

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

December 1, 2014
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Balducci, Deputy Mayor Wallace and Councilmembers Chelminiak, Lee, Robinson, and Stokes

ABSENT: Councilmember Robertson

1. Executive Session

At 6:01 p.m., Deputy Mayor Wallace called the meeting to order and declared recess to Executive Session for approximately 20 minutes to discuss one item of potential litigation.

The meeting resumed at 6:37 p.m., with Mayor Balducci presiding. She announced that the Granicus system was not working due to a broader Internet issue. As a result, the meeting will not be streaming online but it will be broadcast live on B-TV.

2. Study Session

- (a) Shoreline Master Program Update Study Session 10 – Response to Council Direction on Drafting of the SMP Update Package for Submittal to the Washington State Department of Ecology (DOE).

City Manager Brad Miyake recalled previous Council direction on September 8 regarding the Shoreline Master Program (SMP) Update package to be submitted to the Washington State Department of Ecology (DOE). Staff has incorporated Council direction into the revised SMP Update.

Mike Brennan, Director of the Development Services Division, introduced Lacey Hatch, Assistant City Attorney; Carol Helland, Land Use Director; Dan Nickel, The Watershed Company; and Professor Richard Settle, the City's consultant on SMP-related issues.

Mr. Brennan said staff is seeking Council direction to confirm that the Code responds to Council direction, complete the Cumulative Impact Analysis (CIA), and finalize the package for submittal to the DOE. Mr. Brennan recapped the timeline over the past year's review of the SMP Update. He said the key topical areas are public access, park development, determination of

ordinary high water mark (OHWM), setbacks and vegetation conservation, and residential moorage.

Mr. Brennan highlighted the results of staff's work with stakeholders since the Council's September 8 direction. The Council's direction was shared with the Washington Sensible Shorelines Association, Save Lake Sammamish, Newport Shores community, Meydenbauer Bay Neighborhood Association (MBNA), and the Meydenbauer Yacht Club. Meetings were held with stakeholders throughout November and information was posted to the City's web site on November 12 in anticipation of the Council's December 1 Study Session. Information was reposted on November 26 with responses to the stakeholder feedback.

Ms. Hatch described the remaining steps in the process. Code drafting will be completed based on Council confirmation of the final SMP Update package contents. Council will be asked to adopt the regulatory components of the final SMP Update package for transmittal to DOE. The Cumulative Impact Analysis will be completed based on the final Code language and transmitted to the DOE as part of the package. The DOE will conduct its review, hold a public hearing on the final package, and provide mandatory and recommended amendments.

Ms. Hatch said the meeting approach tonight will summarize the Council's previous direction for each topical area, seeking Council confirmation or alternate direction.

Carol Helland, Land Use Director, said the Council provided direction to retain the requirement for physical public access as a component of new or expanded public uses (e.g., transportation, utilities and parks projects), and to require visual public access as a component of new or expanded private shoreline recreation uses.

Mayor Balducci noted no comments or suggested changes from the Council.

Ms. Helland recalled Council direction regarding park development, which is to retain the Conditional Use Permit (CUP) requirement for beach parks without a Council-adopted Master Plan, retain the administrative shoreline permit requirement for beach parks with a Council-adopted Master Plan, and to treat Meydenbauer Bay Park the same as other beach parks with an adopted Master Plan (without including the specific implementation principles in the SMP).

Responding to Councilmember Chelminiak, Ms. Helland confirmed that the implementation principles remain in the Master Plan but are not included in the SMP regulations.

Ms. Helland described previous Council direction regarding the determination of the Ordinary High Water Mark (OHWM). Shoreline jurisdiction extends 200 feet from the OHWM. The Council directed using a static elevation as the default for the measurement of structure setback on Lake Sammamish where the statistically valid lake study was completed. The regulations retain the option for property owners to conduct a site-specific determination at their expense.

