

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

April 7, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Commissioner Sands
Commissioner McClelland (arrived at 7:30 p.m.)
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili
Commissioner MacCully (arrived at 9:50 p.m.)

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Jeff Ding, Planner I, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Vice Chair Piro

1. CALL TO ORDER

The regular meeting was called to order at 7:05 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Commissioners Kuboi, Sands, Hall, Phisuthikul and Broili. Vice Chair Piro was excused. Commissioner McClelland arrived at 7:30 p.m. and Commissioner MacCully arrived at 9:50 p.m.

3. APPROVAL OF AGENDA

The agenda was approved as presented.

4. APPROVAL OF MINUTES

The Commission postponed approval of the March 17th minutes until the April 21st meeting.

5. GENERAL PUBLIC COMMENT

Eric Cheney, 17790 – 15th Avenue Northwest, expressed his concern about a proposal on the table that would allow irrigation wells to fight the present day drought, particularly in Innis Arden. He introduced Steven Porter (18034 – 15th Avenue Northwest) and J. Michael Brown (16945 – 14th Avenue Northwest) who were not present but support his remarks. He said all three of them have Ph.D.'s in earth science, and he is a licensed geologist in the State of Washington. Mr. Cheney said it appears the proposal to drill irrigation wells in Innis Arden has proceeded without any geologic or hydrologic studies being done. He suggested, therefore, that the proposal is premature. While most people believe the geology of Shoreline is a porous sponge, it is actually made up of layers, some which transmit water (aquifers) and some which do not. He suggested that a number of important questions must be answered. For example, where in Shoreline would the wells be drilled and how deep? If irrigation wells are put into the main aquifer, would that seriously affect water going into the streams in the area? Would the reduction of water into those streams seriously affect the flora and fauna? Would the reduction of water from the aquifer seriously affect the runoff water and the soil moisture, which many Innis Arden residents now rely upon for their lawns and gardens? Would the periodic withdrawal and subsequent recharge of the water sufficiently affect ground conditions? Would it cause subsidence or slope failure? Would the withdrawal of water from shallow aquifers sufficiently deplete the water table resulting in insufficient surface water for the surrounding neighbors? Mr. Cheney concluded that the questions he voiced should be answered before any proposal for irrigation wells is seriously considered in Innis Arden or anywhere else in Shoreline.

Elaine Phelps, 17238 – 10th Avenue Northwest, noted that when people purchase property and then demand that everyone down slope of them cut the trees and keep the structures low to protect their view, they are actually imposing a financial disadvantage on the people down slope for their own personal gain. She cautioned that before the Commission considers allowing trees to be cut to protect views, they should think about the whole environmental structure, and not just benefits to individual property owners. She concluded that she is not against people obtaining personal benefits, if they do not create a disadvantage for everybody else.

6. STAFF REPORTS

Public Hearing on Rezone File No. 201345 (Ronald Wastewater District, 17505 Linden Avenue North)

Chair Harris reviewed the rules and procedures for the quasi-judicial public hearing then opened the public hearing. He asked if any of the Commissioners had received any ex-parte communications regarding the subject of the hearing. None of the Commissioners indicated an Appearance of Fairness concern. No one in the audience voiced a concern, either.

Jeff Ding, Planner, presented the staff report for Rezone Application 201345. He explained that the subject of the rezone application is four parcels of land located on the corner of North 175th and Linden Avenue North, which are all owned by the Ronald Wastewater District. The proposal is to rezone the

parcels from R-12 and Office to R-24. He reminded the Commission that because this is a quasi-judicial action, the Shoreline Municipal Code requires that they conduct a public hearing and make a formal recommendation to the City Council. The Planning Commission has two options.

- Recommend approval to rezone the subject parcels from R-12 and O to R-24 based on the findings presented in the report and public hearing.
- Recommend denial of the rezone application, in which case the R-12 and O zoning would remain based on specific findings made by the Commission.

Mr. Ding provided an aerial photograph of the area and specifically pointed out the four subject parcels. He noted that the Ronald Wastewater District office is located at the southern most parcel. The two middle parcels are both vacant and consist of a gravel lot that is used for employee parking. The northern most property is currently developed as a single-family rental home that is owned by the District and is being rented out. He provided a photograph of the southern most property, which contains the office building and parking for customers. He noted that the District is currently storing vehicles on the northwest portion of the parcel. He also provided specific photographs to illustrate the current uses of the two vacant parcels in the middle and the parcel to the north.

