

**CITY OF SHORELINE**  
**SHORELINE PLANNING COMMISSION**  
**SUMMARY MINUTES OF REGULAR MEETING**

May 21, 2009  
7:00 P.M.

Shoreline Conference Center  
Mt. Rainier Room

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**Commissioners Present**

Chair Hall  
Vice Chair Wagner  
Commissioner Behrens  
Commissioner Broili  
Commissioner Kaje  
Commissioner Kuboi  
Commissioner Perkowski  
Commissioner Piro (Arrived at 7:04 p.m.)

**Staff Present**

Joe Tovar, Director, Planning & Development Services  
Steve Cohn, Senior Planner, Planning & Development Services  
Steve Szafran, Associate Planner, Planning & Development Services  
Paul Cohen, Senior Planner, Planning & Development Services  
Flannery Collins, Assistant City Attorney  
Jessica Simulcik Smith, Planning Commission Clerk

**Commissioners Absent**

Commissioner Pyle

**CALL TO ORDER**

Chair Hall called the regular meeting of the Shoreline Planning Commission to order at 7:03 p.m.

**ROLL CALL**

Upon roll call by the Commission Clerk the following Commissioners were present: Chair Hall, Vice Chair Wagner and Commissioners Behrens, Broili, Kaje, Kuboi and Perkowski. Commissioner Piro arrived at 7:04 p.m. and Commissioner Pyle was absent.

**APPROVAL OF AGENDA**

The agenda was accepted as presented.

**DIRECTOR'S COMMENTS**

**Vision and Framework Goals**

Mr. Tovar announced that the Vision and Framework Goals were adopted by the City Council on May 11<sup>th</sup>, and a hard copy of the final document was provided to each of the Commissioners. A formal copy would be distributed at a later date for inclusion in their Comprehensive Plan binders. He noted that the City Council held a lengthy discussion and made some adjustments to the draft that was forwarded to

them by the Commission. For example, they decided to adjust the language to remove all references to tall or high-rise buildings. Instead, the language describes Aurora Avenue as being Shoreline's "grand boulevard," with a thriving corridor and a variety of shops, businesses, eateries, entertainment, and clusters of mid-rise buildings. There was also a fair amount of debate about what would be considered mid-rise buildings. Staff explained that in all discussions with the Planning Commission, mid-rise meant a maximum of six stories or 65 feet. The City Council eventually decided not to provide any further clarification and leave the issue to be sorted out as part of the Commission and City Council's future work programs.

Mr. Tovar pointed out that the City Council adopted a new Framework Goal 18, which encourages master planning for the Fircrest Campus to protect residents and encourage energy and design innovation for sustainable future development. Other Framework Goals were modified, and he encouraged the Commissioners to review the adopted language since it would be referred to frequently over the next few years.

### **Development Code Amendment for High School Building Heights**

Mr. Tovar reported that after making a few adjustments, the City Council adopted the code amendment to allow higher building heights for high schools. Mr. Cohn explained that a change was made to make it very clear that the base height would be 50 feet, and HVAC and other mechanical equipment would not be allowed to extend above 65 feet (50 plus 15). In the case of the fly space for the theater, mechanical equipment would not be allowed to extend beyond a height of 72 feet. Mr. Tovar advised that copies of the amendment would be forwarded to the Commission for their Development Code binders.

### **Midvale Demonstration Area**

Mr. Tovar reported that after a public hearing, the City Council adopted an ordinance dealing with interim regulations for the Midvale Demonstration Area (portion of RB-zoned land between 175<sup>th</sup> and 185<sup>th</sup> Streets). The new rules would be applicable for the next six months and establish a maximum density of 150 units per acre. They adopted the staff's recommendations with respect to administrative design review, design standards, built green requirements, electrical vehicle plug in provisions, and retail uses on the ground floor. He reminded the Commission that they discussed all of these elements as part of their review of the Ridgecrest Neighborhood zoning, which was adopted unanimously by the City Council. He noted that some of the Councilmembers suggested that building heights gradually decrease as properties approach the residential neighborhood to the east. It was very late when the City Council took action. When the new language was prepared, it was not consistent with the City Council's intent. Staff would present an amendment to the ordinance at the City Council's next meeting that clarifies their intent.

### **City Council's Annual Retreat**

Mr. Tovar reported that the City Council held their annual retreat, where they adopted ten City Council goals for the coming two years. It was discussed that Goal 1 (Develop a shared vision that incorporates the environmental sustainability, housing and economic development strategies into the Comprehensive Plan) has been accomplished. Therefore, the City Council changed the action verb from "develop" to

“implement,” and they added bullets to talk about what that means. He noted that the Commission’s work program has already been put together for 2009 and a portion of 2010. Now they need to review their work program for the remainder of 2010, as well as 2011, to decide how they will put together the pieces associated with the Comprehensive Plan Update.

### **APPROVAL OF MINUTES**

Commissioner Kaje referred to Page 3 of the minutes, where he was attempting to summarize Mr. Cohen’s earlier remarks. His understanding was that a property owner could cut 80% of trees on any particular property according to the current retention limits, and then three years later go back and cut 80% of what is left. He recalled that he provided an example of a site with 25 trees, with 20 removed in one development action. The current code would allow the property owner to come in three years later for a permit to cut down four of the remaining five trees. Mr. Cohen confirmed that was his understanding of how that chain of decision could play out. He asked that the minutes be corrected to capture this important clarification. He agreed to submit specific language to the Planning Commission Clerk to update the minutes.

The minutes of May 7, 2009 were approved as corrected.

### **GENERAL PUBLIC COMMENT**

**Laethan Wene, Shoreline**, invited the Commissioners to, “Perform in Shoreline Live” events, which are sponsored by the Citizens with People with Disabilities to share their gifts and talents. The events are scheduled for May 27<sup>th</sup> and June 3<sup>rd</sup>.

**Les Nelson, Shoreline**, expressed concern about how the City is viewed by those outside the City. While he wants to see development in the City, it should be done in a planned way. Rather than considering planning matters on a case-by-case basis, he suggested the City do their planning upfront as mandated by the Growth Management Act.

### **QUASI-JUDICIAL PUBLIC HEARING ON REZONE AT 17802 LINDEN AVENUE NORTH (#201781)**

Chair Hall reviewed the rules and procedures for the quasi-judicial public hearing. He reminded the Commissioners of the Appearance of Fairness Rules, which requires them to disclose any communications they may have had about the subject of the hearing outside of the hearing (ex parte communications). He opened the hearing and invited Commissioners to disclose ex parte communications, and none were brought forward.

### **Staff overview and Presentation of Preliminary Staff Recommendation**

Mr. Szafran explained that the application is for a site-specific rezone for property at 17802 Linden Avenue North. He provided an overview of the Comprehensive Plan Map, which identifies the parcel as Community Business. The property is surrounded on the north, south and east by Community Business, with Linden Avenue directly to the west. Next, he reviewed the zoning map, which identifies the

subject property as R-48, with Office (O) zoning to the north, Regional Business (RB) to the east, and R-48 to the south.

Mr. Szafran provided an aerial overview of the subject property, which is currently developed with a two-story, 50-unit apartment complex. A medical/dental building is located to the north, and another apartment complex is located directly to the south. A triplex use is located to the west between the subject property and a single-family zone, and Doug's Cadillac car dealership is located directly to the east.

