal for development would create the equivalent of a small city on the site, and in her opinion, this would result in major problems.

Ms. Paulsen referred to the proposed staff conditions and asked the Commission to note the number of items that are starred to indicate that the applicant has proposed alternatives. Nearly all of the staff's proposed conditions are subject to the applicant's proposed alternatives. The applicant is now proposing that the "shall statements" be watered down. She referred to the negotiated contract between Brian Derdowski, Janet Way and Harley O'Neil, and said that given the propensity to eliminate these incentives by the proposed alternatives, there would be no guarantee that the items in the agreement would be recognized. She said that while Mr. Derdowski has represented himself quite well, he does not represent her views and she does not want to drop her SEPA appeal. She concluded by stating her belief that too much information was presented just prior to the hearing for her to digest and provide comments on at the last minute.

Commissioner Broili arrived at the meeting at 8:10 p.m.

Barbara Lacy, 19275 Stone Avenue North, said she first visited Echo Lake in 1958 and purchased a house on the lake in 1960. She said she has learned to live with the public using the lake in front of her house. Now suddenly, instead of the quiet, passive park, there is a possibility of having a beach again and perhaps fishing at the south end. This causes her to reconsider based on the comments provided previously by Mr. O'Neil. She said it is thrilling to her when people go past her backyard in their kayaks, and she is glad that people are able to enjoy the lake. However, she said she now has to adjust from her sense of a quiet lake to a lake that is used again. She said she recently learned that a "primary contact recreation use" would include activities such as swimming, water skiing, skin diving, etc. A "secondary primary contact recreation use" would include activities such as wading and fishing, but not swimming. However, the staff report talks about the extraordinary primary contact recreation that takes place on the lake now. She suggested that there is confusion about what uses should and could be allowed on the lake and how the lake could be protected as a critical area. She said that when she read through the staff report, she did not realize they were considering the creation of a beach again. She suggested that many things must now be reconsidered.

Ms. Lacy referred to Mr. O'Neil's suggestion that Stone Avenue could perhaps be used for handicap access. She said she lives on Stone Avenue, and this is supposed to be a private road that is owned by Seattle City Light. Any access would have to be negotiated because the homeowners along this street

have no garages. Access to the lake is a big concern, and a lot more issues must be considered before a decision could be made in that regard.

Michael Trower, 2077 East Howe Street, Seattle, 98112, said he is a development consultant and an architect by background. He said his company made a conscious decision, at that time, to provide some development assistance to Echo Lake Associates primarily because of the civic goals they were trying to accomplish with the project. He referred to the previous discussion about the condition that would require setbacks on a building that is yet to be designed. He said this type of condition could become very project specific and the request for a rezone is not project specific. In his view, this condition was established to limit the amount of development so that the City's interest would be protected in the process. The intent was not to provide a specific project.

Mr. Trower said his company is quite used to designing and developing projects according to published urban design guidelines, and the City of Shoreline has these guidelines in their municipal code. He said his assumption is that the guidelines were arrived at by public hearings and statements of policy and are intended to guide the design of any project. He referred to the condition that would require a 10-foot step back for each floor and suggested that this would be very project specific and out of context with the urban design guidelines that were duly considered. The condition would also be out of context with development that might occur on the site.

Next, Mr. Trower referred to the condition that would require a certain percentage of the housing units to be low or moderate income. He said he participated in writing the SEPA submittal, which stated that they expected a portion of the housing to be affordable to low and moderate-income households. That statement was true, and that is what they expected to occur. One of the civic goals of the development was mixed income living on the site. However, what they expected might happen with senior housing no longer appears to be feasible. He said his firm does affordable housing on a regular basis, and it takes a lot of subsidies to accomplish this goal. The applicant considered the feasibility of getting subsidies for the subject property, and it appears that this would not be a very real possibility because all of the funding entities require local, municipal participation. While the applicant's intent was to provide low to moderate-income housing, making it a requirement would be extremely difficult and probably impossible for the applicant to meet under the existing circumstances.

Ken Lyons, 17533 – 47th Avenue Northeast, Lake Forest Park, 98155, said he is a business owner in the City of Shoreline. He said he assisted Echo Lake Associates with preparing the initial documents that were submitted for the rezone. He said he has always had a lot of enthusiasm about the idea of being able to take a split-zoned property and create a project that is unified in its design and more than what was possible under the current zoning configuration without increasing the overall density. That is why he got involved in the project. He said he was quite surprised to find out the conditions of approval that were recommended by the staff. He disagreed with the staff's statement that the conditions of approval that are in the Staff Report are items the applicant suggested. He clarified that the condition the applicant proposed as part of the original application was that instead of 240,000 square feet of commercial development, they would be limited to 182,000 square feet. In addition, instead of 357 housing units, the applicant proposed to limit the number to 350. He said all of the other conditions are project specific, and the application is not intended to be project specific. He pointed out that further on

in the process there would be other opportunities to address concerns raised by the public and the staff. For example, another SEPA process would be required for the building permit, and issues such as sunlight in the buffer area would have to be considered. He concluded that the conditions the Commission should focus on at this time are the overall development limits and not conditions that could end up hindering a project and have an unintended impact on whether or not the proposal comes together.