Mr. Ding reminded the Commission that rezone applications must be evaluated based on the five criteria that are outlined in the Shoreline Municipal Code 20.30.320(B). He reviewed each of the criteria as it relates to the specific proposal:

- 1. The rezone is consistent with the Comprehensive Plan.** Mr. Ding explained that the current Comprehensive Plan designation for the four parcels is mixed-use, which has a compatible zoning designations ranging from R-8 through R-48 and several commercial designations. The proposed R-24 designation would be consistent and compatible with the current mixed-use Comprehensive Plan designation. He further explained that in the future the District plans to construct a parking and storage structure on the two vacant parcels, and this type of use would be permitted in an R-24 zone and is consistent with several Comprehensive Plan goals and policies such as: Policy H-6 to encourage infill development on underutilized parcels; Goal U-I to promote City-wide utilities that are consistent, high quality and forward looking; Goal U-III to facilitate provision of appropriate utility services; Policy U-17 to support efforts to ensure adequate infrastructure and utility services; and Goal CF-1 to provide adequate public facilities and anticipate the needs of future growth.
- 2. The rezone will not adversely affect the public health, safety or general welfare.** Mr. Ding pointed out that at the time of permit application, the project would be reviewed for compliance with Title 20 of the Shoreline Municipal Code. He specifically reviewed the following applicable sections that would be used in review of a permit application: density and dimensions (setback requirements, building coverage, impervious coverage percentages); tree conservation; parking, access and circulation; landscaping; wastewater, water supply and fire protection; and surface and stormwater management. Mr. Ding advised that a SEPA Determination of non-significance was issued for the proposal on March 3, 2005, and future development proposals might also be subject to SEPA review, as well.

3. **The rezone is warranted in order to achieve consistency with the Comprehensive Plan.** Mr. Ding reviewed the list of consistent zoning districts for the mixed-use designation. He advised that the current zoning designations of R-12 and Office are both consistent with the current mixed-use designation, and the proposed R-24 would be consistent, as well.
4. **The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject rezone.** Mr. Ding advised that with construction of the parking structure, there could potentially be a conflict with views from some of the neighboring properties. However, there are other issues of concern that must be addressed such as:
 - **Access from arterial streets.** Mr. Ding explained that the site is currently accessed from North 175th Street, as well as Linden Avenue North. With the construction of a parking structure, the access to all four parcels would not change.
 - **Traffic and Circulation.** Mr. Ding advised that peak hour trips for the proposed structure are currently unknown at this time, but the code requires that the applicant complete a traffic study if PM Peak hour trips exceed 20. Traffic or pedestrian mitigation could be required at the time an application is submitted.
 - **Availability of Water and Sewer.** Mr. Ding further explained that both the Ronald Wastewater District and Seattle Public Utilities have indicated adequate capacity for the R-24 zoning designation, with the submittal of water and sewer availability certificates.
 - **Tree Retention.** Mr. Ding said there are currently four significant trees on the site, and the code would require the retention of at least 20 percent of the significant trees for any development application. At the time of building permit submittal, tree retention, protection and replacement requirements would be reviewed.
 - **Stormwater.** Mr. Ding advised that stormwater must be treated and detained as per the 1998 King County Surface Water Design Manual and Surface and Stormwater Management Sections of the Development Code. Stormwater would also be reviewed as a portion of any building permit for construction of the parking structure.
5. **The rezone has merit and value for the community.** Mr. Ding reviewed that in 2002, the Ronald Wastewater District increased its service area by 40 percent, to include almost all of the City of Shoreline. Since that time, they have had a need to consolidate their resources and store extra equipment, and constructing a parking/storage structure would fulfill that need. It would also provide a long-term cost savings to the District and its customers and allow them to provide better service to the citizens of Shoreline. The construction of the storage structure would allow the District to store their vehicles and equipment out of view of the neighboring properties and in a secure facility.

Mr. Ding concluded by stating that staff recommends the R-24 zoning be adopted for the subject parcels based upon the proposal's consistency with the Comprehensive Plan, its compatibility with surrounding neighborhood zoning, the results of the environmental review, its value to the community, and the availability of necessary infrastructure. Again, he advised that the Commission has the option of recommending approval of the subject parcels as proposed or recommending denial of the rezone application.

Michael Derrick, General Manager, Ronald Wastewater District, advised that the District serves all residents of the City of Shoreline, with the exception of about 20 homes that are still being served by a septic tank system. They have grown over the past several years and have had to purchase more vehicles to serve the growing number of patrons. They no longer have room in their existing facilities to store their vehicles. The goal of the proposed application is to provide space for equipment to be stored inside and be protected from the weather. The proposal would enable them to better protect the public's investment and provide low cost sewer service to the City for many years to come.

Commissioner Hall inquired if the parking structure would be more than one story high. Mr. Derrick said the District still has to do a more detailed site study to identify their needs, but the parking structure would not be of significant height to block the view from neighboring properties.

Commissioner Kuboi asked if the applicant would be required to screen the subject property from adjacent properties. Mr. Ding said the Shoreline Municipal Code's landscape section requires non-residential development to provide Type I Screening along any interior boundaries with multi-family or single-family residential development. Landscaping would be reviewed at the time of building permit submittal, and screening requirements would be part of this consideration.

Commissioner McClelland asked how many of the significant trees would be retained. Mr. Ding said three of the significant trees are located along the far west boundary of the property, and the fourth is along the east boundary of Linden Avenue. Commissioner Hall pointed out that the 20-percent tree retention requirement would mandate that the applicant save one significant tree. Mr. Derrick explained that the one significant tree that is located on Linden Avenue would be retained. There is a large pine tree in the southwest corner of the property that would likely be saved, as well. But there is a Hemlock in the northwest corner that was topped many years ago, and it would probably not be saved.