Councilmember Robertson said the language is currently written: "On Lake Sammamish, the shoreline structure setback may be measured landward from elevation 31.2 NAVD...or from a

point identified in a site-specific OHWM determination prepared by a qualified professional.” She clarified that the option for a site-specific determination is available to the property owner and is not to be dictated by the City.

Ms. Helland recalled that the Council expressed an interest in a new lake study. She did not want to fix the 31.2 NAVD in time and require the City to complete an SMP amendment if a subsequent lake study is completed and a change is made to the OHWM.

Councilmember Robertson said she understood the intention. However, the Council directed that the lake study be updated as part of the work leading to the next SMP Update. Ms. Robertson reiterated it should be clear that a site-specific determination is a property owner’s option.

Councilmember Stokes concurred with Ms. Robertson. He said he envisioned a new lake study within the next four to five years.

Responding to Councilmember Chelminiak, Ms. Helland said the OHWM of 31.2 NAVD provides a safe harbor for property owners.

Deputy Mayor Wallace questioned whether, if a property owner obtains an independent expert determination, it is clear how the OHWM is defined. Mr. Nickel said the OHWM is a defined mark on the soil between water-loving plants and land-based plants, and this definition is based on state guidelines.

Dr. Settle said the definition is in the Shoreline Management Act. He said the beginning point is where the vegetation changes. However, sometimes vertical stabilization makes it impossible to identify where the vegetation changes in any natural way. In that case, the OHWM is the average water level. Dr. Settle said there is disagreement about how that is to be interpreted.

Mayor Balducci agreed with Councilmember Robertson that the idea of the independent study is for property owners to have the option to demonstrate that 31.2 is not the OHWM at their location. Should the Council wish to advance an overall lake study to reestablish the OHWM, the Code could be amended later to reflect any change.

Mayor Balducci noted a Council consensus supporting Ms. Robertson’s clarification.

Moving on, Ms. Helland recalled that the minimum residential moorage walkway width was set at five feet. Mayor Balducci said there is no further input from the Council on this item.

Ms. Helland described previous Council direction regarding setbacks and vegetation conservation regulations, which impose a flexible maximum setback of 50 feet with a footprint exception to allow redevelopment consistent with existing conditions on individual lots. A one-time 200-square-foot expansion to an existing structure would be allowed within 25 feet of the OHWM. The regulations contain a modified greenscape option that bases units of mitigation on comparable units of impact.

Dr. Settle provided additional comments on the setbacks and vegetation conservation regulations. While the default setback is increased to 50 feet, there are incentives for property owners' actions that are conducive to no net loss of ecological function. The vegetation provisions are an important way to achieve no net loss and respond to a number of concerns expressed by property owners throughout the process. He said these regulations are not the only way for the City to achieve no net loss of ecological function. There are also the programmatic features of the Shoreline Master Program versus these regulatory elements.

Dr. Settle said this is perhaps the only SMP to achieve the constitutional requirements of nexus between the loss of ecological function and the proportionality of mitigation. He said the benchmark for no net loss of ecological function is current conditions and not some historic or pristine state. He said the revised draft SMP provisions are based on the actual intensely developed, present state of the City's shorelines. No requirements are imposed by the revised provisions on the owners of presently developed shorelines, and the SMP Update regulations provide the footprint exception with regard to setbacks.

Dr. Settle said there are a number of options for property owners. For example, if their action has a minimal impact to ecological function, the required mitigation is minimal. The options do not restrict the type of vegetation to be planted; property owners may choose what they want. If a property owner removes an impervious surface, such as a patio, he or she does not need to do anything in terms of vegetation.

Dr. Settle said providing this flexibility and options results in a longer document. However, the proposed regulations represent flexibility, fairness, and no net loss of ecological function. He said the regulations include a provision to bank credits for future redevelopment by proactively and voluntarily making certain enhancements to ecological function (e.g., adding and/or retaining high-value vegetation).

Ms. Helland recalled that she has heard concerns about the untested approach and about the complexity of the regulations. She said the City will provide a manual and other tools to assist property owners with implementing and complying with the provisions.