Pat Crawford, 2326 North 155th Street, emphasized that Brian Derdowski is not representing her interests. She is being represented by Michele McFadden, and they do not agree with dropping the SEPA appeal. She suggested that the public should have an opportunity to review and comment on the agreement proposed by the applicant and the group known as Echo-Par, as well as the changes the applicant is recommending for the staff's proposed conditions. She said she is part of the Echo-Par group, yet she just received a copy of their agreement with the applicant today. She said she thought the purpose of the public hearing was to address the rezone application. She said she does not believe the City should be doing any site plan approvals at this time. She said the zoning analysis that was done appears to be complete, and the conditions related to the number of units allowed and parking spaces required should be approved. But placement and design of the development is still so up in the air that the Commission should avoid approval of conditions related to that issue.

Ms. Crawford suggested that proper classification and mapping needs to be done of the environmental features. There are watercourses and their buffers that need to be clearly identified. She said the homework should have been done on the site before they purchased the property, and at least before they went on to the second and third design phases. She stated that the site and not the desires of the developer should dictate the design when sensitive areas are involved. She said she supports the 100-foot buffer requirement and the additional 15-foot setback that has been proposed. But she suggested that this area be naturally reclaimed. Boardwalks could be installed so there would be no further compaction and erosion from traffic. This would allow many people to access the lake without causing further damage. She pointed out that the Gaston property has been left open for five years and there are 20-foot cottonwoods already growing. She said she does not believe in fancy habitat restoration, and a better option would be to rope off the 100 feet and let nature reclaim itself.

Ms. Crawford expressed her belief that the tree evaluation that took place as part of the proposal was insufficient. She said they must identify all of the trees that could be saved. She said she believes the agreement that was submitted by Mr. Derdowski and Ms. Way could end up weakening the code in a lot of places. She urged the Commission to stick behind the code. Adding the other conditions just muddies the whole issue. She said it is not the appellant's job to help with the design of a project. But they should, instead, let the applicants know what the code requirements are and where they could look for guidance.

Tim Crawford, 2326 North 155th Street, said he, his wife and his brother-in-law are also members of the group known as Echo-Par. However, they were totally shut out of the process that Mr. Derdowski and Ms. Way garnered with the applicant. He said he appreciates Mr. O'Neil's comment that everyone needs to get together on the issue, but he finds it kind of disingenuous. The applicant has had plenty of time to work with them and their lawyer regarding this issue, but he has not done so. He said neither he,

nor his wife or brother-in-law, Dave Conlow, would have signed off on the agreement. He referred to the last few words of the first paragraph of the agreement ("enables the achievement of the owners' financial objectives"). Mr. Crawford expressed his opinion that it is not the appellant's job to enable the achievement of the owners' financial objectives. The appellant's goal should be to require the applicant to adhere to the City's code requirements and to protect the environmentally sensitive areas. They have been shut out of the process because Mr. Derdowski has informed them that they cannot be dealt with. He said he takes large offense to Mr. Derdowski ignoring his constitutional right to take part in an unincorporated group. He said Mr. Derdowski and Ms. Way would soon find out that it is actionable that they have spoken for the whole group when there are no by-laws or rules for the group. It takes all seven members to concur with the conditions of the proposed agreement. Although he is a member of the group, he was just handed the agreement prior to the meeting. Therefore, he cannot comment further on the document. He said he knows of no other member that signed onto the agreement that contributed $200 to fund the group as he and his wife did. He and his wife were the major contributors to the financial effort of filing the appeal, so he takes large offense to being shut out the group's dealings.

Jim Abbott, 16218 – 6th Avenue Northwest, said he also owns business property at the north end of Echo Lake. He voiced his support for having the YMCA locate on the subject property. This would provide numerous benefits to the community. He said he believes the best way for the City to proceed with the proposal would be to require a binding site plan that deals with the issues and concerns that have been raised. He said he has done a number of projects over the years involving multiple ownerships with binding site plans and agreements to deal with the common areas, wetlands, etc.

Mr. Abbott referred to the staff's recommended conditions and suggested that the City should allow flexibility at this level. He suggested that it could be a mistake to require all of the conditions as proposed. For example, requiring that 40 percent of the residential units be affordable to low and medium-income residences could effectively prevent the project from going forward. He said he is just starting a multi-family project in Redmond, and they were only required to make 10 percent of the units affordable. He concluded that he believes the 40 percent requirement is too high. In addition, Mr. Abbott expressed his concern about the condition that would require more than 1,000 parking spaces. Since the intent of this condition is to require structured parking, Mr. Abbott suggested that rather requiring a certain number of parking spaces, they could simply require structured parking. Lastly, Mr. Abbott reminded the Commission that the City has a lot of opportunity down the road to control the development that occurs on the site. They can condition the building permit to address issues such as step backs, etc. He urged the Commission to allow for flexibility at this point.

