

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

September 3, 2009
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

Commissioners Present

Chair Hall
Commissioner Behrens (arrived at 7:04)
Commissioner Broili
Commissioner Kaje
Commissioner Kuboi
Commissioner Perkowski
Commissioner Piro (arrived at 7:02)

Staff Present

Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Paul Cohen, Associate Planner, Planning & Development Services
Brian Lee, Associate Planner, Planning & Development Services
Jessica Simulcik Smith, Planning Commission Clerk

Commissioners Absent

Vice Chair Wagner
Commissioner Pyle

CALL TO ORDER

Chair Hall called the regular meeting of the Shoreline Planning Commission to order at 7:00 p.m.

ROLL CALL

Upon roll call by the Commission Clerk the following Commissioners were present: Chair Hall, and Commissioners, Broili, Kaje, Kuboi, and Perkowski. Vice Chair Wagner and Commissioner Pyle were absent, Commissioner Piro arrived at 7:02 p.m. and Commissioner Behrens arrived at 7:04 p.m.

APPROVAL OF AGENDA

Chair Hall suggested that an additional public comment period be added to the agenda after Items 9a and 9b. The remainder of the Commission concurred. The agenda was accepted as amended.

DIRECTOR'S COMMENTS

Mr. Tovar announced that he recently spoke at the Council of Neighborhoods Meeting about the Town Center Subarea Plan open house that is scheduled for October 29th in the Council Chambers of the new City Hall. He reviewed the timeline and emphasized the importance of getting the word out to people from their neighborhoods. He said staff has talked about how to arrange the information from the

various resources, policies and studies for the benefit of the public. In addition, they have talked to the Association of Washington Cities about a new feedback mechanism that could be used to gather public feedback. The meeting would be advertised in *CURRENTS*, the City's website, and staff would attend each of the four neighborhood association meetings in early October.

APPROVAL OF MINUTES

The minutes of August 20, 2009 were approved as amended.

GENERAL PUBLIC COMMENT

Richard Kink, Shoreline, referred to the comments he made at the August 20th Commission meeting relating to the City's effort to update the Shoreline Master Program. He reported that since the August 20th meeting, the property owners along 27th Avenue Northwest have met and uniformly agreed on the following points:

- They classify the reports by the City's consultant, ESA Adolfson, as misleading and inaccurate. The consultants do not anywhere reference the Near Shore Habitat Study conducted as part of the Brightwater research, yet they cite numerous studies elsewhere in Puget Sound. The report fails to accurately describe and characterize the City's shoreline. While 27th Avenue Northwest may be the proverbial elephant in the room, the City is required by State law to accurately identify and acknowledge it.
- In light of the unique characteristics of the area, they request and deserve a special planning designation (Shoreline Residential 27th Avenue Northwest) as allowed under Washington Administrative Code (WAC) 173.26. It is a fully developed single-family residential area. The shoreline along 27th Avenue Northwest has been fully armored for many years prior to January 1, 1992, a key date noted in the Revised Code of Washington (RCW) 90.58. Much of the near shore habitat is fully established and cannot be altered with the repair or replacement of existing bulkheads. The majority of the residential lots are legal, non-conforming lots. There are no, and there have never been, public access points along 27th. The public road ends into the private properties. Additionally, the tidelands to extreme low water are private.
- Because of their concerns and the apparent lack of understanding of the City, they have retained legal representation. Despite perceptions and preferences of others, the property owners along 27th Avenue Northwest have very clear and established rights that relate to the shoreline management program.

As Mr. Kink exceeded his time limit, Chair Hall asked him to conclude and submit his additional remarks to the Commission in writing.

Mr. Cohn reported that Ms. Redinger, Associated Planner, attempted to communicate with Mr. Kink and/or his neighborhood to talk about their issues. Chair Hall said he is confident staff would work with Mr. Kink and his neighborhood and report back to the Commission.

Mr. Hertzog, Shoreline, said he also lives on 27th Avenue Northwest. He finished Mr. Kink's presentation regarding the neighborhood's position as follows:

- Because of their concerns and the apparent lack of understanding of the City, they have retained legal representation. Despite perceptions and preferences of others, the property owners along 27th Avenue Northwest have very clear and established rights that relate to the shoreline management program and will do whatever is necessary to protect their rights, as any property owner would.

Mr. Hertzog advised that Mr. Kink received an email from Ms. Redinger requesting the neighborhood's assistance in working with City staff and members of the Planning Commission, and the property owners are very willing and ready to work together to achieve an amicable situation and determination. He said both he and Mr. Kink would contact Ms. Redinger to set up the meeting.

Mr. Hertzog concluded that the largest issues are the effective and efficient use of City resources (tax dollars) to fund consultants and manage shoreline issues. The tax payers should not have to pay to reinvent the wheel and the property owners should not have to spend their own money just to protect their private property rights. Each time a resident needs to make a bulkhead repair, they must go through a lot of hassle to obtain the necessary permits. He advised that when he lost his bulkhead, it took the City six months to tell him that they had no jurisdiction.

Mr. Hertzog referred to RCW 90.58, which is specific about two items. First, planning is necessary to protect the public interest associated with the shoreline of the state, while at the same time, recognizing and protecting private property rights. Second, standards shall be provided and preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992.

LEGISLATIVE PUBLIC HEARING ON CHANGE TO TRANSPORTATION LEVEL OF SERVICE (LOS) STANDARDS

Chair Hall reviewed the rules and procedures for the public hearing.