Mr. Nickel described an example of expanding a patio. He said that types of vegetation are assigned a value corresponding to their habitat value and benefits to the water. He described examples of mitigating the expansion of a patio by installing certain types and configurations of vegetation. He described different ways to calculate nexus and proportionality for mitigation purposes. Mr. Nickel said the goal of the proposed draft code is to allow flexibility. Other jurisdictions have not employed this concept of proportionality in their mitigation requirements.

Councilmember Stokes recalled the initial concept that the City has substantial discretion to develop regulations specific to its community. He believes that is what Bellevue is doing with its proposed regulations. Although some of the provisions sound complex, they provide the flexibility and incentives desired by the community and acknowledge the programmatic elements of the City's overall policies. He believes the City and residents can all work together, and he supports the proposed regulations.

Councilmember Robertson said her understanding with regard to no net loss is that there is a programmatic requirement for the overall ecological function of the shoreline versus the function related to individual properties. Dr. Settle observed that this is the best interpretation, although there is some ambiguity. He believes the DOE should look at regulatory requirements, programmatic elements, education, incentives, and other relevant policies when it makes a determination on the adequacy of a Shoreline Master Program.

Ms. Robertson stated her understanding that, the way the code is currently written, if individuals are preparing an independent shoreline report and they want to do something that is a little outside of the safe harbors identified in the code, the regulatory body would look at the property specifically for no net loss. Dr. Settle concurred with that understanding.

Ms. Robertson recalled Council direction on September 8 and the drafts that have been made since that time. She noted that the draft code was released the day before Thanksgiving, and she is not ready to take final action at this time. She would like more advance notice to allow more time for the Council and the public to review the code. She has heard there are still some concerns among property owners.

Councilmember Robertson said the presentation summarizes everything that is good about the code, which is the flexibility and options provided in the regulations. She said the goals of vegetation are water quality, aquatic habitat, and upland habitat. The main focus of the latter is the raptors, which need nesting trees taller than 50 feet within one-quarter mile of the body of water.

Ms. Robertson said she would like to find a way, if a property owner is removing lawn and replacing it with a higher value vegetation, for example, to have the option of establishing a record with the City for future reference if modifications are desired by the property owner. Ms. Robertson said she would like the regulations to identify rain gardens as an option due to their positive effect on water quality.

Ms. Robertson said she would like to see the mitigation formula nuanced a little better. She is bothered by the fact that this code seems to support and protect noxious weeds, and she feels this is not a good policy. She said the Washington Sensible Shorelines Association submitted a mitigation proposal that she thinks should be considered. She said certain vegetation attracts vermin (i.e., rats or nutria) and there needs to be a provision to allow the removal of that vegetation in those situations.

Ms. Robertson said there has been a request to look at a minor expansion exception for individuals wanting to expand a structure or impervious surface in the upland area. Other cities have addressed that and she would like to look at that more closely. She said the code formerly had an administrative modification provision for unusual lots, and that has been removed. The option for hiring a shoreline report remains but that is a fairly expensive option for property owners. While she realizes it will be difficult, she would like the City to draft regulations with safe harbors for constrained lots.

Councilmember Robinson said she understands how flexibility results in lengthier and sometimes more complex regulations. However, she wants to ensure that the City can make it more understandable to the public and that residents can call the City for assistance in addressing their specific properties. She said a goal of this process was to make the regulations less burdensome for the community.

Ms. Robinson said she keeps hearing two questions from the community. As proposed, is there a threat that shoreline owners will need to change their existing landscapes to comply with the new regulations? Dr. Settle said no, that is not a requirement.

Ms. Robinson said another question is: Will property owners be able to re-landscape without improving the current ecological value of their property? Dr. Settle said the answer to that is yes.

Continuing, Ms. Robinson asked whether residents can sign up for shoreline public involvement alerts. Ms. Helland said yes. In further response, Ms. Helland said mitigation is required for the removal of diseased natural vegetation. However, there is no prescribed permit process before a property owner undertakes the work. In further response, Ms. Helland said septic tanks are included and treated the same as other existing structures and features.