Mike Marinella, 637 North 185th Court, said he has been a resident of Shoreline for the past four years. He said this is an exciting time for the City, and he is very excited to see that this particular property has an opportunity to be transformed from its former use into a very productive new use. He said that prior to living in Shoreline he lived in Edmonds on a street that was proposed as a possible exit point for a new development in Woodway, in which two developers proposed a 106-lot development on property that had been formerly owned by Chevron Oil. These developers met with extreme public resistance to the project and the hearings went on for two years. Eventually, the developers had to abandon a very creative, thoughtful and sensitive proposal because they could no longer afford to continue. They sold the property to the largest homebuilder in the State of Washington and the most

awful development has occurred on the property when it could have been the most gorgeous replication of what Woodway is. Now the people in Woodway are very sorry that they were so adamant in their opposition to what would have been a much-preferred project. He said he sees the same thing happening in Shoreline because it is difficult to balance the developer's needs, the City's needs and the public's needs. However, he suggested that projects such as this that involve a contract rezone are inevitably far better than the type of development that would occur if the process fails and the property is sold and developed according to its existing zone. This would prevent the Planning Commission from having any constructive input on what is eventually built. Mr. Marinella voiced his support for the proposed project because he thinks it would be far better than what they might end up with otherwise.

Brian Derdowski, 70 East Sunset Way, Issaquah, 98027, said a number of people in the community who have an environmental and neighborhood orientation have come to the conclusion that they want to have a positive outcome for this property. He said he speaks on behalf of four of the seven appellants in Echo-Par (Mamie Bollender, Richard Purn, Peter Henry and Janet Way). He emphasized that he would not speak on behalf of Tim and Patty Crawford or Dave Conlow.

Mr. Derdowski reviewed that some time ago the Echo-Park group filed a SEPA appeal to what they saw as a City Hall project, a purchase and sale agreement, a legislative land use amendment, a site-specific rezone and a contract rezone. They had some profound procedural problems with the proposal at that time. They had concerns about City Hall and conflicts of interest, and they also had substantive objections. Since the appeal was filed, two of the three primary objections have been addressed relative to the conflict of interest and other procedural objections. Therefore, they decided to focus on the substantive objections and did something that a lot of environmental groups do not do, they sat down with the applicant and established a trusting relationship with common goals. The first common goal is that they both want to have a true and balanced mixed use development. This is something that community groups around the country seek to achieve. Secondly, they did not want to have the kind of development that provides surface parking along Aurora Avenue. Instead, they wanted to have structured parking on the site. Third, they wanted to have a lot of public access; and fourth, they wanted state-of-the-art environmental protections for the magnificent lake, which is known as the headwaters of McAleer Creek. Finally, they wanted to demonstrate that a local developer and local investors could work with local people to come up with a good solution.

Mr. Derdowski said the contract they had to work with was the contract rezone, which was not easy to deal with. The original contract rezone was proposed when City Hall was being contemplated on the site, and that is what the applicants were thinking about when they put together the site plan and SEPA checklist. Over time, the project has changed into a proposal that is still a bit of a moving target. However, four of the seven appellants and the applicant have come up with a series of conditions, all of which exceed the City's existing code requirements and speak to the public interest. He distributed a copy of the agreement, which has been changed from the document that was delivered to the staff earlier in the afternoon. Commissioner McClelland inquired if Mr. Derdowski had copies of the document for members of the audience to review. Mr. Derdowski explained that he did not have copies for the audience. However, he asked that the Commission leave the public hearing open for a few weeks to allow the public to comment on their proposed new conditions.

Mr. Derdowski said that, with respect to the wetland, the applicant has agreed to use best available science to comply with the Department of Ecology's Manual, and the latest version has only been out for a few days.

Because Mr. Derdowski had reached the end of his five-minute comment period, the Commission discussed whether or not he should be allowed to continue. Commissioner McClelland pointed out that it would take Mr. Derdowski significantly longer than five minutes to review the entire agreement, and the Commission had not even had a chance to review the document yet. Commissioner Broili said he appreciates Mr. Derdowski's concern and his desire to address the issues. However, if the Commission were to allow him to proceed, they would open the door for everyone else wanting to do the same. He suggested that the Commission stick to the rules and timelines that have been established for the hearing. Commissioner Hall noted that after the Commission has accepted all public testimony, they have the opportunity to ask clarifying questions of all those who have testified. He suggested that once the public testimony has been completed, the Commission could recess for a few minutes to read Mr. Derdowski's document and then they could ask questions for further clarification. The remainder of the Commission agreed.