Staff Overview and Presentation of Preliminary Staff Recommendation

Mr. Cohn recalled that the purpose of the proposed amendment is to change the Development Code to make it consistent with the Comprehensive Plan. He reviewed that the Growth Management Act (GMA) allows each jurisdiction to choose a Level of Service (LOS) method and standard, which the City did in 2005 with the adoption of the Transportation Master Plan. The City adopted LOS E at intersections as the best way to balance the level of congestion and the cost of added capacity. On a site-by-site basis, this methodology was more stringent than the previous methodology (area-wide averaging).

Mr. Cohn recalled that at the Commission's August 6th study session, a Commissioner questioned why the amendment was going forward now when the City is in the process of updating its Transportation Master Plan. The question was also asked in an email from Ms. Kellogg. Staff's response is that the Development Code must be changed to remove the conflict and inconsistency as required by the Revised Code of Washington (RCW). It also makes sense and is consistent with how transportation experts read codes and conduct analysis.

Mr. Cohn reviewed that the amendment was initiated in June, and the Commission conducted a study session in August. A notice of application was posted and advertised on August 19th, and the City has

not received any comments on the SEPA Determination. They anticipate issuing a Determination of Non-Significance next week. He referred to the criteria (Section 20.30.350) the Commission must consider when evaluating Development Code amendments and reviewed each one as follows:

- **The amendment is in accordance with the Comprehensive Plan.** The purpose of the amendment is to ensure the Development Code is consistent with the Comprehensive Plan.
- **The amendment will not adversely affect the public health, safety or general welfare.** Since the regulation is an implementation of the policy, it would not have an adverse impact because the policy itself was reviewed in 2005.
- **The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.** Having regulations that conflict with the City's plan could cause confusion and unpredictability in the permitting process. It is in the best interest of the citizens and property owners of Shoreline to have regulations that are consistent with the most recent City policies.

Mr. Cohn advised that staff has concluded the proposed amendment merits approval because it meets the criteria. Staff recommends the Commission forward a recommendation of approval to the City Council.

Questions by Commission to Staff

Commissioner Kaje questioned how staff currently applies the LOS standards when applications are submitted. Mr. Cohn said the Transportation Department has been implementing the policy (Intersection LOS) in the Comprehensive Plan rather than applying the code language, which calls for intersection averaging.

Commissioner Kaje asked staff to share information with the public regarding the various levels of LOS Standards. Mr. Cohn explained that LOS E is not failure, but it would be more delay at intersections than LOS C or D would be. Chair Hall summarized that the general measure is the amount of delay experienced at intersections. The discussion is whether they regulate based on specific, single intersections or an average of intersections. Commissioner Behrens clarified that LOS F is the lowest standard, which represents failure. Therefore, the proposal would establish the City's LOS level at only one level above unacceptable.

Public Testimony

No one in the audience expressed a desire to participate in the public hearing.

Final Questions by the Commission

None of the Commissioners raised additional questions during this portion of the hearing.

Closure of Public Hearing

The public hearing was closed.

Deliberations

COMMISSIONER PIRO MOVED THE COMMISSION ACCEPT STAFF'S RECOMMENDATION TO APPROVE THE PROPOSED DEVELOPMENT CODE AMENDMENT TO CHANGE THE TRANSPORTATION LEVEL OF SERVICE STANDARD AND FORWARD IT TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL. COMMISSIONER KUBOI SECONDED THE MOTION.

Commissioner Piro commended staff for doing an excellent job of explaining that the proposal is basically a housekeeping amendment. He reminded the Commission that State law requires the City to have a development code that is consistent with their Comprehensive Plan. The proposed amendment would achieve that requirement. He recalled the Commission had an earlier discussion about how methods for measuring LOS and addressing transportation issues are evolving. They talked about their desire to move towards a more multi-modal approach that focuses on the movement of people rather than vehicles. He suggested this discussion also be forwarded to the City Council. The remainder of the Commission concurred, and Mr. Cohn agreed to add this discussion as part of the transmittal that is forwarded to the City Council.

Vote by Commission to Recommend Approval or Denial or Modification

THE MOTION CARRIED UNANIMOUSLY.

DIRECTOR'S REPORT

Mr. Cohn advised that currently two study sessions for Point Wells are scheduled in October, and staff believes one would be sufficient. He also noted that a Planning Short Course is scheduled for October 14th, and the Town Center Subarea Plan Open House is scheduled for October 29th. He suggested the Commission consider cancelling the October 15th meeting. They could make this decision after their study session on October 1st.

UNFINISHED BUSINESS

Tree Regulations Discussion

Mr. Cohen recalled the Commission conducted a study session on the tree regulations on July 9th. They spent a fair amount of time talking about the purpose section and a new method for determining trees that would need to be retained and replaced. At the study session, there was some discussion related to a more natural systems approach and including mitigation for greenhouse gas emissions. In addition, the Commission requested further refinement of the tree credit methodology. They also asked staff to compare the current code with the proposed code and to look for situations that seemed more real life and to scale. He noted the requested information was provided in the Staff Report.

Mr. Cohen said he spent a great deal of time on the concept of using a more natural systems approach, and in general, he felt it would be a good thing. However, implementing the concept would involve

more than just amending the tree regulations. The Commission would be required to look at all sections of the code that have some impact on development. He reminded the Commission that the City adopted an Environmental Sustainability Strategy in 2008, which is loaded with good ideas that are very much in tune with the concept of taking a more natural systems approach. Staff is using the strategy as a guide to develop future work programs. However, a natural systems approach would be difficult to define in a purpose statement. It may warrant a lot more discussion, and he suggested it go forward as a separate recommendation. Mr. Cohn referred to Page 26 of the Staff Report and recommended two additional bullet points be added to Item 1 of the purpose section to read, “promote forest management practices” and “mitigate air pollution and greenhouse gas emissions.”