Wesley Frederick, 816 North 175th Street, Unit 4, said he lives in the complex adjacent from the subject property. He understands that the proposed rezone does not identify what type of building would be constructed, but it would allow for a parking structure on the site. He expressed his concern that the proposed parking structure could affect his view, thus reducing the value of his home. He said the view from the east side of the complex currently looks just above a fence out onto the subject property. The street level of Linden Avenue is just about level with the living units. If a parking structure were constructed to a height of 14 feet above Linden Avenue, his third floor window would even be blocked. He also expressed his concern about the trees that currently exist along the property line. He pointed out that two of the four trees are located on the subject property and two are on the complex property. Removing the two trees on the subject property would eliminate the screen between the complex and the subject property. Again, he expressed his concern that the value of his home would be negatively impacted if the proposed parking structure were constructed.

Bill Santee, 816 North 175th Street, Unit 3, said his living room would face the proposed parking garage. Because he is in a central unit, he only has windows on the east and west sides. The proposed parking garage would only be 24 feet away from his living room window. He said that over the years they have put up with the diesel generators that run in the parking lot during the summer months. The

noise the generators have created is frustrating, and the situation could get even worse if the property were expanded to accommodate more equipment. He said he feels the proposed parking garage would significantly reduce the property value for the six units that would look right out at the back side of the structure. He also expressed his concern about District employees increasing the demand for street parking and creating additional traffic. He concluded by stating that if the proposed rezone were approved, the adjacent property owners would be forced to take legal action to protect their property values.

Joe Jaikin, 816 North 175th Street, Unit 2, said he also lives in the condominium complex located to the east of the subject property, and said these units would look directly towards the garage. He explained that his unit is three-stories high and 19 feet from the property line. He would face the traffic, noise and other activities associated with a garage being located just a few feet from their living room and bedroom.

Mr. Ding referred to a comment letter that was submitted by **Keith Klegman, 816 North 175th Street, Unit 1, Vice President, North Park Lane Condominium Association**, regarding the subject of the public hearing.

Commissioner Kuboi asked how high of a structure could be built on the subject property under the current zoning. Mr. Ding answered that the current zoning of the two vacant parcels is Office (O), which would allow structures of up to 35 feet. The proposed parking structure would be approximately 14 feet. Mr. Derrick explained that the first step for the District was to rezone the property, and the District has not given much thought to the exact type of parking structure that would be developed. He noted that the property drops six to eight feet from Linden Avenue. He explained that once the property is rezoned, the District would conduct a topographical survey of the property. Then they would consider the options of what could be built and what would fit in with the neighborhood. He summarized they plan to work with the surrounding neighborhoods to minimize the impacts.

Commissioner Kuboi inquired if the height of the building would be only what is necessary to accommodate the District's largest piece of equipment. Mr. Derrick said that because of the proposed parking garage, employee parking would have to be provided elsewhere. One idea would be to provide staff parking in the structure during the day when the equipment is out in the field. However, he emphasized that no design plans have been created. He concluded that they intend to build a bay that is large enough to accommodate their largest vehicles. While the door and roof of the structure would have to be a little larger, they do not anticipate a taller building than would typically be necessary.

Commissioner McClelland asked why the applicant chose not to submit a consolidated permit. Mr. Ding explained that Ronald Wastewater District has not done any conceptual plans at this point in time, other than focusing on the rezone application, itself. The parking structure would not be feasible with the current zoning designation. Commissioner McClelland inquired if the Commission would have an opportunity to comment on the design of the parking structure if the rezone application is approved by the City. Mr. Ding said the Commission would not have an opportunity to review and comment on a proposed design during the building permit stage, but the application would be reviewed by staff based on the code requirements. Conditions could be placed on the design based on information gained from

the SEPA review. Commissioner McClelland said it is important for the public to understand that once the Commission makes a recommendation, they would have no further ability to comment if the rezone were approved.

Commissioner Broili questioned if the neighboring property owners would be amenable to the project if the building were aesthetically pleasing and the noise abatement issue were addressed. (*The Commission allowed public comment without coming to the microphone and without identifying themselves*). Someone in the audience said part of their concerns would be addressed, but it would also depend upon the height of the building. Another significant concern to them is the impact the proposed parking garage would have on their property values. The audience member said he spoke with a representative from the Fire Department regarding impacts to their building. The Fire Marshall indicated that the Fire Department has no jurisdiction over the use of the property. But he said it would be very difficult to fight a fire on the east side of the condominium complex. They would only be able to get the trucks to the west side of the complex.

Mr. Stewart pointed out that the design standards would be applied to any development on the subject property and would include building design, building orientation, and scale. There is also a very substantial section in the code about exterior materials. He read Section 20.50.150, which states that building exteriors shall be constructed from quality and durable materials. Any substantial materials such as fiberglass, and material such as mirrored glass, corrugated siding, exposed concrete block and plywood or T-111 siding would not be permitted. There are also requirements for roofline variation techniques to provide variety to the façade of the structure.

COMMISSIONER BROILI MOVED THAT THE PUBLIC PORTION OF THE HEARING BE CLOSED. COMMISSIONER KUBOI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

COMMISSIONER BROILI MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF THE APPLICATION TO REZONE PARCEL NUMBERS 0726049102, 0726049056, 0726049168 and 0726049166 FROM RESIDENTIAL 12 UNITS PER ACRE (R-12) AND OFFICE (O) TO RESIDENTIAL 24 UNITS PER ACRE (R-24) BASED ON THE DRAFT FINDINGS PRESENTED IN ATTACHMENT V, p. 41 OF THE PACKET. COMMISSIONER KUBOI SECONDED THE MOTION.