Mr. Derdowski pointed out that in a rezone application review, the Commission has a duty to construct the record in a quasi-judicial manner, and they have a higher burden than normal to make sure that the record is full and balanced. If they permit an applicant to have unlimited time and they don't allow a similar consideration for the public, they could create the potential for an Appearance of Fairness problem. Chair Harris advised that the Commission would reserve the right to call Mr. Derdowski back for further questioning at the end of the public hearing.

Marlin Gabbert, 17743 – 25th Avenue Northeast, suggested that it is important that everyone work together to resolve the issues. They have an opportunity to create a good project, and the developer has indicated that he is sensitive to the needs of Shoreline. Those who have voiced opposition to the project have also indicated their willingness to work together. He said he believes that some of the conditions that have been recommended by the staff appear to be onerous. For example, requiring that at least 40 percent of the units be middle and low-income housing is unreasonable because they don't even know if this type of housing would be feasible for the area. He said it seems like the applicant is being required to place all of the parking underground or in structured parking. He suggested that there should be some surface parking for quick in and out customers of the retail space. While surface parking would not be precluded, the amount of parking that would be required for the site could preclude it.

Mr. Gabbert said he also is opposed to the condition that would require a ten-foot "step back" for each level of development. He suggested that this seems a little over zealous, particularly since it would apply to each floor and does not seem like good design sense. Also, Mr. Gabbert suggested that the Commission review the proposed condition related to tree retention. He said that in order to develop the site appropriately, they might not be possible to save any of the trees. The code allows trees to be removed and replaced with new trees so that projects can be designed as an urban setting. He encouraged the Commission's support of the project, with the recommendations that were submitted by the proponent's attorney.

Steve Dunn, 18251 – 13th Avenue Northwest, said he is the Board Chair of the Shoreline-South County YMCA. He asked the Planning Commission to work together with the applicants and the appellants to resolve the issues of concern. He said he has been involved in the process for about two years, as have a number of other people from the YMCA who are interested in building a new facility in the north end to serve up to 9,000 children as well as adults. He said he believes the intrinsic value of locating a YMCA on the subject property would be beneficial to the City of Shoreline, and there are a lot of people trying to work together to make the development happen. The YMCA Board totally understands and supports the environmental concerns that have been raised, but there has to be some way to make the project happen. He encouraged the Commission to work quickly to move the project forward. He reported that the YMCA would be kicking off a $70 million campaign starting later in the year, and if they don't hear that the project can move forward by June 10th, they would no longer be a part of the project. He expressed that the YMCA is ready to move forward, and a feasibility study has already been completed. He said four new facilities would be built in the area in the next three or four years, and Shoreline came up as the number one area in which residents are ready to give to build a new YMCA. There are a lot of people who want the project to move forward, and he encouraged the Commission to work with the cooler heads and do their best to make the community a little bit better place.

Matthew Fairfax said he is a resident and business owner in Shoreline. In addition, he said he sits on the Board for the YMCA. He echoed a lot of the sentiments that have already been shared with the Commission. He said he supports the proposed rezone and project for a lot of reasons, but the economic impact on the community, alone, is very important. He pointed out that, from being a spectator and just getting involved with the City in the last year, it is good to know that Janet Way, Brian Derdowski and Harley O'Neil have sat down and talked about their concerns in a positive and productive manner. He referred to questions that were raised earlier about some of the changes the applicant put forward regarding the word "shall." He said that, from his perspective, the difference is that the "shalls and wills" in the agreement that was presented by Mr. Derdowski were agreed upon jointly by the appellant and the applicant. The "shalls and wills" in the City's conditions were imposed. He asked that everyone work together to come to a conclusion that is beneficial for the developer, the City and the Community.

Michele McFadden, P.O. Box 714, Wauna, Washington, 98395, said she is the attorney for Tim and Patty Crawford. She said the issues the Crawfords have are actually the same as those expressed by the staff and Commission. The proposal has been changed and the conditions have not been adequately modified to reflect the changes. The question before the Commission is how they can procedurally do something with the rezone application when the site plan is not even the same as what they started with. They also need to recognize those conditions that should move forward and those that should not. She suggested that the burden is on both the staff and the applicant to identify the scope of the current proposal and what issues could be dealt with later.

Ms. McFadden specifically referred to the conditions that Mr. Derdowski negotiated with the applicant. She said that because the Commission and the citizens did not receive the document until they arrived at the meeting, as a matter of public process, the Commission should allow time for people to react. There are two different versions of the document and people have expressed two different opinions. Some feel

it is less restrictive than the City's code, and some think it is more restrictive. She suggested that it would be worthwhile for the staff to evaluate the conditions identified in the agreement and identify the difference between what is being proposed and what the code would require. There are a lot of design issues included in the agreement that are probably not sufficiently resolved at this point. The Commission must determine whether or not these issues need to be resolved before they can make a decision or if there is another process in which the public could be involved in the final design of the proposal. She said no one is saying that mixed use is not a better approach than piece-by-piece development. She said she would like to provide future comments on behalf of the Crawfords regarding the conditions that have been proposed by Mr. Derdowski and the applicant, and she asked how the Commission plans to procedurally deal with the public's response to the document. She suggested that they at least allow a window of opportunity for written comments on the changes.