Mr. Szafran explained that as per the current development standards, the subject property would accommodate up to 130 dwelling units, with a height limit of 40 feet, a 5-foot setback from the adjacent parcels, and a 90% impervious area allowance. Based on the current cap of 110 units per acre, the proposed RB zone would accommodate up to 297 units with a height of up to 65 feet. The setbacks would be increased to 15 feet, and impervious surface would increase to 95%. He reminded the Commission of the five criteria they must review when considering rezone applications and reviewed each one as follows:

- **The rezone is consistent with the Comprehensive Plan.** Mr. Szafran advised that the rezone meets many of the goals and policies of the land use, housing, transportation and design goals and policies of the Comprehensive Plan as listed in the staff report. However, the following policies would need additional attention during the permitting stage:
  - **LU84** requires the City to consider the impacts of SEPA. However, because there is no development proposal, staff does not know what all the impacts will be.
  - **LU96** encourages the use of green building methods, which is something the City is striving to do. However, they do not currently have requirements for green building.
  - **LU108** requires developers to minimize the removal of healthy trees, and trees would be evaluated when a development proposal is submitted.
  - **T47** requires the monitoring of traffic growth on collectors, arterials and neighborhood collectors and keep volumes within reasonable limits. Staff knows that Linden Avenue North can handle the additional volume, but the intersection at 175<sup>th</sup> and Linden is currently operating at Level of Service D, with a projection of possibly failing by 2030 based on study that was included in the staff report.
  - **PR1** has to do with parks in the area, which there are not very many of.
  
- **The rezone will not adversely affect the public health, safety or general welfare.** Mr. Szafran explained that redevelopment of older housing units would provide safer, more efficient units that would ultimately improve the public welfare.
  
- **The rezone is warranted in order to achieve consistency with the Comprehensive Plan.** Mr. Szafran pointed out that the Community Business land use designation allows RB zoning, and adjacent land uses support RB zoning, as well. The site does not access any local streets, and recent zone changes in the area would support RB zoning, which would provide more efficient use of land in an appropriate area.

- **The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject rezone.** Mr. Szafran addressed each of the concerns raised by the public thus far as follows:

- **Traffic.** The Intersection of Linden and 175<sup>th</sup> Street is currently operating at a Level of Service D. When a specific project is known, mitigation would be required if the proposal trips a level of service threshold
- **Trees.** Trees are not evaluated as part of a rezone application because there is no specific building proposal. When and if a development is proposed, tree regulations would determine how many trees must be saved.
- **Loss of Affordable Housing.** The current apartments are not subsidized housing. The units are more affordable due to the age and condition.
- **Density.** The CB designation allows up to an RB zoning, which allows up to 110 dwelling units per acre. Permanent RB regulations may change the maximum permitted density.

Ms. Collins reported that the City received a lot of comments regarding SEPA. She explained that the SEPA appeal period is 14 days after the SEPA Determination has been issued, and SEPA Appeal hearings are typically combined with rezone hearings. Because no SEPA appeals were filed, challenges related to SEPA are outside the scope of the rezone hearing. The purpose of the hearing is to review the application based on the rezone criteria.

- **The rezone has merit and value for the community.** The proposed rezone would allow greater residential density in an appropriate area adjacent to high-intensity uses and away from single-family homes. New buildings would have to comply with transition area requirements and the densities of the RB zone are currently capped at 110 units per acre. In addition, the rezone would provide an opportunity to accommodate more multi-family units in an area not immediately adjacent to single-family neighborhoods and in close proximity to schools, services and transportation.

Mr. Szafran summarized that staff is recommending approval of the rezone of one parcel located at 17802 Linden Avenue North from R-48 to Regional Business (RB).

### **Applicant Testimony**

**Brian Robinson, Garden Partners, LLL, Applicant,** said both he and his father (business partner) are residents of Shoreline. He is a graduate of Shorewood High School, which is located less than one block from the subject parcel. He explained that the existing buildings are nearly 60 years old, and they have asbestos and are failing in a number of areas (windows, roofs, etc.). Ultimately, they will need to be replaced. He advised that they are trying to redevelop the property with some sense of a plan and goal. The general public doesn't always understand that many factors determine when new buildings can be constructed, such as neighborhood demand, market forces, financing, and whether the new project would ultimately be better. He explained that the rental rates for the existing units are low because the buildings have been failing. In addition, they have issues related to loitering, gang activity, violence, etc. They believe it would be inappropriate to maintain the existing structures forever, and they know they must do something at some point.

Mr. Robinson said they have reviewed the market and what the existing zoning would allow, and there are not a lot of options at this time because there is not a huge amount of financing to spur new development. They have taken some steps to get the buildings through their last years. They are in the process of painting the complex and increased the gardening budget. They are also replacing some window and utilities to make the building a better contributor to the community for its remaining life (five to seven years). However, in the long range, they are looking for greater flexibility to proceed with a newer, nicer and better development than what currently exists. He summarized that increased density would offer greater flexibility to develop a project that provides a benefit to the community. He said they do not plan to maximize the use because of the single-family development that is located within close proximity. In addition, market factors would prohibit them from developing to the maximum density allowed by the RB zone. While some people would lose their rental units when redevelopment occurs, others would gain a new home. He noted that the property has been mismanaged for a decade.

### **Questions by the Commission to Staff and Applicant**

Commissioner Piro emphasized that although SEPA concerns are beyond the Commission's purview as part of the hearing, all of the communications that were received have been made part of the record.

Commissioner Kaje pointed out that Linden Avenue North is a neighborhood collector, which is not a type of arterial but is a local street according to the Comprehensive Plan. Mr. Szafran replied that the Transportation Master Plan does not identify this part of Linden Avenue as a local street. Commissioner Kaje again pointed out that the Comprehensive Plan identifies Linden Avenue as a neighborhood collector, which is a local street. Mr. Szafran agreed that there are conflicting statements in the two documents. For the purpose of this application, staff would refer to the Comprehensive Plan, which identifies the street as a local street. Therefore, a Director's decision would be required.

Commissioner Kuboi invited Mr. Szafran to review the relevance of the proposed rezone to the Town Center Subarea Plan. Mr. Cohn reminded the Commission that there is no subarea plan in place at this time, but the property is located within the study area. Mr. Tovar emphasized that the Planning Commission is conducting the rezone hearing because the property is located within the study area. He reminded the Commission that the City Council decided recently that the Hearing Examiner would hear all quasi-judicial rezones, except those that are within a subarea plan shown on the work program.

Commissioner Piro noted that some of the public comments suggested that an action should be delayed until the subarea plan is completed. He asked Mr. Robinson to address why he is coming forward with his rezone proposal rather than waiting until the subarea planning process is completed. Mr. Robinson replied that he has struggled with the fact that Shoreline doesn't have a high-density residential zone. This is not a business site. They know there are likely to be changes and amendments to the RB zoning language throughout the next few years. Their goal is to work with the City in preparation for what they want to do later. He explained that a huge amount of money must be put up front to try and meet the zoning standards, and they felt it was very appropriate to approach the City early and work with them while the Town Center Subarea Plan is being put together and while they are still a few years away from development. Their goal is to address the zoning and density as early as possible. Once they know the outcome of zoning and density, they can work more specifically on development plans and end up with a better product that is less adversarial.