Commissioner McClelland said she would vote against the rezone application. As a professional planner by trade, she said she feels it is important to take a stand in favor of residential neighborhoods. This is not the first time the Commission has recommended a change that intensifies a non-residential use in an area that is surrounded by residential uses, and she is opposed to the concept. She noted that, with the exception of the high school, all of the uses surrounding the subject property that are accessed by Linden Avenue are residential. She said she considers this area to be a residential neighborhood. She summarized that she said she does not approve of using a residential zone (R-24) to intensify a commercial use. Linden Avenue is a residential street. She said there is nothing unique to make the proposed location the only place the District facilities could be located.

Commissioner Hall pointed out that the current Comprehensive Plan designation for the subject property is mixed-use, and the two middle parcels are currently zoned Office. While he is very sensitive to the neighbor's concerns that their view could be blocked, it is also important to remember that the view could be equally blocked if an office building were constructed on the property as the current zoning designation would allow. He reminded the Commission that aesthetics would be addressed as part of the design review of a specific development proposal and is not within the purview of the Commission. He noted that the current zoning designation would allow for the construction of a utility facility, which could have a greater impact. He said he would support the proposal since it will allow a utility, which provides an important service to the City, to efficiently meet its expanded needs on site.

THE MOTION CARRIED 6-1, WITH COMMISSIONER MCCLELLAND VOTING IN OPPOSITION.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Hall thanked the Innis Arden community for inviting the Commission on a tour of their reserves. The tour helped him to learn things he had not known previously. Commissioner Broili agreed.

8. UNFINISHED BUSINESS

Deliberations on Critical Areas Ordinance

Mr. Torpey reviewed that a public hearing on the proposed Critical Areas Ordinance Update was conducted on March 17th, and 29 citizens addressed the Commission. The written comment period was extended to March 25th. Within a week, 71 written comments were received, and staff compiled them into a binder for each of the Commissioner to review. He also advised that a second copy of the matrix (Attachment 1) was prepared. Staff incorporated several recommendations from the two State agencies (Community, Trade and Economic Development and the Department of Ecology) that have provided comments and amendments. As the Commission begins their deliberations, staff is asking them to identify the specific amendments they would like to add to the matrix for further deliberation.

Mr. Stewart added that staff received additional suggestions from Commissioner Hall, and these were provided in the Commission's mail envelopes (light blue handout). Staff believes there is some merit to his proposals, so they encourage the Commission to consider them, as well. He stated that if the Commission wants to add additional items or ask staff to do additional research, they should make their requests as soon as possible. He said the staff is looking at comparable cities and what they have done in terms of view protection in relationship to critical areas, but this work has not been completed yet.

Commissioner Sands asked if the staff found anything in the 600 pages of written public testimony that they would deem appropriate to add to the Critical Area Ordinance. Mr. Stewart said that other than comments from the State agencies, nothing else jumped out. Most of the comments were lined up in predictable positions. There were a number of people arguing for tree preservation, view restoration, additional regulations for streams, etc. The values of the community were brought out in the written

comments, but none of the comments rose to the level of being amendments staff wanted to initiate. However, he emphasized that the Commission also has the ability to initiate any amendment they deem appropriate, including those suggested by the citizens.

Commissioner Broili inquired how the previous Commission comments were incorporated into the draft document. Mr. Torpey said the Commission's comments could be found in the first several pages of the amendment matrix. General comments were addressed by staff to the Commission either in writing or orally at a previous meeting. Where there were no specific proposals for code changes, staff did not add them as amendments on the matrix. Mr. Stewart explained that the comment matrix identifies amendments that have been proposed previously by both the staff and the Commission. New additions to the matrix include specific recommendations from State agencies involved in the draft critical areas ordinance review. The April 7, 2005 version of the matrix and the January 10th draft of the Critical Area Ordinance (presented to the Commission in the January 20th meeting packet) are the documents the Commission should work with.

Commissioner Broili referred to Item A on the first Page of Chapter 20.20. He noted that the proposed amendment would change "flood plain" to "flood hazard areas." He explained that "flood plain" is an ecosystem issue, and "flood hazard" is people oriented. Mr. Torpey said the language change was intended to make the City's Critical Areas Ordinance consistent with the Growth Management Act. Mr. Stewart advised that these areas are not only ecosystems and descriptions of areas that are inundated, they are also legal boundaries for the flood insurance rate map. According to the definitions typical of the Federal Flood Insurance Program, Flood hazard areas are "those areas that are subject to inundation by the base flood, including but not limited to streams, lakes, wetlands and closed depressions." A flood plain is "the total area subject to inundation by the base flood." A flood way is "the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot." The proposed ordinance is intended to reflect the Growth Management Act language, which calls them "flood hazard areas."