Because no one else in the audience expressed a desire to address the Commission, the public comment portion of the hearing was adjourned for the evening.

Commission Discussion Regarding the Rules and Procedures for the Quasi-Judicial Hearing

Commissioner McClelland suggested that it would be appropriate for the Commission to deal with the procedural issues first so that everyone present would have a clear understanding of the process. She agreed with Ms. McFadden that the Commission should come up with a plan that would allow the public to respond to the document that was presented by Mr. Derdowski. She suggested that the Commissioners could read through the document before the hearing continues on May 5th and be prepared to talk about them. Mr. Derdowski could say more about the document tomorrow night, as well. But this would not provide an opportunity for the general public to comment on the document.

Chair Harris clarified that those who already had an opportunity to address the Commission on this subject would not be allowed to speak on the issue again at the May 5th hearing. Mr. Stewart added that the SEPA appeal hearing would be limited to those who have standing in the SEPA appeal. Vice Chair Piro said it appears that members of the public who just received the documents provided by Mr. Derdowski might want to offer some written comments. He agreed with Commissioner McClelland that the Commission should address the appropriateness of this and the time period for receiving them.

Commissioner Hall said his understanding is that following public testimony, the Commission has the ability to recommend approval of the contract rezone proposal with the conditions recommended by staff, recommend denial of the contract rezone proposal, or modify the conditions thereof. However, neither the applicant nor the public has the ability to impose additional conditions. Any changes in the conditions would be the result of the Commission's deliberations based on input from the public. Mr. Stewart said Commissioner Hall was correct. Commissioner Hall said it is important for the Commission to understand that there is no requirement for public notice or hearing related to the conditions that have been presented by both the applicant and Mr. Derdowski. Mr. Stewart agreed. He said the purpose of the public hearing is to allow members of the public to voice their opposition or support of the contract rezone and/or suggest substitutions for language in the conditions of the contract rezone. Once the Commission receives the comments, they can begin their deliberations and make a recommendation to the City Council who will be the final decision maker. Mr. Stewart emphasized that

the Commission should not deal with the conditions that were submitted by the public until they begin their deliberations. He reminded the Commission that one mechanism they have used in the past is to close the verbal hearing but leave the written comment period open for a time. The Commission could consider the written comments when they begin their deliberations, which are currently not scheduled to occur until May 19th.

Commissioner Phisuthikul clarified that the agreement between the two parties that was presented by Mr. Derdowski was not be included with the staff recommendation at this point. However, a Commissioner could choose to add these conditions during the deliberation period. Mr. Stewart agreed that during deliberations the Commission could add or delete whatever conditions they deem appropriate for their recommendation to the City Council. The City Council would then have the opportunity to add or delete conditions. Then if the applicant chooses to agree with the rezone conditions set forth by the City Council, he could sign the agreement and the contract rezone would go into effect. If the applicant chooses not to sign the rezone agreement then the action would be void.

Commissioner Broili referred to the agreement between parties that was submitted by Mr. Derdowski and asked how these conditions would align with the staff's recommendation. He questioned if staff would provide a new recommendation to the Commission based on the new information. Mr. Stewart said the staff has not reviewed the document that was submitted by Mr. Derdowski during the public hearing. However, they did review the previous draft of the document that was provided to them during the afternoon. He advised that staff provided a memorandum that raises a couple of issues with the proposed conditions, but staff reached the conclusion that they are generally supportive of the conditions that have been outlined by the appellants and the applicant. While they are concerned that some of them might be vague and difficult to enforce, generally, they are consistent with the staff's recommendation.

Vice Chair Piro reminded the Commission that not only must they consider the recommendation that was submitted by Mr. Derdowski, but they also have to consider the new conditions that were presented by the applicant's attorney. The staff has not had a chance to review these proposed changes, either. Mr. Stewart agreed that two sets of conditions were presented to the Commission: a new set by Mr. Derdowski and a new set by the applicant. Staff has not reviewed either document.

Vice Chair Piro asked if staff could analyze the proposed conditions and present a revised set of conditions to the Commission. Mr. Stewart said that if the changes to the development proposal or the conditions of the proposal would exceed those that were advertised or noticed, the City would have to readvertise, notice and reopen SEPA. If the conditions are within the project that was noticed and advertised, the Commission could move forward without a procedural defect.

Commissioner McClelland asked if it would be possible for the Commission to set a deadline for the public to provide written comments regarding the new documents that were submitted. Staff could also provide written clarification regarding the proposals. All of the written comments could be provided to the Commissioners for review prior to the May 19th hearing. Mr. Stewart said staff tries to get the packets out to the Commissioners and the public a week in advance of a Commission meeting.