Commissioner Behrens reminded the Commission that they must take action based on what an RB zoning designation would allow to occur on the site. The property owner could sell the property at any point, and someone else could come in with a whole different plan that pushes development to its maximum level. As long as a development proposal meets the current development standards, they could build something completely different than what Mr. Robinson is considering. Mr. Robinson said that based on the market force, it would not be possible to construct a project that maximizes the density. It would require a tremendous amount of underground parking and would meet significant opposition from the community. Ultimately, they believe it would be in the community's best interest to encourage reasonable development on the site, knowing that it would not likely be possible to build a six-story, 300-unit building. Again, Commissioner Behrens pointed out that if RB zoning is approved, then a property owner would be allowed to construct a 6-story building with almost 300 units. Mr. Robinson said this would be subject to the design, code requirements, SEPA, etc.

Commissioner Behrens referred to LU8, which talks about continuing to provide low-cost housing. He noted that although the current structure is old and in need of repair, it is one of the largest multi-family sites in the area that provides affordable rental opportunities. He invited staff to respond to how they foresee the proposed rezone would be consistent with this policy. Mr. Szafran clarified that LU8 actually encourages a variety of types and styles of housing to meet the future needs of Shoreline citizens. Mr. Cohn added that the people they expect to live in Shoreline in the future are going to be singles, seniors, singles with children, and starters. These people will all want smaller units. The idea of constructing a building with more units and some of them smaller would actually support LU8. Again, Commissioner Behrens asked how the proposed rezone would comply with the affordable housing policy H15, and ensure that a proportion of housing created through an increase in permitted density is priced to accommodate low and moderate-income households. Mr. Szafran explained that this policy is supported by the Development Code, which allows an increase in density if a developer provides affordable housing.

Mr. Tovar clarified that the policies in the Comprehensive Plan provide direction, and when the Commission begins their work on the subarea plan, they will consider how to implement the various policies, including how to retain and increase low to moderate-income housing. However, the issue is less on point with the rezone that is currently before the Commission.

Commissioner Broili inquired regarding the City's timeline for completing the Town Center Subarea Plan. Mr. Tovar said the City Council's work program identifies adoption of the plan in February 2010.

### **Public Testimony or Comment**

**Debbie Kellogg, Shoreline**, distributed materials to the Commission, which were identified as Exhibit 1. The materials included photographs from various locations on Linden Avenue, Page 2.2 from the Transportation Master Plan regarding street classifications, and the street classification map from the Transportation Master Plan.

Ms. Kellogg advised that she had originally planned to file a SEPA appeal, but she did not because she was unable to obtain the necessary public records in a timely manner. She explained that although she submitted a public records request on April 23<sup>rd</sup>, it didn't get to the City Clerk's Office until April 27<sup>th</sup>.

She didn't get the records until April 28<sup>th</sup>, and the appeal had to be filed by April 29<sup>th</sup>. She did not have time to prepare the appeal. She noted that another appeal could be filed at a later date.

Ms. Kellogg referred to Mr. Szafran's comment that Linden Avenue North was a collector arterial based on the Transportation Master Plan. However, the map in Exhibit 1 identifies the street as a neighborhood collector street. Therefore, the Comprehensive Plan and Transportation Plans are consistent. She referred to the description from the Transportation Master Plan (Exhibit 1) of local and arterial streets, which makes it clear that Linden is a local residential street. She emphasized that the Commission does not have to make a recommendation tonight; they can wait two weeks.

**Michele Moyes, Shoreline**, said some of her family members have lived in the Garden Park Apartments (subject property) for years. Her sons went to school with families who lived there, as well. This complex is the melting pot of Shoreline, with immigrants, single mothers, etc. They live there because it is affordable. For them to lose their homes would be horrible, and there is no where else for them to go in Shoreline. She noted that these children help support the school district, and she doesn't want the property to be rezoned to RB. If the property is rezoned to RB and then sold, the new developer could build anything that is consistent with the RB zone. She recalled that one of the Planning Commissioners has previously spoken in favor of waiting until the Town Center Subarea Plan has been completed before considering for this area. She expressed her belief that loitering would occur regardless of the type of apartment building. The gang activity would always exist, as well.

**Les Nelson, Shoreline**, pointed out that his SEPA comments were included in the staff report. He said he did not feel he had an adequate opportunity to make an appeal because the comments he sent in on the SEPA checklist were not considered and he did not receive a response back from staff as to how they had been addressed until after the appeal date passed. Although SEPA does not require the City to address or answer the comments, they do have to be considered. Although SEPA is not an issue before the Commission at this time, he is bothered by the City's current process.

Mr. Nelson emphasized that the City Council made the decision that the Commission would continue to review rezone applications for properties that are located within a subarea plan boundary. He reminded the Commissioners that they must have a basis for making a judgment regarding a rezone application. He questioned why the City Council would ask the Commission to evaluate rezone applications within subarea plan areas rather than the Hearing Examiner. He suggested the City Council had assumed the Commission would have started the process by now. Again, he suggested there needs to be coordinated planning by getting some idea of what they want in the town center, and then they can make a judgment as to whether high density should be allowed or not.

**Lisa Sorowiec, Shoreline**, said she is the co-chair of the Richmond Highlands Neighborhood Association. She explained that when a neighbor provided a copy of the SEPA notification, she forwarded it to her neighbors. She heard back from some of them who were concerned that if the property is rezoned, what would stop it from being sold and redeveloped into something much more intense. There was not a lot of concern about higher density housing, but there could be problems associated with extra traffic on Linden Avenue North. John Marek spoke at their association meeting, and he indicated the City is currently working to make the sidewalks on Linden Avenue North accessible for wheelchairs without having to go out in the street. Unless this problem is corrected, there could be a safety hazard with increased traffic, particularly because there are several group homes in the



area. She said she talked to a property management professional who indicated it would make sense to rezone the property now because it would make it more valuable and allow the property owner to obtain a loan that he might not otherwise be able to get with the current zone. She said she does not want to begrudge the property owner the opportunity to obtain financing if he does what he says. It sounds like he wants to be a good neighbor and develop a project that is nice and replaces a failing structure.

**Kathy Keil Crozier, Shoreline**, described the location of her residential property, which is in the center of the area that is being discussed. She explained that the F-shaped cul-de-sac has 15 houses on it, and the only access comes from Linden Avenue North. She suggested that whether or not it is listed as an arterial, Linden Avenue North is becoming a defacto arterial. The proposed rezone would result in too high of density for Linden Avenue North to accommodate. She said residents already have to deal with high school traffic nine months a year, and it is a bad idea to allow twice as much density. She agreed with Ms. Sorowiec that if the rezone is approved, the resell value of the property would be increased dramatically should they decide to sell. While she would not be opposed to redevelopment, she felt the proposed rezone would result in too much density for the neighborhood and the road.

**Dwight Gibb, Shoreline**, submitted a written copy of his remarks, which were entered into the record as Exhibit 2. He said he represents the Shoreline Coalition, which advocates development that is well planned. He said the Coalition was pleased that the City intends a subarea plan for the Town Center, so as to include all the amenities that can make a city beautiful. However, they are disappointed that the City is now progressing with specific permits that do not emphasize aspects of urban planning other than buildings. He emphasized that each development reduces the space remaining for future planning, generates variables that may intersect with others later on, and can set unfortunate precedents that may be replicated in the future.