Commissioner McClelland inquired if "flood hazard areas" are supposed to be included in the list of hazardous areas. Mr. Stewart answered affirmatively. Commissioner McClelland inquired if the correct term for Item D on the same page should be "critical aquifer recharge areas" rather than just "aquifer recharge areas" in general. Mr. Stewart said the Growth Management Act lists geologic hazards, flood hazards, aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas. The City of Shoreline has chosen to also add streams, giving them a total of six items on the list.

Commissioner Sands asked when the Commission would have an opportunity to discuss the issues raised by the citizens. Commissioner Broili said he reviewed the citizen comments and flagged them in the document. He said he plans to raise his concerns and questions when each particular section is discussed. Commissioner Hall said he, too, read through the written public comments, and he plans to introduce to the Commission during their review. He suggested, and the Commission agreed, that they should review the draft ordinance page-by-page and identify the concerns they flagged while reading the public comments.

Commissioner Broili referred to Section 20.20.024.H, which deals with the removal of hazardous trees that present a potential danger to structures in the area. He said he does not see any provisions in this section to indicate that the threat must be imminent. Commissioner Hall agreed. He referred to the language at the bottom of the page, which states that removal of hazardous trees shall occur consistent with the tree conservation permitting and site restoration requirements of the Shoreline Municipal Code Sections 20.50.290 through 20.50.370.” He noted that amendments have been proposed to Section 20.50.310 (Exemptions from Permit). The original ordinance says any hazardous tree or vegetation which is an immediate threat to public health, safety, welfare or property may be removed without first obtaining a permit. While staff has recommended that this language be deleted, he would recommend it be retained. Commissioner Broili said he would like to go further to make it clear that the threat must be immediate. Commissioner Hall agreed that the words “immediate” or “imminent” should be added to Section 20.20.024.H so that issues could be resolved before trees are removed whenever possible.

Commissioner Sands said that, in general, he would not support the concept of government telling people what they can do with their private property. He said he understands that critical areas must be protected, but no matter how specific the language is, some people will still do whatever they can to avoid following the ordinance requirements. However, he is opposed to making it too difficult for owners to do things on their property by having to second-guess what the City requirements might be. This could expose private property owners to possible liability. There are already plenty of rules related to tree retention, and he would not be in favor of making them more stringent. He is, however, in favor of appropriate enforcement of the existing rules, which appear to work well.

Commissioner McClelland said it is important for the Commission to clarify the issue of hazardous trees. The ordinance presumes that property owners have the knowledge to determine which trees are hazardous. However, often it is not possible to identify all hazardous trees just by looking at them; this determination requires research. If the Commissioners are not all completely comfortable with the presumption of this definition, they should not accept it as written. Chair Harris asked if the City should require a person to live under a tree they perceive dangerous even though it is a perfectly sound tree. While the tree might not technically be considered dangerous, the tree may cause fear in a property owner.

Commissioner Hall reminded the Commission that they are not attempting to completely rewrite the Clearing and Grading Ordinance, which gives the Planning Director the authority to require a certified arborist to make that decision. The Commission is currently deliberating the Critical Area Regulations, so their focus should be on hazardous trees that are in critical areas. Most of the trees in the City of Shoreline are not in critical areas, and property owners can remove six of them in a three-year period regardless of the reason. The point of the ordinance is to balance the protection of the critical areas with the community values.

Mr. Stewart further explained that the hazardous tree exemption applies anywhere in the City, including critical areas. The current six-tree exemption applies only in non-critical areas. Part of the dilemma is that professional arborists use a form created by the Arborists Society. This form has three factors: structure of the tree, health of the tree, and the target (where the tree would fall and the potential risk).

The proposed language would narrow the target to structures, public assembly, etc. Some people have argued that any place is a target because there could be someone in that location at any time.

Commissioner Hall suggested that adding a definition for “hazardous trees” would be appropriate. Commissioner Sands said he believes the proposed language would be appropriate without making it any more restrictive. Commissioner Hall suggested that the Commission make a decision about whether the words “immediate” or “imminent” should be added to the definition. Commissioner Broili agreed but suggested that the appropriate place for the change would be in the clearing and grading ordinance (Section 20.50.310). The majority of the Commission concurred.

Commissioner Hall referred to Section 20.20.046.S, which is the definition for a stream. After reviewing the Gaston Decision a number of times, as well as comparable provisions in other cities, he said he finds the City may have a hard time defending a definition that says “a stream ceases to be a stream at the point it enters a pipe and then becomes a stream again when it comes out.” He suggested the Commission consider not adding the word “open” to the definition of streams as recommended by staff. In addition, he said he would propose other associated amendments. While he believes a stream is still a stream when it is in a pipe, he does not believe that it needs the full width of buffer that would otherwise be required. For example, he said one of the functions a buffer provides is to shade the stream. If the stream were in a culvert, the shade function would not be important. The same would be true with leaves and litter fall. He said there is not much that could be done with the land above a culvert that would affect its value and function. However, several citizens have commented that this would foreclose the future option to restore the stream for day lighting.

Commissioner Hall suggested that these watercourses could be identified as “piped stream segments.” The ordinance could explicitly define a level of protection for it that is lower than what would be required for a Type II Stream. He recommended the buffer be 10 feet, which is the same buffer width that would be required for a day lighted stream.