Commissioner Hall recalled that the Commission has been questioned twice by members of the audience regarding their procedures. He asked staff to offer an opinion about whether quasi-judicial rules and procedures would allow the Planning Commissioners to speak with the staff about the proposal. He also asked if limiting the time for public testimony would be consistent with the rules and procedures for a quasi-judicial proceeding. Mr. Stewart said he would ask the City Attorney to respond to both of these questions. He noted that Flannery Collins, the Assistant City Attorney, would attend the May 5th public hearing.

Chair Harris explained that the public hearing would be held open until May 5th. Once the public hearing is closed on May 5th, the Commission would make a decision about whether or not they would hold the public comment period open for an additional period of time. Commissioner Hall suggested that extending the public hearing could impact the SEPA hearing. Mr. Stewart said staff also discussed with Mr. Derdowski the possibility that Echo-Par would terminate the SEPA appeal between now and the May 5th SEPA appeal hearing. If this occurs, the Hearing Examiner hearing would be cancelled and the Planning Commission would only hold a continued hearing on the change of zone. He suggested that the Commission continue the hearing on May 5th and accept testimony from anyone who has not already testified. Written public testimony could be submitted prior to the May 5th hearing. Another option would be for the Commission to extend the written comment period now so that the public would know that they have additional time.

COMMISSIONER PHISUTHIKUL MOVED THAT THE PUBLIC HEARING BE EXTENDED FOR WRITTEN COMMENTS ONLY UNTIL MAY 10, 2005 AT 5:00 P.M. VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall clarified that the motion does not imply any extension of the public hearing for verbal testimony beyond May 5th, although the Commission might make that decision after the hearing on May 5th. Commissioner Kuboi asked if someone who has already been allowed to offer verbal testimony would also be allowed to provide written testimony. Chair Harris answered affirmatively.

THE MOTION CARRIED UNANIMOUSLY.

Commissioner McClelland asked if the staff and applicant would provide their presentation again at the public hearing on May 5th. Mr. Stewart pointed out that the hearing was advertised for both nights. Therefore, staff feels it would be fair to allow anyone to come on either night and give testimony, but they had not planned on making a presentation on May 5th. Commissioner Hall suggested that copies of the staff report and PowerPoint presentation should be made available to the public prior to the May 5th meeting.

Commission Questions of the Applicant and Public

Commissioner Kuboi recalled that Mr. Derdowski made reference to a number of goals that he and the project proponent had agreed were important. One was related to public access. However, he said that in his review of the document Mr. Derdowski submitted, there was nothing that would secure this benefit in any legally enforceable way. In response, Mr. Derdowski referred to Condition 5, which

states that the owners would construct a boardwalk with public access through the buffer area. In addition, Condition 7 would require the owners to provide handicap assessable public access from the Interurban Trail to the project site. Lastly, he said Condition 3 indicates that the owners intend to apply for a permit to construct a publicly accessible beach and dock. Mr. Derdowski summarized that the owner has committed to allow public access on the boardwalk through the buffer, allow public access to a beach and dock if it is permitted, and provide public access from the Interurban Trail to the project site.

Commissioner Kuboi asked if the Echo-Par group and the applicant have come up with a dispute resolution process should they come to a disagreement on how any of the conditions are executed. Mr. Derdowski said he recently spoke with the City Attorney about how an agreement between the applicant and the appellant should be constructed. The City Attorney advised that the best way to do this would be to put it in the form of conditions that would be added to the contract rezone. This would be an alternative to the applicant and appellant signing some sort of real estate contract, which could get very cumbersome. He referred to the third paragraph of the agreement, which states that certain conditions would be added subject to approval of the City of Shoreline. The appellants who signed the agreement and the owners agreed to petition and work together to get the conditions approved. Once the conditions become part of the contract rezone, the applicant would have a complete contract and could decide whether to sign it or not. If he signs the contract, all of the contract conditions would be enforceable and applied to subsequent building permits, etc. If the contract rezone were approved, the owners would have to apply for a building permit, which would require a SEPA review. Citizens would be able to comment about whether or not the conditions were being applied correctly.

Commissioner Broili commented that he does not see how Conditions 3, 5 and 7, as pointed out by Mr. Derdowski, would assure linkage between Aurora Avenue North and the Interurban Trail. Mr. Derdowski agreed that the proposed agreement would not address this linkage. The linkage would probably be along the road that connects Aurora Avenue to the Interurban Trail, and presumably the access would be provided in this location. In addition, as they worked with the applicant, they contacted various experts in the field to provide ideas. One idea was the incredible concept of a view corridor from Aurora Avenue to the lake. One of the advantages of this feature would be that a person could cross the street from the park and ride, walk along Aurora Avenue northbound for a short distance on a sidewalk, walk by a café with some outdoor seating, and then start walking on a sidewalk with a view corridor right down to the lake on public right-of-way. At that point, they could get on the boardwalk and walk to the Interurban Trail on a handicap assessable trail. Another connection could be provided on a public right-of-way (North 192nd). He concluded by stating that a lot of open-minded people are looking for options. But tonight the Commission is considering the contract rezone, and the Commission's challenge is to come up with a package of conditions that are tight enough to protect the public interest and broad enough to include enough flexibility so the applicant can construct a viable project.