Mr. Gibb pointed out that the Midvale Demonstration Area Proposal was a response to the interests of one developer, yet it opens eleven acres to a density of 150 dwelling units per acre for a total potential of 1,650 small apartments to be inserted into an environment without adequate provision for traffic flow, open space, etc. The proposed rezone, which is also a response to the interests of one developer, would extend this same pattern. Mr. Gibb said the Coalition recommends that the City complete the Town Center Subarea Plan before approving development projects that would change density. In order for the Commission and City Council to make wise judgments, planning for the subarea needs to be formulated; perhaps not complete, but at least in terms of basics to address the following:

- Where is density appropriate?
- What density is appropriate?
- What traffic improvements are needed?
- What infrastructure is needed?
- What about greenery, recreation, art and public life?
- How does the Town Center Plan coordinate with adjoining areas?

Mr. Gibb concluded that when a subarea plan has been completed, the Commission and staff would have the tools they need for true urban design. Their work would be easier, and the results would be better. He suggested the Commission postpone a recommendation on the rezone application until the subarea plan has been completed. He recalled that Mr. Tovar pointed out that the affordable housing

policy would not be considered as part of the rezone application, but would be an issue of consideration during the subarea plan discussions. He suggested it would make more sense to address the issue of affordable housing during the planning period and before the permitting period.

**Laethan Wene, Shoreline**, said he lives in the Linden Highlands Apartments on Linden Avenue North, which is near the subject property. He said the residents of this apartment building are wondering where they will live if the property is redeveloped. Some of them are mentally disabled and physically challenged and would have a difficult time getting around.

**Dan Thwing, Shoreline**, noted that the intersection at Fremont Avenue and 175<sup>th</sup> Street is heavily congested when kids start walking across the road to get to school, and residents of West Shoreline must pass through this intersection to get to the freeway. All of the additional traffic that would result from the proposed rezone would make the situation even worse, especially given that the peak traffic times would coincide with when school starts and ends. This is a very sensitive area with school crosswalks, busses, etc.

**Lisa Thwing, Shoreline**, agreed that traffic is already a major problem, particularly during the peak morning and evening hours. They are now looking at a potential expansion of the CRISTA property, the James Alan Salon, the Masonic Lodge, and the Aurora Corridor Project. All of these would have an impact on their ability to access their neighborhood. She asked the Commission to keep in mind that more density would not work for the neighborhood.

**Larry Heesacker, Edmonds**, said he is the Chair of the Trustees at Ronald United Methodist Church. While their property is located at 17839 Aurora Avenue North, it goes clear through to Linden Avenue North. He said he goes to the church several times a day at all hours, and he has never had any problems accessing it from Linden Avenue. The high school students cut through their back parking lot, and sometimes they litter. The existing buildings probably have high maintenance problems, and he would like to see a new building replace the 60-year old decrepit structures. This would result in a larger tax base and more students in the school. He noted that the apartment complex further down the street is four-stories high, so a few additional stories would probably not make that much difference. It would probably not be economically feasible to construct a building under the density allowed in the current R-48 zone. Again, he said he would like the project to go forward.

### **Final Questions by the Commission**

Commissioner Piro said that while there has been some confusion related to the status of Linden Avenue North, the information provided in the staff report indicates that the nearby intersection is currently functioning at Level of Service D. If the rezone is approved and the project is developed to the capacity available, the street would continue to function as Level of Service D. He asked if that would remain correct even with the confusion regarding the classification. Mr. Cohn said the level of service classification for the street would be determined once a development proposal has been submitted.

Commissioner Piro asked if the City or a cooperative agency would get involved in the placement of existing residents when affordable housing units are eliminated. Mr. Cohn answered that the City does not have the current capacity to provide this service.

Commissioner Piro asked if the City would have any justification to delay a decision related to the rezone until the subarea planning process has been completed. Mr. Tovar answered that if the Commission's review of the rezone criteria and the facts and testimony provided leads them in that direction, they could recommend a delay. However, they cannot ignore the criteria just because they think it would be better to wait.

Commissioner Piro asked if there are opportunities, through the rezone process, to look at issues of transition on the subject property so the height and character of the new development would blend in better with the neighborhood to the west. Mr. Tovar reminded the Commission that the City Council has asked them to review and make a recommendation for the adoption of permanent RB regulations by November 12<sup>th</sup>. As part of this discussion, the Commission could consider other types of conditions or standards that would apply not only to the subject property but to all properties in the RB zone. However, he cautioned that the Commission does not have the ability to condition the rezone that is currently before them. Mr. Cohn added that the current RB standards provide for a transition from single-family zones.

Commissioner Kaje pointed out that both the written and oral staff report mentioned that the RB zone is not intended to be located immediately adjacent to single-family zones, yet the subject property is located across the street from a single-family zone. Mr. Szafran clarified that properties that are located across the street are not considered "immediately adjacent."

Commissioner Perkowski clarified that staff has provided clear guidance that the discussion should not become project specific in terms of a development proposal. In addition, he suggested it would be irrelevant to consider the condition of the existing apartment complex and the fact that it is currently supplying affordable housing. Mr. Szafran agreed that the City does not have the ability to stop a property owner from redeveloping the property under the current zoning. Chair Hall pointed out that it would be possible for the City to adopt codes that require some form of inclusionary component to replace the loss of housing. However, at this time, the City does not have this type of code in place. While this is a good long-term policy issue to address at some point, it is not appropriate to consider as part of this rezone application since the property could be redeveloped under the current regulations.

Vice Chair Wagner asked if it would be possible for the subject property, if zoned RB, to join with the adjacent property that faces Aurora Avenue North so that commercial development could span the two lots. Mr. Cohn agreed that would be possible. However, if that were to occur, staff would use design and other tools to make sure the main access would come from Aurora Avenue North rather than Linden Avenue North.

Commissioner Kaje pointed out that there is an official back access to the Cadillac dealership from Linden Avenue North. That means the City is allowing access to a major commercial center on a busy arterial from a local street, and this has an impact to the overall traffic load on Linden Avenue North. He requested information from staff as to why this access was allowed to occur. Mr. Cohn said staff cannot speak to how the secondary access came to be, but he agreed it is possible to access the dealership from Linden Avenue North. However, the signage on the dealership property makes it clear that traffic flow is supposed to go onto Aurora Avenue North.

Mr. Tovar explained that a SEPA review would be required for any development proposal under the current zoning, and the review would address impacts and traffic circulation by imposing conditions

such as limited access. Listening to tonight's discussion has helped staff think about what should be addressed as part of the permanent RB regulations. However, in the near term, the only way to address impacts would be through SEPA as part of permit mitigation.

Commissioner Behrens explained that, originally, there was a gravel access through the rear of the Cadillac dealership to Linden Avenue. A part of their parking lot adjacent to the old gravel right-of-way has been fenced off and is not being used. He was told by someone at the Cadillac dealership that the City encouraged them to pave the access because they thought it would work better. It looks like the dealership has not used the gravel area for 20 years, and the access was probably a road leading to the old storage lot.