Commissioner Broili said he is also concerned about the language in this section, and he was going to suggest leaving the word “open” out of the definition. If a stream is a Type II Stream at one end and a Type II at the other, it should be considered a Type II Stream. Regarding Commissioner Hall’s recommendation that the buffer be reduced to ten feet, Commissioner Broili recalled Mr. Lombard’s suggestion that the City consider more flexible approaches to buffering. Rather than set a firm number, he would like to leave this option open. Commissioner Broili disagreed with Commissioner Hall’s statement that development above a piped stream would have very little impact to the stream base. While the stream is piped at that point, the runoff would be impacted and would eventually end up in the stream. He said it is important to remember that piped streams create impacts to the stream base.

Chair Harris asked staff to clarify if and when the City would allow someone to build a structure over a piped watercourse. Mr. Stewart said the typical cases involve piped watercourses that are not recorded and do not have any public easements. When piped watercourses are found, the City requires an easement dedication since they are part of the public water system. He concluded that the probability of the City allowing development to occur on top of a known piped watercourses that has stream

characteristics would be small. Chair Harris pointed out that since the City would not allow structures to be built over known piped watercourses, there would be no need to provide additional regulations.

Mr. Stewart said that the proposed ordinance identifies a 20-foot buffer for piped-watercourses to accommodate the future possibility of day lighting the stream. He noted that this would not be a lot greater than what the City might request for a drainage easement. If the City knows a piped watercourse is present and they get the appropriate drainage easement, then the buffer would be 20 feet anyway. This would reserve the buffer area necessary for potential future day lighting. He said Commissioner Hall's recommendation is a creative way to address a bitter community conflict, and staff would support the notion of declaring it a stream and then regulating it as Commissioner Hall proposed. Chair Harris agreed but questioned the need for further detail regarding construction over the watercourse. Commissioner Hall said the additional language would make it clear to the concerned citizens that piped watercourses would be treated as critical areas. If a loophole would allow construction over the piped watercourse, his proposed language would address the issue.

Commissioner McClelland asked Mr. Stewart if the City would ever allow parking lots to be built over piped watercourses. Mr. Stewart said the City would find themselves in a difficult situation if someone owned property that had an existing structure on top of a piped watercourse. If the property owner wanted to expand the structure, there is currently no development regulation that would prohibit the expansion. Adopting the regulation proposed by Commissioner Hall would close this option. It would also address the community's significant fear. As proposed by Commissioner Hall, any development on top of piped watercourses and within the 20-foot buffer would be prohibited. Commissioner Hall added that any existing buildings situated on top of piped watercourses would become non-conforming uses.

Commissioner Sands expressed his concern that there may be numerous situations in the City where structures have been built over piped watercourses. He questioned if it would be appropriate to turn all of these properties into non-conforming uses. Mr. Stewart said the current stream and wetland inventory identifies 73,889.49 linear feet of piped watercourses. If all of these piped watercourses were buffered with 10 feet on each side, it would utilize 1.49 million square feet of land.

Commissioner McClelland asked if any of the City's surface water runoff pipes and stream pipes intercept. Mr. Stewart answered affirmatively. Commissioner McClelland said this could result in situations where streams might be Type II going into a pipe, but not when they come out the other end if they intercept with a surface water runoff pipe. According to the current code, anytime a surface water runoff pipe is used by salmonids, it would be considered a stream. Mr. Stewart agreed, but he pointed out that the definition for "salmonid use" has also been an area of dispute.

COMMISSIONER BROILI MOVED THAT THE COMMISSION ACCEPT THE AMENDED LANGUAGE INTO THE AMENDMENT MATRIX AS PROPOSED BY COMMISSIONER HALL TO SECTION 20.20.046.S. HOWEVER, HE WOULD LIKE TO AMEND THE BUFFER REQUIREMENT TO ALLOW MORE FLEXIBILITY.

COMMISSIONER SANDS SECONDED THE MOTION.

Commissioner Broili pointed out that upland uses affect streams and critical areas. However, the Commission has currently only discussed areas that are adjacent to critical areas. Property owners must also take responsibility for the upland issues. When he, Commissioner Hall and Commissioner Phisuthikul visited Innis Arden during a rainstorm, they found water running off the uphill properties and into the stream, carrying sediment loads and pollution to the lower portions of the stream. These issues must also be addressed, and allowing a more flexible buffer requirement would help the City address the upland situations on a site-specific basis.

Commissioner McClelland suggested that Section 20.20.046.S be changed by replacing the phrase “naturally occurring prior to construction” with “that occurred naturally prior to construction of the device.” She asked the staff to work on the sentence structure of this section.

Mr. Stewart said there is a lot of science available that indicates the buffers should be flexible. But the City’s Critical Area Ordinance has been constructed around the “hard and fast rule” with deviations between the minimum and maximum buffers required. When dealing with piped watercourses, staff assumes that a legal easement would be the minimum buffer needed over the pipe. He said he spoke with the City Attorney about the possibility of the City getting into a “taking” situation by implementing a flexible buffer concept. Their conclusion was that this would not be a problem because an easement would already be required for construction over a drainage way. A 20-foot easement requirement would retain the possibility of day lighting the piped watercourse at some point in the future.