Ms. Helland referred the public to the Planning Initiatives portion of the City's web site. Clicking on the Shorelines heading leads to a page that provides an Alerts button at the top to sign up for email alerts.

Councilmember Chelminiak observed that the explanation of a basic example earlier in the meeting was too complex. He questioned the appropriate threshold for requiring a landscaping permit. He suggested that 200 square feet seems too small. He suggested, if a permit is going to be required, a threshold based on the percentage of the square footage of a lot would be more fair.

Mayor Balducci noted the need to move to the next topic. She said she still has some questions and comments. She asked staff to work up a final version of the ordinance with optional language for the changes suggested tonight by Councilmembers. She suggested that the basic example described earlier would be easier to understand with the math provided in writing.

Ms. Balducci said the proposed regulations are responsive to property owners' concerns about requiring the replacement of landscaping beyond the amount that is removed. The regulations also respond to landowners' interest in clear guidelines and options.

Mayor Balducci noted ongoing concerns about the ability to rebuild within the same footprint. Staff confirmed that property owners can rebuild within the current footprint.

- (b) Review of the Planning Commission Recommendation to Amend the Comprehensive Plan with the Mountvue Place 2014 Comprehensive Plan

Amendment (CPA), as part of the 2014 Comprehensive Plan Amendment Work Program adopted by the City Council on September 8, 2014.

Mr. Miyake said no formal action on the Mountvue Place Comprehensive Plan Amendment (CPA) is requested this evening but will be scheduled for the following week.

Planning Director Dan Stroh introduced Michelle Hilhorst, Vice Chair of the Planning Commission.

Nicholas Matz, Senior Planner, provided an overview of the two-part Comprehensive Plan Amendment (CPA) review process. This proposed CPA has undergone threshold review and tonight's focus is final review. Council action is scheduled for December 8.

Mr. Matz said the Mountvue Place CPA property is located at 14510 NE 20th Street (west of Fred Meyer store and east of Rich's Stoves).

Ms. Hilhorst said the Planning Commission voted unanimously to recommend approval of the Mountvue Place site-specific CPA application to change the map designation on the 4.67-acre site from split Bel-Red Commercial Residential (BR-CR) and Bel-Red General Commercial (BR-GC) zoning to all Bel-Red Commercial Residential. The Commission determined that the application met the final review decision criteria.

Ms. Hilhorst said the application is consistent with the Comprehensive Plan and the Bel-Red policies for development of a sustainable urban redevelopment pattern intended to dramatically reshape the subarea. The application addressed the interests and changed needs of the City by eliminating the split zoning to permit unified redevelopment. The application responds to a significantly changed condition in that it was unforeseen that the split zoning would inhibit Bel-Red Plan implementation. The application identifies a public benefit by aligning with policy for suitable urban redevelopment.

Responding to Councilmember Lee, Mr. Matz said the issue of expanding the geographic scope of the CPA was addressed. He said there is a property line between this site and the BR-GC district to the west that contains commercial uses. Mr. Matz said the Mountvue Place site is more similar to development to the south.

Responding to Councilmember Robinson, Ms. Hilhorst said the only public comment was an email with a recommended language change. The other parties were the applicants and their legal counsel.

Mayor Balducci thanked staff and the Planning Commission for their work.

Deputy Mayor Wallace questioned whether it would have been better to review this site within the context of an overall review of the Bel-Red Plan. Ms. Hilhorst said the Planning Commission did not discuss that issue.

Mr. Stroh said staff is due to start the five-year review with the Council.

Deputy Mayor Wallace agreed that it is time to conduct the five-year review of the Bel-Red Plan. While the CPA request makes sense to him, he suggested it would be appropriate to discuss the CPA decision criteria and consider whether they continue to be the best criteria. Mayor Balducci concurred.

At 8:01 p.m., Mayor Balducci declared recess to Regular Session.

Myrna L. Basich, MMC
City Clerk

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