Mr. Cohen recalled that at the study session, Commissioners expressed concern that striving for a no net loss of tree canopy would fall short of what the City should strive for. He noted that the Environmental Sustainability Strategy suggests a 40% tree canopy, but he was unable to find data to substantiate the number. He referred to a drainage basin study the City conducted of all their drainage basins, which indicated the potential of 40% pervious surface in the future based on the current zoning designations. These surfaces could translate into planting areas. This seems like a very difficult goal to reach if the large properties that do not have trees on them (golf courses, ball fields, etc.) are subtracted, and he has not received any response from the American Forest Association that would indicate otherwise. Mr. Cohen suggested it would be difficult to put a number in a purpose statement, since it would make it read like a regulation. Perhaps it would be better to include a statement such as “achieve the maximum tree coverage possible.” He suggested that instead of a 40% tree cover, they should look at a 40% vegetative cover citywide, which would be far more feasible.

Commissioner Broili agreed that it would be appropriate to look at vegetative cover as opposed to tree cover, since this would afford a more holistic way of addressing the issue. He said he is personally more interested in reducing impervious surfaces as opposed to talking about vegetative cover. The City’s ultimate goal should be to reduce impervious surface to the minimum. Chair Hall summarized that Commissioner Broili supports the proposed purpose statement for the tree regulations, but he wants the Commission to continue emphasizing a reduction of impervious surfaces when they discuss stormwater issues in the future.

Commissioner Behrens suggested the last bullet in the purpose statement be changed to, “Strive for an increase of tree canopy and vegetative cover citywide.” He felt the goal should be to make the situation better rather than continuing with the status quo. If the City moves forward to develop forest management practices, at some point they will identify a measurement of their existing forest. Therefore, whatever regulations are imposed should be oriented towards improving the existing forest. Commissioner Piro suggested the words “strive for an” be deleted. The Commission agreed that the last bulleted item should read, “Increase tree canopy and vegetative cover citywide.”

Commissioner Perkowski referred to the second to the last bulleted item in the Purpose Section and questioned the use of the word “mitigate.” He suggested the sentence be changed to read “Improve air quality and reduce greenhouse gas emissions.” Commissioner Behrens questioned how the City would measure improvements in air quality. Chair Hall reminded the Commission that this is a purpose statement, and its intent is to identify why the City cares about trees.

Commissioner Kaje referred to the staff's recommended bullet, "promote forest management practices." He noted that nearly all of the other bulleted items have a specific, understandable, and identifiable function and/or meaning and this one does not. He suggested the wording be changed to more clearly capture the meaning. Chair Hall reminded the Commission that the purpose statement should make it clear that the intent of the proposed regulations is to regulate the clearing and replacement of trees. Commissioner Broili suggested that the sentence be changed to read "sustainable forest management practices." Chair Hall agreed that the word "sustainable" should be added to the purpose statement. Commissioner Behrens suggested staff be invited to provide a clear definition for "urban forest management practices." The remainder of the Commission concurred. Commissioner Kaje also invited members of the public to share their thoughts during the public comment period.

Mr. Lee referred to the tree credit table and noted that one small change was made. As per the Commission's comment, the 4" to 12" diameter replacement trees would now be worth 1 credit rather than ½ credit. He reviewed that, as proposed, 60 tree credits would be required per acre. Therefore, a 7,200 square foot property would have a requirement of 10 tree credits.

Using this example, Mr. Lee explained that the proposed language would prohibit removal of trees along the perimeter of the property that are outside of the building envelope, and each of the new lots would have a requirement of 10 tree credits per lot. Mr. Lee summarized that the current code would allow the removal of 9 trees and only require five new replacement trees. The proposed language would allow the removal of 7 trees, and 23 new replacement trees would be required.

Mr. Lee advised that the Commission previously discussed the concept of having a tree account in which an applicant would have the option of paying towards the tree account if they decided not to replant some of the trees on the site. The above example would not allow this concept to be implemented, because all of the required trees must be replanted on site to meet the minimum 10 credits per lot. However, an applicant would have the option of paying into a tree account for any replacement trees that are required beyond the minimum requirement.

Commissioner Behrens said he likes the direction the proposed language is heading. However, he is concerned about how the proposed regulations would be applied to already developed lots. He referred to a tree that was removed from the area directly behind the courthouse on Meridian Avenue. It was a Douglas Fir and over 5 feet in diameter. He said he would like the regulation to address how the City would enforce compliance and regulate the removal of trees from private lots.

Mr. Cohen explained that assigning more tree credits to larger-sized trees would hopefully encourage people to preserve the larger trees. An owner of developed property would be allowed to remove a tree for whatever reason as long as the site maintains the required 10 tree credits. However, they would be required to replace the removed trees, and the removal of a large tree would have a sizeable tree replacement requirement. He noted the current code would allow a property owner to remove up to 80% of the existing trees. Five years later, the property owner would be allowed to remove 80% of the remaining trees. The proposed language is intended to address this issue. However, he cautioned the City's code must remain somewhat flexible to allow property owners to develop their lots. Although some sites would lose tree to accommodate development, the replacement requirement would invest into the City's future tree canopy.

Commissioner Behrens inquired who would be responsible for enforcing the new tree regulations on owners of developed properties. Mr. Cohen agreed this is an important issue. Obviously, the City would need to advertise and educate the property owners about the new tree regulations. Commissioner Behrens suggested that most property owners would hire a professional to take down large trees, and the City could easily enforce the new regulations by educating and informing the tree removal companies of the new requirements. Commissioner Broili agreed that placing the onus on the tree arborists to obtain a permit would be appropriate and would reduce the amount of communication and public education necessary to enforce the new requirements.