Commissioner Broili asked the applicant how he would be impacted if the Commission were to postpone their recommendation for a year until the Town Center Subarea Plan is in place and then adjust the request based on the adopted plan. Mr. Robinson pointed out that he started the process three years ago as part of a 50/50 partnership when the economy was booming. They could have demolished the buildings and constructed 80 town homes and sold them for a ridiculous amount of money. This would not have resulted in affordable housing, and it would not have solved any problems in the neighborhood. He noted that in the two years he has been the controlling partner, four ceilings in bedrooms have fallen in due to poor roofs and insulation and this has created a safety situation. Investing money to make the buildings financially viable in the short term would enable them to raise some rents to improve cash flow to pay for property taxes and improvements to hold back the transition period.

Again, Commissioner Broili inquired how the application would be impacted by waiting one year to complete their plan. He noted that this delay would not prohibit the property owner from making repairs and upgrades to the existing buildings. Mr. Robinson said it would make it a little bit more difficult to finance improvements, but it would be doable. He is asking for the rezone now because he believes there is value in having some certainty to the plan, and postponing the rezone would take this value away. If things turned around in the next three years, they will be wondering why they waited to proceed with the rezone. He summarized that the purpose of the rezone application is to provide some certainty. Other than derailing a plan that he's worked on and paid for and has some value to the community, he wouldn't be impacted by the delay because he doesn't anticipate redevelopment to occur in the near future. However, a rezone would allow them to start developing building plans now rather than waiting until the last minute.

Chair Hall noted that the Central Shoreline Subarea Plan was scheduled for adoption before he came onto the Commission over five years ago. Mr. Tovar said the City was scheduled to complete the plan in 2002. Chair Hall agreed there is value in doing advanced planning, but there are also risks that need to be considered. Commissioner Piro recalled that when the Comprehensive Plan was last updated, the Commission forwarded a transmittal of the Central Shoreline Subarea Plan with their recommendations, and the document was included as an appendix in the Comprehensive Plan. It is accurate to say the Commission's intent was that the document be adopted into the plan, but that did not occur.

### **Close Public Hearing**

The public portion of the hearing was closed.

## Deliberations

Commissioner Kaje referred to the five criteria the Commission must consider when reviewing rezone applications and provided the following comments:

- **The rezone is consistent with the Comprehensive Plan.** Commissioner Kaje said he appreciates that staff identified policies with which the proposed action is consistent, as well as those that would need additional attention during the permitting stage. However, he is uncomfortable that staff's interpretation that inconsistent elements are simply to be dealt with at the permitting stage. The evaluation of consistency should in his view reflect a balancing of these considerations.

Commissioner Kaje referred to Item 11 on Page 28 of the staff report, which refers to Policy LU36 and talks about providing opportunities and amenities for higher-density residential communities to form within or adjacent to the Aurora Corridor in harmony with the surrounding neighborhoods. He commented that higher-density residential is already supported by the site, but perhaps not the maximum density residential. He urged the Commission to not forget about harmony with surrounding neighborhoods when they talk about consistency with LU36.

Commissioner Kaje suggested there are additional policies to consider as well. For example, H3 states that the City should maintain and enhance single-family and multi-family residential neighborhoods so they provide attractive living environments with new development that is compatible in quality, design and scale within neighborhoods and that provides effective transitions between different uses and scales. He said this goal clearly raises some questions with regards to the rezone proposal in that there are immediately adjacent neighborhoods, as well as some single-family homes across the street.

Commissioner Kaje referred to LU31, which says that single-family neighborhoods should be protected from traffic, noise, crime and glare impacts of the Aurora Corridor through design standards and other development criteria. He particularly noted the traffic element of this policy.

Commissioner Kaje referred to LU108, which talks about trees. He disagreed with the staff's comment that absent a specific proposal, the City cannot evaluate the impact on trees. He noted that, unlike residential zones, there are currently no regulations that limit the number of trees that can be removed from an RB zoned property. That doesn't mean that trees cannot be retained, but the way it is framed in the Development Code, retaining trees would warrant some kind of density bonus, etc.

Commissioner Kaje referred to T47 and said one scenario described in the packet suggests a 27% increase in daily traffic on Linden, which is a fairly large increase in an area that has a poorly performing intersection.

- **The rezone will not adversely affect the public health, safety or general welfare.** Commissioner Kaje emphasized that the rezone criteria must be established by substantial evidence, and staff's response is a little bit of a chicken and egg answer. Staff asserts that because they are using the Growth Management Act and Comprehensive Plan designations and the applicable development standards are based on that, the proposal can't possibly be contrary to the public health, safety or

general welfare. He observed that is not looking very deeply into what this project might mean for the public health, safety or welfare.

Commissioner Kaje said that while he can appreciate Mr. Robinson's description of the current condition of the buildings, the question before the Commission is the rezone and not about whether or not the buildings should be replaced or upgraded. He expressed his belief that the proposal has not met the substantial evidence criteria.

- **The rezone is warranted in order to achieve consistency with the Comprehensive Plan.** Commissioner Kaje said that, generally, the response they get from staff is a list of ways a rezone is consistent with the Comprehensive Plan, but the criteria is phrased to inquire if the rezone is warranted to achieve consistency. He noted that the current zoning of the site is not inconsistent, so the rezone is not needed to achieve consistency with the plan.
- **The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject rezone.** Commissioner Kaje pointed out that an RB zoning designation would allow buildings up to 65 feet in height. The site is unique because it is elevated from the sidewalk. The houses on the other side of the street are a bit lower than the sidewalk. In reality, the buildings would appear much taller from the houses on the other side of the street.
- **The rezone has merit and value for the community.** Commissioner Kaje disagreed with staff's suggestion that the criteria was met since the rezone provides an opportunity to accommodate more multi-family dwelling units in an area not immediately adjacent to existing single-family neighborhoods. Perhaps the parcel is not immediately adjacent to single-family parcels by staff's definition, but it is certainly immediately adjacent to an existing single-family neighborhood.

#### **Vote by Commission to Recommend Approval or Denial or Modification**

**COMMISSIONER BROILI MOVED THE COMMISSION RECOMMEND THE CITY COUNCIL APPROVE THE REZONE OF PROPERTY LOCATED AT 17802 LINDEN AVENUE AS PROPOSED BY STAFF. COMMISSIONER PIRO SECONDED THE MOTION.**

Commissioner Behrens agreed with Commissioner Kaje's observations about the scale of the building. He felt a 65-foot building would be out of character with the surrounding properties on Linden Avenue North.

Commissioner Piro said he appreciates Commissioner Kaje working through the rezone criteria, which revealed there are a lot of merits associated with the project, but they are not necessarily absolute. One of his concerns is related to the issue of compatibility. While on one hand, the rezone has merit when you look at the development pattern of adjacent properties along Aurora Avenue North, but there is a point where it starts to unravel when you look at the adjacency of the neighborhood immediately to the west. If the City had a method to deal with transition, the rezone proposal would be a lot more palatable.

Commissioner Broili said Commissioner Kaje summarized most of his concerns. He noted that, by the applicant's own admission, redevelopment is something they want to do within the next five to seven

years. Waiting at least until the Town Center Subarea Plan is in place would not preclude them from reapplying for a rezone that is adjusted to better meet the needs of the surrounding area. He said he could not support the rezone proposal at this time.