Again, Commissioner Broili asked if there would be a connection between the Interurban Trail and Aurora Avenue North. Mr. Derdowski said his understanding of Commissioner Broili's question was whether or not there would be a connection between the Interurban Trail and Aurora Avenue North via Echo Lake. He said the latest drawings the applicant is considering would have a sidewalk going along

the retail space. People would be able to walk down to the sidewalk to the public square and then along the boardwalk, through the buffer area, to the Interurban Trail access.

Commissioner Hall said asked if it would be within the City's purview to impose conditions in a contract rezone that may appear to be project specific conditions such as bulk regulations, upper floor "step backs", etc. Mr. Stewart answered affirmatively.

Commissioner McClelland questioned if the conditions proposed by the staff would be independent of the City being a participant in the project. Mr. Stewart answered that the project that was submitted to the City for review contained a proposal to use the building on the northwest corner as either a City Hall or other commercial use, including office. That is exactly how the application has been processed from the beginning. While the City Hall project has been withdrawn, the project that was proposed remains, and that is what the staff has reviewed and presented to the Commission for consideration. If the project has changed significantly because one of the perspective partners or buyers has withdrawn, making the project impossible, it would be appropriate to reconsider whether this is the project the Commission should be reviewing. But the staff cannot unilaterally change the project proposal without giving adequate notice, re-scoping and looking at the potential impacts of the changes.

Commissioner Hall clarified that if it is the staff's position that the conditions they received in the staff report are not out of date because of changes, it might be moot to ask them to work with the applicant team to come up with a broader and more flexible set of conditions. Mr. Stewart explained that the staff initiated the set of conditions originally. The applicant responded to those conditions with a complete set of comments that were included in the Staff Report as Attachment J. Staff agrees that many of the applicant's recommendations have a great deal of merit and the Commission should carefully consider the amendments proposed in Attachment J. They cover issues that were raised during the public hearing about parking requirements, affordable housing, etc. Now there is a third proposal to significantly change some of the conditions that the applicant had previously agreed to. In addition, a set of proposed conditions were set forth in the agreement with Echo-Par. He summarized that there are currently four sets of conditions: the staff's original conditions, the original comments from the applicant, the applicant's second set of comments, and then the agreement between the applicant and Echo-Par. He suggested that it would be appropriate for the staff to attempt to put these recommended conditions into some semblance of order. Commissioner Hall said he would welcome this effort by the staff because he feels the language proposed by the applicant's attorney would result in non-conditioned conditions. He said he feels there is some room to develop some conditions that may be more appropriate for a project that is in flux, and the staff's efforts in this regard would make the Commission's job much easier.

Commissioner Kuboi referred to the staff's opinion of the geotechnical report and said it appears from the staff write up that there wasn't really any objection taken to this report. Mr. Stewart pointed out that at the project level, a much more detailed soil analysis would be required as part of the structural review. Ms. Lehmberg agreed that at the project level the geotechnical reports would be analyzed by the City's development review team and a soils analysis and structural review would be done at that time. Mr. Stewart said a preliminary geotechnical review was completed for the site, and no insurmountable obstacles were identified for development of the site as proposed. Commissioner Kuboi said he is specifically interested in the extent to which the existing ground water flow would be interrupted by any

sort of excavated structured parking as proposed. Commissioner Hall said this issue is addressed in Attachment E of the packet.

Commissioner McClelland asked for further information about Ms. Crawford's comments about letting the buffer area restore itself naturally. She asked if Ms. Crawford is suggesting that this should happen on the entire 115 feet of buffer area or just a portion of the buffer area. If the Commission were to recommend that the buffer area restore itself naturally, she questioned if the species of birds that are found on the site would stay around. Ms. Crawford suggested that a natural restoration process would probably encourage the habitat to stay around more. If the grass is not mowed, it would grow up tall enough that the mother mallards could use the vegetation for screening. Commissioner McClelland asked Ms. Crawford if a public boardwalk would be in conflict with a natural restoration program. Ms. Crawford answered that it would not. She said a boardwalk would be the best way to provide access through the buffer area. There would be no compaction or erosion of the soil, yet the public would be able to access a deck right up to the lake.

Commissioner Hall recalled that the applicant and others expressed concern about some of the conditions as they currently appear in the Staff Report. He asked the applicant if he would support approval of the contract rezone as currently conditioned in the staff recommendations. Mr. O'Neil answered that he would not. He said the project would no longer be feasible, especially considering the significant cost associated with providing parking structures. He questioned how a condominium developer could provide affordable housing when he has to provide underground parking or parking structures. Also, he questioned how he would be able to attract senior citizens to the project if 40 percent of the clients have to qualify for low to medium-income housing.