Mr. Stewart said that at one point in time, there was a proposal to day light the pipe from Ronald Bog. However, once the property owners recognized that they would be facing a 100-foot buffer requirement if the stream were opened up, they became concerned about losing their property rights. If the City could clearly establish a 20-foot buffer along the piped corridors, they would be able to remove the apprehension about the negative impacts of day lighting.

Commissioner McClelland suggested that the word “their” be added before the word “construction.” Mr. Stewart explained that staff’s interpretation is that the word “they” refers to irrigation ditches, canals, storm, and surface water devices. Commissioner Hall said he would not accept this change as an amendment to his language.

THE MOTION CARRIED UNANIMOUSLY.

Mr. Stewart reviewed the Commission’s upcoming schedule. He said staff would like the Commission to first complete their review of the Comprehensive Plan amendments. If they don’t get this document approved in a timely manner, the City would lose their eligibility for IAC park funding on June 1, 2005. The Commission should focus on getting the Comprehensive Plan to the City Council as soon as possible. Then they could focus their attention on the Critical Area Ordinance Update. Next, they could work on the Cottage Housing Ordinance and Code enforcement issues. Mr. Stewart advised that while the deadline for completing the Critical Area Ordinance is May 19, there are a number of other communities that are also struggling to get their work done.

Mr. Stewart advised that the Commission could propose additional amendments in writing before the May 19th meeting. Mr. Torpey said the additional amendments would be added to compare the existing code and the proposed changes. He advised that as Commissioner amendments are submitted, he would add them to the matrix on the web site the very next day. This would enable the Commissioners to view the amendments that are submitted prior to their next discussion.

Mr. Stewart suggested that the Commission review the draft ordinance page-by-page, flagging their major issues. The Commission could then discuss the major issues that were raised. Commissioner Kuboi asked if it would be helpful to the staff if the Commission were to actually craft the amendment language. Or would it be appropriate for the Commissioners to explain their concerns and allow the staff to draft the appropriate language. Mr. Stewart said staff could draft code language to address the concerns, but it would be more beneficial if the Commissioners were to propose draft language. Commissioner Kuboi pointed out that the Commission appears to spend a lot of their meeting time crafting language. Perhaps this is not the best use of the Commission's time. The Commission should focus on the intent and philosophy of the ordinance, and then allow the staff to craft appropriate language. Mr. Stewart said that for particular issues that have a wide variety of values, the Commission could use the technique of having the staff prepare a "positive/negative analysis" on behalf of the Commission. This analysis could be presented to the City Council to clearly describe the various perspectives of each Commissioner.

9. NEW BUSINESS

Election of Chair and Vice Chair

Ms. Simulcik explained that the Commission's Bylaws state that once a year, the Commission must hold an election for the chair and vice chair positions at the first regular meeting in April. She described the rules and procedures for the election process. She explained that she would conduct the chair election process. Once a new chair has been elected, the Chair would assume the duty of conducting the vice chair election.

Ms. Simulcik called for nominations for the position of Commission Chair. Commissioner Phisuthikul nominated Commissioner Harris as chair of the Commission. As there were no further nominations, Ms. Simulcik declared the nominations closed and called for the vote. Commissioners Broili, Hall, Kuboi, McClelland, Phisuthikul and Sands all voted in favor of Commissioner Harris as Chair of the Commission.

Chair Harris called for nominations for the position of Commission Vice Chair. Commissioner Sands nominated Commissioner Piro as vice chair of the Commission. As there were no further nominations, Chair Harris declared the nominations closed and called for the vote. Chair Harris and Commissioners Broili, Hall, Kuboi, McClelland, Phisuthikul and Sands all voted in favor of Commissioner Piro as Vice Chair of the Commission.

Amendment to Bylaws

Chair Harris advised that at their retreat, the Commission discussed the possibility of amending the Commission Bylaws by inserting a "Director's Report," updating the signature lines, and correcting the spelling error.

COMMISSIONER SANDS MOVED THAT THE COMMISSION AMEND THE BYLAWS BY INSERTING "DIRECTOR'S REPORT" AS ITEM NUMBER FOUR ON THE REGULAR MEETING AGENDA AND PUBLIC HEARING AGENDAS AND TO UPDATE DATES, SIGNATURES LINES AND THE SPELLING OF THE WORD "BYLAWS." COMMISSIONER MCCLELLAND SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

10. ANNOUNCEMENTS

Mr. Stewart referred to a handout staff provided in the Commissioners' packets regarding cottage housing. This handout identifies staff's early guess at what amendments might be proposed to address the problem issues. Staff intends to use the handout at a community workshop, and the Commission would then conduct a public hearing on the issue. He noted that the cottage housing moratorium expires at the end of August, so the City Council is anxious for the review process to move forward.

Mr. Stewart referred to the development that was the impetus for the City's review of the Cottage Housing Ordinance. He reported that the City has issued a decision of approval, with an associated MDNS Determination, for the single-family development on the site. The appeal period for this decision ends on April 8th.

Mr. Stewart reported that the Hearing Examiner has issued a pre-hearing memorandum regarding her decision on a number of the motions on the SEPA appeal for the Echo Lake Application. She dismissed a number of the appeal points, and only one or two are still outstanding. A public hearing on the proposed Echo Lake Comprehensive Plan amendment is scheduled for April 14th, and the rezone and SEPA appeal hearing would be heard in May.