Mr. Cohen expressed staff's concern that, over time, the current code standard of preserving 20% of existing trees would result in a diminishing amount of preserved trees, and the proposed tree credit requirement would resolve this issue. It would allow property owners to replace trees in perhaps better situations. He summarized that the proposed language considers more trees to be significant, encourages larger tree protection, provides for a better replacement ratio, and has a greater planting size and longer maintenance period. That means the trees have a better chance of becoming the minimum significant size at the end of their maintenance period. Those trees that cannot be replanted on the site would be placed into a forestry account, which would come back to the community in another way. Staff is hoping that these combined features would allow property owners to develop within their building envelope while obtaining the best tree canopy possible.

Mr. Cohen said staff considered whether the requirements should be different for private property owners versus developers who want to remove trees. Staff believes it would not be appropriate to make a distinction because it can often be difficult to discern between the two. Staff recommends the standards be applied equally to both.

Mr. Cohen recalled the Commission's earlier question about how the tree credit method would work on sites with fewer than the minimum tree credits. He explained that hazardous trees could be removed from these sites as long as the current tree credits are maintained and the removed trees are replaced.

Mr. Cohen said the Commission also raised a question about whether existing established small trees could be used as a part of the replacement requirement. He answered that staff believes it would be very reasonable to use existing 2 to 4-inch trees as replacement trees since they are usually healthier and have a better chance of survival. In addition, this allowance would not unnecessarily punish the property owner who has already supplied young trees.

Mr. Cohen said staff considered how the proposed language would be applied to sites that are heavily wooded. Rather than reducing the tree replacement requirement, the proposed new language would allow the developer to meet the requirement by placing money into the forestry account. He noted this could result in a substantial cost to the developer, and he asked for feedback from the Commission regarding the option of placing a cap on the amount an individual property owner must place into the forestry account. Another option would be to defer to the current code, which allows the Planning Director the discretion to reduce the tree replacement requirement.

Commissioner Kaje referred to an example of a property that only has one, 4-credit tree that is located outside of the building envelope. He summarized that, as proposed, the property owner would not be allowed to remove the tree unless it is considered hazardous. Mr. Cohen agreed that is correct.

Commissioner Kaje clarified that, as proposed, a property owner would only be required to replace the number of tree credits associated with the removed tree rather than replacing to the required 10 credit level. Mr. Cohen concurred.

Commissioner Kaje expressed his opinion that there should not be a cap on the amount of money a developer is required to put into the forestry account. He suggested that if a property owner has to remove a large number of trees they could sell the wood to find money to replace the trees.

Commissioner Perkowski referred to an example of a lot with several significant ten credit trees, but enough smaller diameter trees to meet the 10 credit requirement. Mr. Cohen explained that the property owner would be allowed to use the smaller trees to meet the credit requirement. Commissioner Perkowski observed that the proposed language only considers the size of a tree and not the species, etc. He expressed his belief that it is not appropriate to look at all trees the same since they grow at different rates. He said he would want the proposed language to provide some protection for the large, exceptional trees based on size and species. He suggested that deciduous and conifer trees should not be treated the same, either.

Commissioner Behrens noted that the City of Seattle has very strict regulations about removing Cottonwoods because they are such a great source of water absorption. Commissioner Perkowski said he is more concerned about Conifers, Cedars, Douglas Firs, and other native evergreens. He summarized that he would be opposed to using diameter breast height (DBH) as the only measurement for tree credits. He would like the protection to also be species specific. Mr. Cohen asked if Commissioner Perkowski is asking that a separate DBH Tree Credit Table be provided for different species. Commissioner Perkowski agreed and added that there should also be a threshold that places trees of certain species that exceed a specified DBH into another category. Mr. Cohen said staff has avoided this issue because it would be difficult to reach a consensus on which trees are more valuable than others. The proposed language is intended to look at trees as a value in terms of their attributes. He summarized that trees are a difficult resource to manage and/or regulate. By dropping the significant size to four inches, more trees would be included and the need to differentiate between one species and another may be lessened.

Commissioner Perkowski observed that evergreen trees would provide much greater benefit than deciduous trees during the rainy season for erosion control and water quality, etc. In addition, native trees can provide a greater benefit than non-native trees. He noted that other municipalities have distinguished between the different tree species. He expressed his belief that it would be incorrect to treat all trees the same. It would be much better to make choices about value based on species. Chair Hall invited staff to craft alternative language for the Commission's consideration to address Commissioner Perkowski's concern. Commissioner Perkowski suggested staff contact the City of Seattle for an example to use as a starting point. Commissioner Perkowski agreed to work with staff to prepare the draft language.

Commissioner Perkowski said that while he does see benefit to the tree credit proposal, it would not score high on the simplicity matrix. Using an exceptional tree approach could be a simpler approach.

Commissioner Broili suggested that another column be added to the tree credit table to identify the actual value of a tree. A standard \$200 per tree value would not be acceptable. For example, larger cedar trees are worth much more than \$200 each, both in their environmental benefits and the value of

their wood. On the other hand, an Alder is not worth a lot and its lifespan is very short. The dollar value should go along with the species and size. While it may be more complicated to create upfront, it would make the replacement requirement easier to apply in the long run. Mr. Cohen clarified that the \$200 identified in the proposed language is intended to identify the dollar value of a replacement tree and not the dollar value of a tree being removed.