Commissioner Perkowski supported Commissioner Kaje's summary of the criteria, particularly the criteria related to whether or not the rezone is warranted in order to achieve consistency with the Comprehensive Plan. He said he believes the current zoning is already consistent with the Comprehensive Plan.

Chair Hall recalled the work the Commission did with the Ridgecrest Commercial Neighborhood to address the issue of transition. He said he looks forward to having a tool that can be used citywide to deal with higher-density development. If it weren't for the issue of transition with the adjacent single-family neighborhood, the subject property would be a great place to add more units because it is located close to transit opportunities. There are benefits to allowing higher density on the subject property in terms of long-term planning, as long as it can be done in a way that provides certainty. Waiting until the Town Center Subarea Plan would be a great idea if he felt the City could commit to the property owners that the plan would get done and adopted. However, the City's track record in this regard hasn't been good.

Chair Hall pointed out there is a beautiful row of trees along the property line of the subject parcel. As part of their discussion related to the tree regulations, the Commission has discussed the idea of retaining trees within the perimeter setbacks. Tools may be available in the future to help deal with the rezone application better, but they are not all in place now. At the same time, he is very aware of the development cycle and the issue of trying to get financing and what it takes to do a proforma. He agreed with the applicant that five years does not seem like an unreasonable timeframe for getting the rezone because the project design and financing would depend upon it.

Chair Hall said that if they are going to look for clear findings that it would be warranted to achieve consistency with the Comprehensive Plan, the Commission needs to consider both the map and policies. For example, one thing to think about would be the energy efficiency of the buildings, the impervious area, and the environmental regulations. The current structures were built 60 years ago before the modern energy code and water efficiency requirements, etc. Affordability considers more than just the amount of rent, utilities need to be factored in as well. Newer buildings that meet the newer fire and energy code would be safer, and meeting the new drainage manual would result in less impervious area. The people downhill from the subject property are concerned about drainage issues and stormwater in the creeks in the Innis Arden Reserves. He summarized that the rezone proposal does have some potential benefits, and the question will become finding a balance.

Commissioner Kaje noted that RB is the most intensive designation the City has. He said he is not comfortable with the precedent of encouraging RB zoning into areas that really should be transitional. In the absence of a plan for this area, pushing the RB zoning further out does not strike him as a sound way to plan and develop the corridor.

Vice Chair Wagner pointed out that while the Commission has talked a lot about the impacts of increased residential density, they haven't considered the potential impact if the property were redeveloped into a commercial use. Although the staff has indicated they don't think this would be likely, she is inclined to agree with Commissioner Kaje's concern about the property's proximity to a

single-family neighborhood. She emphasized that they are not just talking about potentially increasing the density and height for residential uses, they are talking about the potential of completely different uses. She summarized that she is not as certain as staff that the property wouldn't be redeveloped into something other than multi-family residential.

Vice Chair Wagner underscored Chair Hall's comment that the Commission cannot guarantee that the Town Center Subarea Plan would be approved within the next year. Therefore, she questioned the appropriateness of asking the applicant to wait until the subarea plan has been adopted. She suggested the Commission should focus on whether or not the rezone would be appropriate given today's situation.

Vice Chair Wagner struggled with the fact that there is no residential density designation between R-48 and what would be allowed in RB. This ends up restricting the Commission's ability to accommodate anything else. She expressed concern about rezoning the property to RB now, only to decide later during the Town Center Subarea Planning process that is not what they want. She expressed her belief that given the traffic concerns and the safety of the high school students, the subject property might not be the most appropriate place for RB zoning with a maximum of 297 units.

Vice Chair Wagner reminded the Commission of their previous discussions about exploring the option of implementing form-based development codes. Rather than focusing on the number of units, form-based zoning would focus on the building mass, height, etc. While there are scenarios within the City where it might not matter what is constructed inside the box, this is one location where the Commission should be concerned. Regardless of the City Traffic Engineer's initial projection regarding level of service at the light, she expressed concern about the potential impact of adding more cars on a small street. She suggested the level of service numbers do not really capture the unique characteristics of the neighborhood given its close proximity to the school. Although she agreed with Chair Hall that there are some positive aspects of the proposed rezone, her concerns cause her to believe it is inappropriate at this time.

Chair Hall said he actually would favor redevelopment of the property into commercial instead of residential uses, particularly given the City's economic development strategy and the Advisory Board's recent report to the City Council regarding the current economic situation. Commercial uses would result in a very different traffic pattern that would not be as concentrated during the AM/PM peak hours. He noted that the Vision Statement also calls for increasing economic development. He summarized that the impacts to the community would be different if the property were developed as commercial versus residential, but he is not convinced the impacts would be worse.

Commissioner Behrens recalled that as part of the Commission's discussion regarding the Vision Statement they talked about Aurora Avenue North being the City's signature place with restaurants, shops and people interacting. He noted that half the cars on the Cadillac dealership lot are Hummers, which will not likely be the case two years from now. While he anticipates the dealership would continue to operate in the future, it may be possible to combine a portion of the property with the property behind it to create a type of business corridor. This is what most people visualize when they think about a central area of the City.

Commissioner Behrens said that in order for form-based codes to work, the streets in front of buildings need to be wide to give the proper perspective. Linden Avenue North is such a narrow street and most



of the north end has no sidewalks and is not pedestrian friendly. It is not an area that would easily accommodate a building of this scale or size. If the road was wider, there would be a better sense of space.

Commissioner Piro said he does not necessarily think the proposal needs to satisfy each and every criteria 100%; the Commission must look for a balance. While he does not find the request unreasonable, he expressed frustration that they lack the tools to consider the proposal at this time. There are some clear challenges associated with the proposal that have caused discomfort, and it would be helpful if the Commission had the ability to consider a zoning designation between R-48 and RB.

Chair Hall reminded the Commission that they do have procedural tools at their disposal that would allow them a creative way to recognize the positive aspects of redevelopment of a property that would have value to the neighborhood. For example, if the City Council were to adopt the Commission's recommendation of denial, the applicant would have the ability to start the process over at a future date. In addition, the Commission could postpone the rezone proposal to a date certain, when they would have a clearer understanding of what the permanent RB regulations would be.

Commissioner Broili agreed with Chair Hall's suggestion, but recalled Commissioner Kaje's concern that an RB zoning designation would push the envelope of transition out. At some point, the City needs to provide a transition between RB and single-family residential zones. He suggested this is the single most important point the Commission must consider. Chair Hall pointed out that the northern most part of the site is across the street from R-6 zoning, but the bulk of the site is across from R-12.

Chair Hall asked the City Attorney to speak about the time constraints associated with the City taking action on a completed and submitted application. Ms. Collins advised that the target date in the code is 120 days from the time of application. If the Commission is seriously considering the option of postponing a recommendation on the proposal, she would like to take a recess to discuss the matter with Mr. Tovar. She expressed concern that delaying a decision for six months could subject the City to legal challenge, even if it would benefit the applicant.