Commissioner Hall asked if the Commission is required to make a decision on the Comprehensive Plan amendment prior to the SEPA appeal and contract rezone public hearing, or could the Commission hold a public hearing on the Comprehensive Plan amendment and postpone their deliberations until after the SEPA appeal and contract rezone public hearings have been completed, as well. He pointed out that, in this case, the Commission understands that there is a very specific contract rezone application connected to the proposed Comprehensive Plan amendment. He would like to hear all of the information prior to making a decision on any portion of the application.

Mr. Stewart expressed his initial concern that this would hold up the Comprehensive Plan amendments contingent upon the change of zone. Secondly, he expressed concern that the proposal to change the area to mixed-use would not require any rezone because the current zoning is consistent with the mixed-use designation. Staff's primary issue is trying to get the annual Comprehensive Plan review to the City

Council in a timely manner, and it might be difficult to get deliberations on the SEPA appeal and contract rezone application completed and on the City Council's agenda in time. He reminded the Commission that splitting the contract rezone application from the Comprehensive Plan amendment was agreed to by all parties during the pre-hearing workshop. He said he would discuss this with the City Attorney for further direction.

Commissioner McClelland recalled that at the Commission pre-hearing workshop, the staff presented pictures of what development of the site might look like. She asked if the Commission would ever have an opportunity to review a proposal for the use of the site that would not include the significant amount of public space. Mr. Stewart said the issue is related to the applicant's right to use the property as opposed to a type of space. The design could work equally well whether the open space is private or public. While there would be a huge benefit to the public if the open space were public, it is important to remember that the property is privately owned. The City must use their zoning power to gain public benefit without crossing the line. From the staff's point of view, they intend to focus on the design of the property and how the buildings and land uses relate to each other as opposed to the ownership rights. Mr. Stewart said there would also be an issue related to right-of-way and public access in and around the subject property. And the Commission should be concerned about this issue as they enter into their deliberations.

Commissioner Kuboi requested a report on the recent Code Enforcement Workshop that was recently held. Mr. Stewart reported that Chair Harris and Deputy Mayor Jepsen participated in a Code Enforcement Workshop on April 6th, which was attended by about 60 people. A number of issues that were presented to the City Council were identified and discussed. As projected, people spoke to both sides, some wanting more regulations and some wanting less. They conducted an exercise where people identified what they thought were the most important changes that could be made. Staff is working on sets of amendments to the Development Code, and these would be presented to the Commission in the future. The blighting influences on the neighborhoods and parking within the right-of-way and on private property were two of the issues raised the most. Chair Harris added that the issue of trash and debris was also raised a number of times, but the comments seemed to be focused on a few derelict properties. Mr. Stewart said the City has a few tough cases that are difficult to prosecute, but they are trying to come up with a method of handling these particularly difficult situations.

Commissioner McClelland requested further information regarding the volunteer breakfast that is scheduled for April 22nd at 7:30 a.m. in the Shoreline Room. Mr. Stewart said this is a free breakfast sponsored by the City to honor Shoreline's volunteers. All of the Commissioners have been invited to attend.

Commissioner Hall asked if the Planning Commission has the authority to amend a docketed request for a Comprehensive Plan amendment. Mr. Stewart answered affirmatively. Commissioner Hall referred to Page 15 of next week's Commission Packet, which shows an amendment to the current Comprehensive Plan land use designation. It shows mixed-use along Aurora, with a large area of high density residential and a narrow strip of public open space connecting Aurora Avenue to the south end of Echo Lake and to the Interurban Trail. While the Comprehensive Plan's description of public open space is not necessarily what one might expect, he asked if it would be possible for the Commission to accept the

portion of the docket that recommends changing the high-density residential area to mixed-use, but not change the public open space to mixed-use. Mr. Stewart answered that the Commission does have the authority to do this, but the City Attorney might have some concerns about this type of action. He explained that this is a situation where the City has a designation of public open space on private property, and the Comprehensive Plan designation states that the underlying zoning would remain. While the Comprehensive Plan designation would not take away any development rights, the property could be open for future acquisition by the City. Again, he cautioned that the City must be careful that they not use their regulatory power to take private property. He said staff's recommendation is that the property be designated as private open space.

Chair Harris said he spoke with Mayor Hansen regarding the Commission's request to meet with the City Council at a dinner meeting. He indicated that the City Council had actually considered the need to meet with the Commission. He suggested that the joint meeting be held as soon as possible. Mr. Stewart advised that staff would work to schedule the dinner meeting.

Mr. Stewart reported that the City Council has scheduled a meeting with the Innis Arden group on April 19th. The Commissioners are invited to attend, as well. He said staff would notice the meeting as a Planning Commission meeting, just in case a quorum of Commissioners are in attendance.

Commissioner Phisuthikul requested more detail about the Point Wells property that was recently sold. Mr. Stewart referred to the letter that was provided to each Commissioner regarding the sale of Point Wells. The letter provides all the information staff has on the matter to date.

11. AGENDA FOR NEXT MEETING

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

12. ADJOURNMENT

The meeting was adjourned at 9:55 p.m.

David Harris
Chair, Planning Commission

Jessica Simulcik
Clerk, Planning Commission