Commissioner Kuboi requested clarification of the proposal as it relates to trees that are located outside the building envelope. Chair Hall summarized that the building envelope is not the size of the building, itself, but everything inside of the setback areas. Mr. Cohen agreed and noted that a potential building could be built anywhere outside of the setback areas. Chair Hall concluded that trees located within the required perimeter setbacks must be retained unless found to be hazardous. Mr. Cohen agreed, but only up to the 10-credit minimum requirement. Commissioner Kuboi inquired how the requirement would relate to driveways and accessory structures that are allowed in the setback areas. Mr. Cohen said the requirement would remain the same. Commissioner Piro inquired if the public right-of-way on a corner lot would be included within the perimeter. Mr. Cohen answered that public rights-of-way would not be included in the calculation, and removal of trees in these areas would be dictated by the engineering guidelines rather than the development code.

Commissioner Broili referred to the hazardous tree language, which states that a certified tree risk assessor would be used without a third party review. He expressed concern that unless an arborist is approved by the City, a property owner would be able to pay a professional to state whatever they want.

Mr. Cohen referred to the other topics that are briefly addressed on Page 28 of the staff report: park lands and campuses, hazardous trees, and landmark trees. If the Commission is comfortable with the initial concepts, staff would come back to the Commission in a few months with draft code amendment language that addresses the additional issues, as well. He reminded the Commission of the Innis Arden Club's proposed amendment related to hazardous trees, which should also be considered by the Commission. He suggested the Commission conduct study sessions on the draft amendment on November 5th and 19th. A public hearing has tentatively been scheduled for December 3rd.

Commissioner Kaje recalled his earlier suggestion that there be some vehicle to ensure that replacement trees that are located off site for whatever reason stay in the same neighborhood. However, staff expressed concern that this would be difficult to implement. Commissioner Kaje further recalled his suggestion that other private property owners would welcome the replacement trees on their properties, and staff termed this concept "transfer of development rights." He disagreed with staff's reasoning on Page 27 of the Staff Report which states their belief that private property owners would not be a substantial resource for this method. The Staff Report also describes the difficulty of keeping track of the accounting. However, he suggested it would not be any more difficult than keeping track of the replacement trees on properties where the action took place. If tree bereft property owners want to accept free or subsidized trees, they need to understand the rules and responsibilities associated with the trees.

Commissioner Kaje recalled the staff report suggests the Parks Department would be a likely recipient of trees planted via the forestry account. However, it further states that the Parks Department would be uncomfortable with being responsible for tracking transferred trees along with the entirety of their current tree resources. He asked where staff intends the forestry account trees would be placed if not on

other private properties or within the parks. Mr. Cohen said the forestry account money would likely be used for forest management practices (most likely on park lands) and for tree planting programs where the City purchases trees and distributes them to neighborhoods and/or private property owners. However, they do not currently have a program for tracking the trees that are planted. The assumption is that if people want the trees, they will protect them into the future. He agreed it is possible to transfer development rights by allowing another property owner to accept the tree and the maintenance bond and assume the responsibility of protecting the tree. However, staff has actually offered this option to developers, but none have been interested. Staff believes it would be better to divert the funds to a forestry account and distribute them in a less onerous way. He summarized that staff is not opposed to the concept of transferring development rights, but they do not believe it will be a significant resource.

Commissioner Kaje said he would be somewhat concerned if the forestry account were used for general forest management practices, which equates basically to staff time. If they are allowing a developer to plant fewer trees, the money placed in the account should be used to plant more trees. Whether this is accomplished through voluntary tree planting programs or by planting protected and bonded trees on another property, he wants more trees to be planted rather than using the money to subsidize other elements of park management. Chair Hall agreed it is important for the tree regulation language to be clear as to how the forestry account would be managed.

Commissioner Broili said he is not necessarily wed to the idea that the forestry account must be turned into trees; his only proviso is that the money is used to manage the urban forest within the City. It may not necessarily go to purchasing trees; it may go for some other purposes that further enhances the vegetative cover within the City. It should not go into a general fund that is spent someplace else. It should stay within the forest management regime.

Mr. Cohen advised that the Parks Department will be doing some tree thinning at Hamblin Park to provide other plant material so the forest becomes more complex. The trees that will be removed are considered unhealthy. He suggested this project would be a good example of how the forestry account could be used to support an urban forest management program. He recalled the initial intent of the forestry account was to support both tree planting programs and urban forest management programs.

Commissioner Broili referred to a 40-acre, second-growth forest on Vashon Island, which was carefully thinned with an eye towards recreating an old-growth forest. Trees were removed as logs that were milled and sold for \$40,000. The money was used to plant other vegetation to restore the forest understory. He suggested these are the types of projects the City needs to consider. Too many times, perfectly good saw logs are turned into firewood, which isn't the highest and best use. He noted there are several firms that collect street trees for free. They turn them into slabs that are sold for a good profit. He summarized the City should keep this economic opportunity in mind, as well.

Commissioner Behrens suggested the forest management account could be used to fund disputes over whether or not a tree is hazardous. The funds could be used to hire independent arborists to review the trees and make a determination.

Mr. Lee explained that, in the past, the City has allowed property owners to hire their own arborist and provide a report to the City as a basis for a decision. Because arborists are often hired to provide reports that support the needs of developers, the City decided to require a third-party arborist report. However,

they found this was cost prohibitive to certain property owners who had to pay twice for arborist services. Just recently, the City enacted a policy change where they attempt to avoid the need for third party arborist reports by requiring that the arborist reports be prepared by professionals that meet certain criteria. Mr. Cohen said the City has prepared a list of certified tree risk assessors, and the standards are higher. Staff is more confident with their decisions if there are quantifiable thresholds for when a tree is considered hazardous and property owners are required to use an approved arborist. It also results in cost savings for the property owner. In light of the City's new policy of requiring a property owner to use an arborist from the City's approved list, Commissioner Broili retracted his earlier comment. He expressed his belief that the current method is correct and should be adopted as policy in the new regulations.