Vice Chair Wagner asked Mr. Tovar to comment about other options available to the Commission for addressing their concerns. Mr. Tovar explained that the Commission would have two opportunities to address what they think should happen with the RB zone: the Town Center Subarea Plan and the permanent regulations for RB zones. While the City Council does not anticipate adoption of the subarea plan until February 2010, the permanent RB regulations should be in place before the interim ordinance expires on November 12<sup>th</sup>. Perhaps the Commission could address standards for transition, access, etc. as part of the permanent RB regulations.

**THE COMMISSION RECESSED THE MEETING AT 9:15 TO ALLOW THE CITY ATTORNEY TO CONFER WITH THE PLANNING DIRECTOR REGARDING THE ISSUE OF POSTPONING A RECOMMENDATION ON THE PROPOSED REZONE. THE MEETING WAS RECONVENED AT 9:25 P.M.**

Mr. Tovar summarized the Commission's frustration that until the permanent RB regulations or the Town Center Subarea Plan have been adopted, the Commission does not have the tools necessary to adequately address their concerns. He recommended that if the Commission were to recommend denial

of the application, they could also pass a motion directing the City Council to consider a city-initiated legislative rezone if and when additional tools are available. This would involve another public hearing before the Commission, and the citizens and property owners would be invited to participate. It would be a new action requiring a new SEPA determination.

**THE MOTION TO RECOMMEND APPROVAL OF THE REZONE FAILED 0-7-1, WITH COMMISSIONER PIRO ABSTAINING.**

**COMMISSIONER PIRO MOVED THE COMMISSION RECOMMEND A CITY INITIATED LEGISLATIVE REZONE AT A TIME WHEN MORE TOOLS EXIST, SUCH AS THE PERMANENT RB ZONING REGULATIONS, THE TOWN CENTER SUBAREA PLAN, THE NEW TREE REGULATIONS, ETC. COMMISSIONER BROILI SECONDED THE MOTION.**

Commissioner Behrens said he would vote against the motion. As part of the process of creating the Town Center Subarea Plan, the Commission or City Council could suggest zoning for the subject property. Therefore, the subarea plan could actually change the zoning regulations for properties inside of the subarea plan. If that is the next step the City would likely get to, the Commission would again have an opportunity to consider the appropriate zoning for the property without requiring an additional rezone hearing process.

Mr. Tovar reminded the Commission that they would conduct public hearings on the permanent regulations for all RB zones in the City this summer, and they need to formulate a recommendation to the City Council by no later than November 12<sup>th</sup>. In addition, the Commission would participate in the process of creating the Town Center Subarea Plan. They would start hearing from staff regarding this process in the early summer, and their discussion would carry on into the fall with a potential recommendation to the City Council by the end of 2009 or early 2010. The City Council's goal is to adopt the new subarea plan, with its implementing regulations, by February 2010.

Commissioner Kaje spoke against the motion. He said the Commission has raised many different issues of concern about the proposal. As optimistic as he is about the outcome of subarea planning and of the permanent RB regulations, he is not particularly optimistic that the City can provide a good enough list of tools that would allow all of these issues to be addressed before such a legislative rezone could happen. This could lead to the legislative rezone being proposed before all the issues of concern have been handled. He expressed concern about the uncertainty this would cause for the property owner and the City Council as to when they have met that bar. Rather than just one issue, there are several issues of concern to tackle. He noted the Commission cannot exactly articulate what needs to happen in the permanent RB regulations in order for the Commission to recommend approval of a legislative rezone. While he appreciates the Commission's desire to avoid additional expense for the applicant, he would vote against the motion.

Chair Hall said he is inclined to support the motion for reasons other than saving the applicant the expense of submitting another application. The bigger concern is that forwarding a unanimous recommendation of denial without providing additional comment would make it appear as though none of the Commissioners saw any merit to the proposal. While he respects that Commissioner Kaje has numerous issues with the proposal, the transition to the residential neighborhood across the street is the one main issue left in his mind. The rest is a balance between parking, traffic, affordability, etc. He

said he sees merit in continuing to look for opportunities for higher density adjacent to the City's primary signature boulevard or transportation corridor. He said he reviewed the Framework Goals and found there are both pros and cons. He said he wants to support the motion in order to send a message to the City Council that while they are not recommending approval of the rezone, they believe it does have some merit.

Commissioner Broili asked if the property owner would be required to pay the application fee again if the City were to initiate a legislative rezone. Mr. Tovar answered no. Commissioner Broili said he sympathizes with the desire to avoid having the applicant pay twice for the rezone.

Commissioner Piro agreed that it would be appropriate to revisit the rezone again after the permanent RB regulations, the Town Center Subarea Plan and the tree regulations are put in place to provide adequate tools to address the concerns. Again, he said he does not believe the Commission necessarily has to achieve a level of 100% certainty, but a level of reasonable comfort for the rezone to go forward. He said he sees a hierarchy of issues, with transition being a top priority. If this were resolved, some of the other benefits that have been articulated far outweigh any of the other concerns that have been discussed.

Commissioner Kaje observed that the Commission's record and lengthy discussion would make it very clear that they saw a lot of merit with the proposal but they struggled with how to deal with proposals of this type in the context of the vision, etc. He emphasized that the transition issue for him is not just about site, parcel, design, stepped back roof lines, etc. It's about transition of the intensity of use. Even if they change the RB zoning regulations, it would still be the most intense zone, and it would be inappropriate to push it out into an area that should be a transition area. The Commission should not forget the point that if the property were rezoned to RB, it could be redeveloped into something other than residential. The record will make it clear that the Commission wished they had more tools to work with, so the motion is not really necessary.

Commissioner Perkowski agreed with Commissioner Kaje that the record would provide enough of a message to the City Council regarding the Commission's discussion. He said he would not support the motion because he feels it is an unnecessary step. They could recommend a city-initiated legislative rezone at a later date when they have more information.

**THE MOTION FAILED 3-4-1, WITH COMMISSIONERS HALL, KUBOI AND PIRO VOTING IN FAVOR AND COMMISSIONERS WAGNER, BEHRENS, KAJE AND PERKOWSKI VOTING IN OPPOSITION. COMMISSIONER BROILI ABSTAINED.**

## **UNFINISHED BUSINESS**

### **Tree Regulations Discussion**

Mr. Cohen recalled that on May 7<sup>th</sup> the Commission reviewed tree code regulations from other jurisdictions in the area and provided feedback to staff on how they wanted to move forward. He specifically recalled the Commission discussed that all vegetative cover has many of the same environmental benefit as tree cover, solar access is becoming an issue, and there is a community desire to preserve prominent trees. He further recalled that he offered up a rough calculation of the City's

potential for reaching their goal of 40% tree canopy throughout the City. He noted that staff is working on a baseline tree canopy calculation for the City, and it should be available for the Commission's July 9<sup>th</sup> discussion.

Mr. Cohen advised that the purpose of this discussion was to review the purpose statements of different Shoreline code sections. He noted that the existing purpose statement in the tree code does not include some of the newer concepts discussed by the Commission. He reported that he would bring forward draft language for the purpose statement on July 9<sup>th</sup>. He reminded the Commission of their stated desire to talk about the purpose and intent of the tree ordinance before they start talking about the individual elements of the code. Also on July 9<sup>th</sup>, he would prepare visual information that displays three different alternatives for the retention/replacement section, which is the core of the tree code. He explained that how this section is handled would shape the other side issues such as hazardous trees, landmark trees, enforcement, etc. In the meantime, he encouraged Commissioners to contact him with their questions and/or additional insight.