Mr. O'Neil said the property owners had hoped to be done with the contract rezone process by the end of April, and they received a June 1st deadline to complete the purchase and sale agreement with the YMCA. If they are not able to meet this deadline, the YMCA would not be coming to Shoreline for at least another four years. They have four other communities that are ready to go, and plans have been developed. He said they have significant concerns about the conditions proposed by the staff, which they did not receive until the day after the appeal period had expired for response. He said he wrote a letter of response (Attachment J) stating that the conditions proposed by staff would be deal breakers.

Commissioner Hall asked if the YMCA facility would be a permitted use in the R-48 zone. Mr. Stewart said a YMCA facility would be classified as a sports and social club and would be allowed as a conditional use in all residential zones of the City, including R-48. It would be allowed as a permitted use in a regional business zone. If the YMCA were to locate on a site that had both regional business and R-48 zoning, the entire use could be permitted through a conditional use permit. Commissioner Hall summarized that it would be possible to locate the YMCA on the subject property with the current zoning designation, but it would require an additional permit. Mr. Stewart said the conditional use permit would require public notice, a comment period and an administrative decision that would be appealable to the Hearing Examiner.

Commissioner Hall said two types of suggestions about the various sets of conditions have been presented to the Commission. One suggestion the applicant's attorney brought forward was to modify

the language to be more permissive rather than mandatory. Other comments have been offered that while the step back concept is acceptable, requiring it to occur on every story would be excessive. Or perhaps structured parking is okay, but requiring it for all 1,000 spaces might be excessive. It was suggested that perhaps it would be appropriate to require some low to moderate-income housing, but 40 percent would be unattainable. Commissioner Hall asked if there are ways to put in mandatory conditions that might have smaller numbers that would provide some certainty to the public that has testified, while at the same time preserve the applicant's ability to complete a master planned mixed-use development. Mr. O'Neil said he understands that the contract rezone option is a new concept for the City. But they chose to do a contract rezone at the recommendation of their architects, and it was also a goal of the purchase and sale agreement. He said he does not know of any other rezones in the City that have mandatory requirements placed upon them. He said it seems like the City is trying to design the building, tell them where to the place their parking and how much parking to put in. While he can see some positive aspects related to the concept of a contract rezone, it appears the proposed conditions were orchestrated to actually kill the project.

If they were to end up with some sort of condition for the parking requirement that was mutually agreed upon by the City and the attorney as appropriate for the project to go forward, Vice Chair Piro asked if that would be acceptable to the applicant. Mr. O'Neil said that he expected the staff to come to him with the concerns that have been brought up by citizens and then they could work together to address the issues. But this type of communication and cooperation did not occur.

Vice Chair Piro asked if the applicant would be willing to work with the City to agree upon some percentage for affordable housing that would be feasible for both the City and the applicant. Mr. O'Neil said it would be a detriment to any developer if the City were to require that a specific amount of the housing be affordable to low and medium-income individuals. Developers would turn away from the project and go elsewhere where there are no restrictions. Vice Chair Piro said there are jurisdictions in the region that have formulaic percentages for the amount of affordable housing that must be set aside with each project. He asked if the applicant would accept a condition of this type. Mr. O'Neil said he would have to speak with some of the members of their development team regarding whether or not this type of requirement would make the development unfeasible.

Vice Chair Piro asked if the applicant would be amenable to working with the City to come up with some type of condition that would allow light access to the buffer area and the lake. Mr. O'Neil said their goal is to provide as much open space as possible. They are not trying to build something that would cluster buildings around the waterfront. Their intent is to open a view corridor and get light into the buffer space. But he doesn't understand the City staff's recommendation to add further conditions related to the building design.

Based on his discussions with the applicant, Commissioner Kuboi asked if the party Mr. Derdowski is representing is in agreement with the geotechnical report as it relates to impact on ground water. Mr. Derdowski said they have not addressed this issue. Commissioner Kuboi asked if Mr. Derdowski's group had any discussions about traffic impacts. Mr. Derdowski said they did not discuss this issue, either.

Commissioner Hall said he was unable to find the tree evaluation report that was referenced earlier in the hearing. Ms. Lehmberg said this report is in the application file, but it was not included as part of the Staff Report. Commissioner Hall asked that staff provide the Commission with copies of the report before the May 5th public hearing.

Commissioner Kuboi asked that staff provide feedback from the City Attorney regarding the difference between the terms "shall" and "will."

COMMISSIONER HALL MOVED THAT THE COMMISSION CONTINUE THE PUBLIC HEARING FOR FILE NUMBER 201372 TO MAY 5, 2005 AT 7:00 P.M. VICE CHAIR PIRO SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

5. ADJOURNMENT

The meeting was adjourned at 9:50 p.m.

_____	_____
David Harris	Jessica Simulcik
Chair, Planning Commission	Clerk, Planning Commission