Commissioner Kuboi agreed with Commissioner Kaje's statement regarding the use of forestry account funds. He said his initial thinking is that the money should be used to purchase replacement trees or other types of vegetation. All of the various management practices and programs are good things to do, but they should be funded with the normal budget for the respective departments. The draft amendment should provide clear direction as to the intent of the account so it is not abused during times when City budgets are lean. Mr. Lee emphasized that the forestry account concept is just a recommendation staff is including with the proposal and has not been established. How the account would be spent is still up for discussion. While he acknowledged there are strong feelings about how the account should be used, staff is considering the option of using the fund to purchase and distribute trees to parks and property owners and to plant streetscape trees in the City's rights-of-way during street improvement projects. This would enable the City to guarantee maintenance of the replacement trees, which would result in an increased net canopy.

Chair Hall suggested it would be useful for staff to outline what the different choices are related to the forestry account. He expressed concern about using the forestry account to pay for street trees that are already required by the code. If the new fund is created, the sources and uses of the fund must be made clear. He encouraged staff to provide alternative language to address both sides of issues in which the Commission identified mixed direction.

Chair Hall inquired if the proposed amendment would apply to all zones or just residential zones. Mr. Cohen said the proposed amendment would currently only apply to single-family residential zones. He noted that most of the park lands fall within the R-6 and R-4 zones. Chair Hall added that most of the high schools and much of the rights-of-way are also within the single-family residential zones. Mr. Cohen questioned if the residential zoning would apply to the streets, and he agreed to research the answer. Chair Hall referred to Cromwell Park, which is located within a single-family residential zone, and noted that development is currently in progress. He questioned if this project would meet the proposed minimum tree credit requirement. He suggested that if the City is to be a leader and example, he would not be inclined to allow a lower standard for publicly-owned property.

Commissioner Behrens noted that the Meridian Park project is a progressive project, and full-grown trees will be planted. The park will be much more heavily forested than it previously was. It will be an impressive park when it is finished. Chair Hall said his comments were actually intended to be much more general in that the City has an obligation to meet, at a minimum, the same requirements that are placed on private property owners. Mr. Cohen advised that when public works and park projects in residential zones are reviewed, they have to meet the tree requirements. Chair Hall suggested staff

consider how the proposed language would impact parks and other public-owned properties such as ball fields and schools. They should also carefully consider how the proposed language would impact the very small lots versus the very large lots.

Mr. Cohn noted the Commission received handouts, but there were not enough copies for everyone in the audience. He indicated the handouts would be available via the City's website by the end of the day on September 4th.

Follow Up Discussion on Work Plan and Upcoming Joint City Council/Planning Commission Meeting

Mr. Cohn advised that since the Commission's last discussion about the work plan, Chair Hall and Vice Chair Wagner met with the Mayor and Mayor Deputy to talk about the agenda for the joint City Council/Planning Commission Meeting on September 14th. As discussed earlier by the Commission, the agenda would include discussions about the work plan and City Council Goal 10 (expanding opportunities for public comment). A staff memorandum would be sent out on September 7th or 8th to remind the Commission of the dinner meeting, which starts at 6:00 p.m.

GENERAL PUBLIC COMMENT

Mike Jacobs, Shoreline, elected president of the Innis Arden Club, advised that the Club and the Innis Arden Community has some very real concerns regarding the proposed tree regulations. He reminded the Commission that Innis Arden was platted in the 1940's by the Boeing Family, with view covenants. The covenants were amended in 1981 to include a requirement that trees above roof height that block mountain and sound views from adjoining properties would have to be brought down to roof height. The amendment was challenged and upheld by the Court of Appeals in 1988, long before the City of Shoreline was incorporated. He explained that the Court of Appeals indicated that protection of the Innis Arden marine and mountain views was imminently reasonable and has always been one of the principle attractions of the Innis Arden Community.

Mr. Jacobs expressed concern that the new tree regulations do not take into account any of the requirements or provisions with respect to the Innis Arden view covenants. He noted that other municipalities, such as Mercer Island, do have such provisions. The Mercer Island code still requires a tree permit to remove a tree, but it states the permit would be granted where the proposed removal is pursuant to a private covenant. He asked the Commission to direct staff to come up with a provision for the Innis Arden Community. Over the years, people are losing their views, and there are approximately 350 view homes in Innis Arden. If there is view impairment and the value of the properties drops by \$150,000, it would equate to more than \$50 million in lost property values and \$500,000 in lost tax revenue. Again, he asked the City to make some accommodations to respect the Innis Arden covenants that have been upheld by the courts.

Kathi Peterson, Shoreline, said the vast majority of the citizens of Shoreline have no clue that the Commission is reviewing potential amendments to the tree regulations and their personal property rights could be stripped or stolen. She said she is totally opposed to the current attempt to change the tree code provisions, and she does not believe the City has any right to tell, guide, demand or legislate what private property owners can and cannot do on their properties regarding vegetation. Trees that grow on City land or City rights-of-way are certainly under the purview of City policies, but not trees on private

property. Citizens are trying to live with trees planted in the early 1970's as part of "Forward Thrust." The wrong species of trees were planted and now they are too big and have root systems that push up sidewalks and cause no end of problems to the homeowners residing near them.