**Nancy Rust, Shoreline**, said she read the Commission's minutes of May 7<sup>th</sup> and noted the their concern about the goal of a 40% tree canopy. She emphasized that this is just a goal. It won't happen right away, but it is still something the City should continue to work for. She said some Commissioners also expressed concern because the Shoreline Citizen Group's proposal was too punitive. She clarified that in order for the code to work well, there must be adequate enforcement. It is important that the penalty be high enough so it is not cheaper for someone to pay the fine than comply with the code. She noted their proposal would not exempt non-residential zones and would be applicable throughout the City. Ms. Rust said she lives in Innis Arden, and there is no reason why Innis Arden can't follow the same procedure that everyone else has to follow for hazardous tree. She noted there is always a risk with tall trees, since any healthy tall tree could fall in a bad storm. Ms. Rust said she would provide written comments to the Commission regarding the comments the Innis Arden Club's attorney said about the Shoreline Citizen Group, and particularly about her.

**Peter Eglick, Attorney for the Innis Arden Club**, requested that Mr. Fosmire hand out the letter he prepared for the Commission. He expressed disappointment that the materials provided by the staff to the Commission did not include anything that addresses the issues raised by Innis Arden. He cautioned that these issues should not be ignored. The Innis Arden Club believes there should be a reasonable standard and procedure for hazardous trees, and they suspect that Innis Arden is not the only property owner in the City that is asking for the same consideration.

Mr. Eglick emphasized that Innis Arden is very special, with 50 acres of reserve tracts and 300 to 400 acres of residential tracts that are all heavily treed. The regulations proposed by the Shoreline Citizen Group would place a disproportionate burden on Innis Arden. There must be a means for addressing this issue, or it will have to be worked out in some other forum. This would be to no one's advantage. He added that whether or not some of the trees are in reserve tracts, critical areas, residential tracts, etc. makes no difference to the constitution or legal issues of disproportionality and unreasonableness.

Mr. Eglick summarized that the Innis Arden Club is very unhappy with the way the process has proceeded to date. Calling the proposal before them the Citizen's Proposal is an insult to the large body of citizens in the City. He said he just received materials today from the Public Disclosure Act request he made about how the citizens proposal was created, and it is very disappointing. There were members

of the City Council, the Commission, and the community who intentionally and affirmatively expressed in their email that they were meeting behind closed doors to come up with a proposal that they didn't want Innis Arden or anyone else in the City to know about until it was ready to be presented to the City Council and a deal worked out with the Planning Director. He said the Innis Arden Club is willing to move ahead, but the issue of disproportionality must be addressed early in the process. This is not a matter of Innis Arden wanting to cut trees that shouldn't be cut; it is a matter of property rights that Innis Arden is entitled to. These property rights include mutual restrictive easements that have been in existence for more than a half century. The weight and importance of these rights have been upheld by the appellate courts of the State of Washington, and he asked that the Commission address and respect these rights and work with the Innis Arden Club.

Mr. Eglick noted that Mercer Island has a code provision that allows property owners to remove trees that are subject to covenants adopted prior to the date of the code adoption for view preservation purposes pursuant to a covenant. He suggested this type of provision would be a good starting place to address some of Innis Arden's issues, but they still must work out what happens in critical areas. The Innis Arden Club is willing to work with the City to resolve these issues, but they would like to hear something from the City other than the idea of dealing with Innis Arden at a later date. He said the Innis Arden Club has a strong belief that trees are important, but constitutional rights are important, as well. The City must find a way to balance the two.

Commissioner Piro recalled that the Commission previously spent a great deal of time reviewing the tree code, and he requested staff make the record of their previous deliberations available electronically to the Commissioners and public. Ms. Simulcik Smith advised that a project page has been created on the City's website for the tree regulations, and the record from 2006 can be accessed from that site. It includes Planning Commission and City Council staff reports and minutes. Vice Chair Wagner asked if the site provides all of the comment letters that were received, including the various proposals that were submitted by different parties. Ms. Simulcik Smith said the comment letters from 2006 are not accessible as a separate file, but they are likely included as attachments to the various staff reports.

Vice Chair Wagner suggested that when legal issues are raised, staff should invite the City Attorney to provide feedback and offer advice to the Commission as soon as possible.

Commissioner Perkowski referred to Mr. Cohen's statement that the retention/replacement section is the core of the tree code. He suggested that how the City defines and regulates hazardous trees will also be very important. He asked that staff provide some draft language or ideas for addressing hazardous trees on July 9<sup>th</sup>. Mr. Cohen reiterated that the core of the tree code is the retention/replacement policy. While hazardous trees are very important, this element should be based on the retention/replacement section. Commissioner Perkowski cautioned that the code should provide very specific language related to hazardous trees.

Commissioner Broili referred to the baseline tree canopy calculation that staff is working on to illustrate the City's potential for reaching their goal of 40% tree canopy throughout the City. He noted that new development and new technologies are coming forward all the time; and buildings, themselves, can become vegetative cover (i.e. vegetative roofs, etc). He asked if this would be taken into account when considering whether or not the City can reach their goal of 40%. He recalled his comments at the last meeting about the importance of a forest management plan, and functional qualities will become the

core element of this plan. He explained that functional qualities come from the permeability that vegetation adds to the bigger picture of stormwater detention, etc., and how they are measured is important. Green building and low-impact development technologies are becoming the way people design and build, and many cities are requiring these elements. He expressed his belief that it would be possible for Shoreline to get close to 80 to 90% vegetation cover with careful, thoughtful effort, and this should be the long-term goal.

Commissioner Behrens referred to the auditor's report that was attached to the article that came out in the newspaper regarding the City of Seattle's efforts. Mr. Cohen said he saw the report, but he has not reviewed it in its entirety. Commissioner Behrens said it includes some interesting things, particularly the way the auditors looked at the results of the first few years of the ordinance. Seattle has allocated certain targets for each type of land use and a table was provided in the report to show where they started and how much they have improved. Their goal is 30% coverage, and they started at 20%. There was a chart showing other cities in the United States, and it was phenomenal to see that New York City has greater tree canopy coverage than Seattle.

### **NEW BUSINESS**

No new business was scheduled on the agenda.

### **REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS**

Mr. Cohn noted that staff provided books to each Commissioner containing the CRISTA Master Plan proposal. He encouraged the Commissioners to review the information within the next week or so. Staff spent a lot of time reviewing the proposal and requested additional traffic analysis and other information. Chair Hall cautioned that the Commission would be entering into a process that has been going on for a long time. He challenged the Commissioners to become familiar with all the work that has gone into the plan prior to the hearing.

Ms. Simulcik Smith asked that the Commission give back the three-ring binders when they are finished using them. They can be recycled and used to provide new information.

### **AGENDA FOR NEXT MEETING**

Chair Hall advised that the next Commission Meeting is scheduled for June 4<sup>th</sup>.

### **ADJOURNMENT**

The meeting was adjourned at 10:14 P.M.

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Will Hall  
Chair, Planning Commission

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Jessica Simulcik Smith  
Clerk, Planning Commission