Ms. Peterson advised that one homeowner living on 155th said the tree in front of his house has branches that cover half of his lawn, and drop a substantial amount of leaves on his grass and sidewalk. He is responsible to rake, sweep and pay for its removal year after year. During the winter when it snows, he has to shovel the snow from a sidewalk that is cracked and severely uprooted by City-owned trees. He is tired of it, and he wants the trees removed and others planted that are more suitable to a city street. She said that a Shoreline employee recently told her that he was hired from a nearby city where the policy was to remove "Forward Thrust" trees. One tree out of every four was removed each year for four years, and they were replaced with trees grown by an arborist in Arlington who grows trees specifically for urban settings. However, the City of Shoreline prevents this employee from cutting almost anything and doing his job.

Elaine Phelps, Shoreline, said she lives in Innis Arden and disagrees with both of the previous speakers on every count. She appreciates Commissioner Perkowski's suggestion that the City consider the function of the various species of trees rather than just the size. Not every tree has the same function, and she would be interested in knowing exactly what would be lost and what would be gained by the proposed replacement program. Would the program require a property owner to actually replace the function of the tree, the size of the tree, and/or the species of the tree. She concluded that all of these are elements of what the canopy is going to be like. She recalled that Innis Arden used to have a plan whereby a property owner could start planting replacement trees in preparation for removing old growth trees. As the trees grew, property owners were allowed to remove the older trees as part of a continuous cycle. While that is not what she is advocating, it represents another option for retaining the function of trees that are removed and replaced.

Harley O'Neal, Shoreline, said he has served on the Innis Arden Board for a number of years, and part of his responsibilities include reviewing court hearings that have taken place over the years. He advised that Anne Ellington, Superior Court Judge, made it clear that the Innis Arden Board has the duty to protect the covenants in Innis Arden, which includes listening to filed complaints and trying to restore the lost views. He asked the Commission to carefully consider whether or not the proposed amendments would impose restrictions on Innis Arden that are against what the Court has told them they have a duty to provide for the neighborhood. As they review the proposal, he asked them to keep in mind that the Innis Arden Club has an obligation to protect views.

Christine Southwick, Shoreline, expressed her belief that all trees have value. For example, Madronna trees do not grow large and they don't have a long life, but they are a valuable diversity. The Cedars and other trees are valuable, as well. She observed that the City doesn't want to have just all one kind of tree, and they should keep in mind that it takes a long time for some trees to get large. It is important that the tree regulations provide a mechanism to evaluate the value of a tree based on more than just its size. She also suggested that where views are involved, replacement trees should be of a species that take longer to grow and/or don't get as tall.

Shannon Martzoff, Shoreline, said she is also a member of the Innis Arden Board, but she is present to speak about the application of the current proposal to the broader community. She said it is really important for the City to start by auditing all of its public places, creating a requirement and leading by

example. She suggested the very concept of placing requirements on private property owners and using the tree replacement program to fund a forestry management plan or street beautification is an absolutely backward approach. The City cannot enforce requirements upon private properties without having some record of what exists on City-owned properties.

Ms. Martzoff expressed concern about the lack of scientific information to support the proposed amendments. She said she has heard a lot of concepts discussed by the Commission such as erosion control, but there has been absolutely no discussion about vegetation that is the most effective at preventing erosion. Neither has there been a discussion about the concept of slowing water down in advance of where it creates erosion issues. As an example, she noted that a recent University of Washington study suggested that a dying tree actually emits more carbon dioxide into the air than it absorbs. She concluded that the Commission must consider all of the science related to tree and vegetation issues before they create a code that is unenforceable, punitive to the average property owner, and disproportionate. She said she recently spoke to a property owner from outside of Innis Arden who was surprised to learn the Commission was considering a regulation that would require a permit to remove a dying tree that is more than 4 inches in diameter. She encouraged the Commission to be reasonable about the codes they create.

Barbara Guthrie, Shoreline, said she appreciates Commissioner Perkowski's remarks about finding a way to protect the existing mature significant trees. She said her neighbor has a very mature Redwood tree, and the service the tree provides cannot be compared to even 10 or 20 four-inch trees. Raccoon families live in the tree during the day, and it also provides shade and privacy. She expressed her belief that enforcement of the new policies should reside on private properties owners and the commercial arborists and tree service companies that practice within Shoreline. This would be the simplest and best way to enforce the tree regulations.

Bob Allen, Shoreline, said he is a resident of the Innis Arden Community. He suggested the issue of trees has become overriding to all other issues. A tree that supports birds, gives canopy cover, absorbs water, etc. does not have to be a tree that blocks somebody's view. He said he was hopeful when he heard the comment that foliage could do some of the same things and sometimes be better than tall trees. Many of the tall trees in the Innis Arden Reserves are so tall and their canopies are so complete that they block out sun and prevents other vegetation from growing. The same is true on other private residential properties in the community. One private property owner indicated he had so many trees it was impossible to grow any other type of plants in his yard. Thankfully, he was able to remove some of the trees so that other things could be planted. He noted that many of the properties in Innis Arden are planted with a variety of plants and trees that all provide the same benefits that tall trees do, including the absorption of water.

Mr. Allen summarized that the contention that has caused neighbors to become enemies in Innis Arden is because some people insists on having tall trees that block views. These same tall trees could be in non-view-blocking areas and be a wonderful place for squirrels and birds to live without blocking views. Creating a one-size-fits-all plan that perpetuates this contention is totally unnecessary. They need to bring the community together, and the policies should take into consideration that peoples' views are valuable. If a person prefers to see the mountains and water rather than a large tree, he questioned why the City should insist that a particular tree be allowed to block a view when it could be on another piece of property close by and provide the same or better function.

Chair Hall reminded the public that this is a workshop setting, and the public comment period was added to the agenda because they know that people want to speak on the issue. He emphasized that a public hearing on the proposal would be held at some future point. He encouraged the citizens to recognize this is just one step in a process that will continue for the next few months.

Peter Eglick, Innis Arden Club Attorney, submitted a comment letter dated September 3rd. He said he believes the best comment made by any Commissioner was, “We’re not going to score too high in the simplicity matrix.” In addition to all of the other problems raised by Innis Arden, he cautioned that the proposed regulations would be complex and expensive for the general citizenry to follow. He suggested the citizens would be appalled if they really understood what the Commission is considering. He said he would doubt that Chair Hall, when citing his accomplishments on the Planning Commission, advertises that the Commission is adopting a really complicating plan that would require a property owner to replace trees that are removed with a “gazillion” trees or pay money into a fund. He’s not touting that as one of the really good things he’s working on. The Commissioners are part of the cognoscenti. They either work in government agencies or are contractors with government agencies, etc. They are inured to what these kinds of regulations can mean for citizens and lay people. He expressed his belief that the current proposal is very daunting, and there must be a measure of tempering and reality. The proposal, in terms of its substance and approach, is divorced from reality at this point and is actually edging more in that direction rather than being reined in. He suggested they would likely hear this from people who having nothing to do with Innis Arden once they become aware of the situation. Using the City of Seattle’s regulations as a model is the backwards way to go for Shoreline, especially since Shoreline was created because the citizens didn’t want to be annexed into and subject to the Seattle code.

Mr. Eglick asked the Commission to ponder and be open minded about the following questions:

- What is the justification for applying the proposal only to residential areas and can it really be justified both in principle and legally?
- What is the basis for refusing to even recognize or use the word view in the purpose section of the tree code? Does the Commission really think that mentioning solar access is equivalent to acknowledging the need to balance views in some circumstances?
- What is the City’s current understanding of the existing tree canopy, what is that understanding based on, and is it a solid basis? What is the City’s understanding of its former tree canopy?
- What is the basis for the tree replacement requirements in terms of comparisons with other jurisdictions? Does any other jurisdiction have anything like this, or is the City in the ballpark of being double what the jurisdictions they are citing require?
- What will be the cost to the City and taxpayers in terms of staff, bonding, administration, permitting and enforcement of adopting this program? How many staff would be required and how will it work? It’s great to adopt a regulation and figure it will all get filled in later in the meetings with senior staff, but that’s not the way it’s supposed to work. The Planning Commission is supposed to build this into their consideration. Once they figure this out, they could accomplish many of their purposes by putting all of the money into a program of incentives (property incentives, property purchases, tree easements).

Robert Phelps, Shoreline, said he lives in Innis Arden and this is the first Planning Commission meeting he has attended. He thought the Commission’s questions and comments were searching, and he

was impressed. He said he disagrees with so much of what Mr. Eglick presented. He presented some good questions for the Commission to consider, but the attitude of condemning the Commission for their approach was unwarranted.

Chair Hall thanked the citizens for their comments. While there were strong disagreements, he also appreciated that everyone was respectful and cautious.

Commissioner Kaje commented that the tree regulations are an important issue, and some citizens have attended numerous Planning Commission meetings at which the issue has been discussed. He has only been on the Commission for a year and a half, and this is the first time he has heard an individual Commissioner called out and criticized by name. He expressed his belief that this was inappropriate and he hopes the public refrains from doing so again in the future.

Chair Hall encouraged staff to attempt to address the comments provided by the public, as well as the feedback they received from the Commission. He said he previously talked to Mr. Tovar about the idea of conducting a public open house similar to the one they conducted for the Transportation Master Plan. He expressed his belief that it is important that everyone has a chance to understand the proposal and participate in the process. They need to address the concern about whether or not the property owners who would be affected by the proposal have had an adequate opportunity to speak on the issue.

NEW BUSINESS

There was no new business scheduled on the agenda.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

Commissioner Behrens expressed his gratitude to the City staff. He said he was quite impressed with the amount of work and time they have spent accumulating information. He said he appreciates their patience in listening not only to the Planning Commissioners, but to the diverse opinions that come from the citizens, as well. They are doing a good job, and he encouraged them to keep going. Hopefully, they will end up with a product that will serve the citizens of Shoreline well and everyone will be happy with the outcome. This is not an easy project.

Chair Hall reported that he attended the Council of Neighborhoods Meeting on September 2nd where Mr. Tovar briefed the group on the Town Center Sub Area Planning Process. All of the neighborhood groups that are organized were represented by one or two individuals. He reminded that the Commissioners agreed to be part of the open house on October 29th. He reported that staff is also going out to each of the four neighborhoods that are part of the Town Center study area. Mr. Cohen said either he or Mr. Tovar would also attend the Economic Development Advisory Commission and Chamber of Commerce Meetings to update them on the Town Center Sub Area Planning Process. The open house would be advertised in *CURRENTS* and on the City's website by early October.

Chair Hall commended staff for creating an effective model for getting information out to the individual neighborhoods and the community and having a public workshop early in the process.

AGENDA FOR NEXT MEETING

Chair Hall reviewed that the September 17th meeting agenda would include a public hearing on the Regional Business Regulations. They would also review their joint meeting with the City Council, which is scheduled for September 14th. Mr. Cohen advised that staff is seeking ideas for a new name for the Regional Business zone, and he invited the Commissioners to share their ideas.

ADJOURNMENT

The meeting was adjourned at 9:35 P.M.

Will Hall
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission