

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

March 16, 2015
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Balducci¹, Deputy Mayor Wallace, and Councilmembers Chelminiak, Lee, Robertson, Robinson, and Stokes

ABSENT: None.

1. Executive Session

Deputy Mayor Wallace opened the meeting at 6:01 p.m., and declared recess to Executive Session for approximately 30 minutes to discuss one item of potential litigation.

The meeting resumed at 6:45 p.m., with Mayor Balducci presiding.

2. Study Session

- (a) Shoreline Master Program Update Study Session 11 – Consideration of Amendment Options to the Council SMP Update Package

Mayor Balducci indicated that this is the 11th study session to discuss the Shoreline Master Program Update. The Council will be considering a list of potential amendments to the SMP Update package.

City Manager Brad Miyake said that, in addition to extensive study and discussions by the Planning Commission and Council, the Council held two public hearings. The purpose of this session is to seek Council direction on a number of potential Code amendments suggested by Councilmembers during and after the December 1, 2014 meeting.

Mike Brennan, Director of the Development Services Department, recalled that the Planning Commission transmitted its draft SMP Update to the Council in March 2014, and the Council's first public hearing was held on May 15, 2014 to receive comments on the draft document. The second public hearing was held on August 4, 2014. The Council provided additional direction to staff on suggested revisions during the September 8 meeting. Those revisions were addressed

¹ Mayor Balducci joined the Executive Session at 6:07 p.m.

with the Council on December 1, at which time the Council requested additional variations to consider. Councilmembers submitted suggested to staff following that meeting via email and phone calls as well.

Mr. Brennan referred the Council to the SMP Code Drafting Options Matrix in the meeting packet and Council's desk packet. Staff is seeking final direction from Council to enable staff to complete the drafting of the Code, return to the Council for final action, and transmit the package to the Washington State Department of Ecology. Staff will complete the Cumulative Impact Analysis before returning to the Council for final action on the package.

Carol Helland, Land Use Director, led the discussion of the options matrix, which presents suggestions and alternatives suggested by Councilmembers as well as staff's responses to those suggestions. Staff is seeking Council feedback on whether to retain the existing language or to select one of the options.

Mayor Balducci said the goal tonight is for the Council to provide final direction to enable staff to complete their work and to finalize the package for submittal to the DOE. She said she would ask for clear direction following each item, including approval of any specific revisions to the wording of the Code language.

Mayor Balducci said the first item clarifies that the option for an individual determination of the ordinary high water mark (OHWM) instead of the elevation set by the Council at 31.2 NAVD 88 is to be prepared at the sole discretion of the applicant. She recalled that was the Council's intent based on previous discussions. Mayor Balducci noted a Council consensus supporting the clarification.

Ms. Helland said the second item relates to vegetation and Council direction to create a more nuanced mitigation menu and to add rain gardens and swales to that menu. She described two potential options. Option 2a would add a nuance between non-native plantings based on distance from the OHWM and add rain gardens and swales. Option 2b adds to the above option by providing a line item for mown lawn, annual or perennial gardens, and noxious species/weeds; providing a line item for bare ground or pervious features; and assigning a higher value to rain gardens.

Councilmember Robertson noted that rain gardens help with both water quality and quantity by reducing the amount of water runoff into the lake.

Responding to Mayor Balducci, Ms. Helland said the options do not change the mitigation planting types. However, they change the values assigned to certain mitigation measures.

Ms. Robertson questioned staff's proposed reduction in the value for non-native vegetation. Ms. Helland said this was in response to a meeting with the Washington Sensible Shorelines Association (WSSA) and their suggestions. The suggested values were vetted with The Watershed Company and are reflected in option 2a.

Responding to Councilmember Chelminiak, Ms. Helland said staff would value the rain garden option at 0.4 under Option 2a and between 0.7 to 1.0 under Option 2b.

Responding to Mayor Balducci, there was a consensus in support of option 2b.

Moving to Item 3, Ms. Helland noted optional language regarding the recording of mitigation credits. Instead of “The applicant shall record plans and credits earned with the King County Recorder’s Office or its successor agency,” the recording of mitigation credits would be at the applicant’s discretion.

Responding to Mayor Balducci, Ms. Helland said that, if a permit is required for a project, the applicant would need to submit a planting plan, which would remain attached to the permit. For projects exempt from permitting, a shoreline exemption letter is still required under the terms of the Planning Commission-recommended alternatives. The letter provides another mechanism for the City to record the property’s history. In further response to Ms. Balducci, Ms. Helland said a prospective buyer of a property may request permit records for the property.

Responding to Deputy Mayor Wallace, Ms. Helland said some of the permit types require an inspection. Mr. Brennan said this would confirm that the work was completed in compliance with the plan.

Mayor Balducci suggested that education materials for property owners include information on how to find out about previous actions on the property.

Councilmember Chelminiak expressed support for the proposed revision indicating that the recording of mitigation credits with King County is optional.

Councilmember Robertson said property owners should have the option to record actions they have taken on their property to receive credit and to document improvements that could increase the property value.

Mayor Balducci noted Council support for the proposed revision to Item 3, which provides an avenue for applicants to record mitigation credits at their discretion.

Ms. Helland said Item 4 of the matrix relates to the removal of significant trees. Option 4a details requirements that at least one tree be replaced within 50 feet of the OHWM, but additional replacement trees could be placed anywhere within 200 feet. Option 4b: 1) allows the replacement of removed significant trees anywhere within 200 feet without limitation, and 2) provides credit for planting native trees anywhere within shoreline jurisdiction.

Councilmember Robertson said the basis for her proposal, Option 4b, is that one of the ecological functions of trees is to provide habitat for birds of prey. Available science indicates that a perch can be anywhere within the first third of a mile from the shoreline, and can sometimes be more beneficial farther from the shoreline. She expressed concerns that placing trees close to the shoreline blocks views and can impact the safety of shoreline uses.

Councilmember Stokes expressed support for Option 4a, noting that it encourages individuals to take better care of their properties. He expressed concern that moving too many trees from the shoreline would negatively affect the ecological function of the property. He observed that 4a provides flexibility and reasonable options.

Councilmember Robinson concurred with Mr. Stokes. She supports Ms. Robertson's comments about trees providing perches for birds. However, the ecological value of trees goes beyond that function.

Responding to Councilmember Chelminiak, Ms. Helland said the other ecological benefits of planting trees closer to the shoreline are water quality and the control of water runoff into the lake.

Responding to Councilmember Lee, Ms. Helland said significant trees are eight inches in diameter or greater. Their root systems and canopies help water quality and quantity by intercepting water and lessening runoff. The trees also provide wildlife habitat.

Mr. Brennan said trees of all heights provide habitat for different types of animals and birds.

Responding to Mr. Lee, Mr. Brennan said staff recommends Option 4a. However, he acknowledged that there are pros and cons to any of the options.

Responding to Deputy Mayor Wallace, Ms. Helland confirmed that essentially all of the requirements provide prescriptive solutions. However, individuals have the option of requesting a departure from the requirements through a special shoreline report that demonstrates no net loss of ecological function for their proposal. Given that flexibility, Mr. Wallace said he would support Option 4a, which seems to be the preference of the majority of the Council.

Mayor Balducci noted a Council consensus in favor of Option 4a.

Ms. Helland noted Councilmember Robertson's suggestion to provide mitigation credits for replacing solid dock surfaces with grated decking. There is currently no Code language in the Shoreline Master Program addressing dock grating. Option 5a adds the dock grating credit in the LUC sections that discuss other types of enhancements (e.g., shoreline vegetation enhancement, retention, mitigation planting, and advanced mitigation).

Councilmember Robertson questioned how Options 5a and 5b differ in practice. Ms. Helland said they are essentially the same by application. The difference is where the language would be added to the Code.

Councilmember Robertson expressed support for Option 5a.

Mayor Balducci noted Council consensus supporting Option 5a.

Ms. Helland said Item 6 is a proposed vegetation removal exception for vermin control. This is not currently addressed in the Code. This option would exempt property owners from mitigation

requirements when vegetation impacts are taken to control vermin. Vegetation can currently be removed to control vermin; however, mitigation is required.

Responding to Mayor Balducci, Mr. Brennan said the proposed exemption presents an administrative challenge because there is not a definition of what constitutes a vermin problem and there is no specific limitation on how much vegetation could be removed.

Ms. Balducci questioned how the City would respond to a complaint about a vermin problem on a neighboring property. Mr. Brennan said the property owner would first be asked to clean up the property and do whatever they could to eradicate the problem. There are options in the Code to do so that would not trigger permits (e.g., pruning vegetation, removing debris, etc.). In some instances, individuals are feeding the animals, generally inadvertently by leaving pet food outside. However, generally the approach is voluntary compliance. Mr. Brennan noted the possibility that a property owner could remove a great deal of vegetation and then attribute it to vermin control, without the City having a way to verify the claim.

Mayor Balducci said she would be comfortable leaving the Code as it is for now, while monitoring whether vermin problems are occurring along the shoreline related to excessive vegetation.

Councilmember Robertson said she believes most people would not try to take advantage of the exemption as a loophole. She would like to consider specific Code language that could provide some level of exemption.

Councilmember Stokes agreed that most people would not try to take advantage of a Code exemption. He observed that property owners want to be educated about the requirements and have options to consider. He would like residents to have the option of applying for some type of administrative approval or exemption.

Ms. Helland said the current Code provides quite a bit of flexibility as long as a plant is not entirely removed. Options include the ability to move the landscaping to a different location without having to provide additional mitigation.

Responding to Deputy Mayor Wallace, Ms. Helland said residents are required to comply with the Land Use Code even in situations that do not require a permit. Mr. Wallace said he prefers to allow residents to maintain their property as they see fit as much as possible. If there is a way to provide an exemption while complying with the requirements for no net loss of ecological function, he would be open to considering specific Code language. However, he would support not adding the proposed exemption as well.

Councilmember Lee said he would prefer not to decide on this issue.

Councilmember Chelminiak observed that the City's existing regulations provide the ability to address vermin control problems.

Mayor Balducci observed that three Councilmembers support leaving the Code as it is while others are not fully committed to a specific approach. However, the Council is in agreement that the City should support property owners who are trying to control vermin. She suggested putting the proposed amendment aside for now and moving to the next item.

Ms. Helland said Option 7 is a proposal to add language that noxious weeds should not be protected, while acknowledging that any vegetation does have some amount of water quality and habitat benefit. Based on Council discussion on December 1, staff proposes clarifying language to ensure the removal of noxious weeds does not create erosion or sedimentation impacts.

Mayor Balducci noted a Council consensus in support of the clarification.

Responding to Councilmember Robinson, Ms. Helland said the shoreline vegetation conservation area is within 50 feet of the OHWM.

Moving on, Ms. Helland described four options for Item 8 related to minor expansion exemptions for primary structures and minor modifications to the percentage of square footage within 50 feet of the OHWM.

Responding to Councilmember Stokes, Ms. Helland confirmed that Option 8d provides a greater potential exception than 8b, which applies only to lateral expansion and not to forward expansion. Option 8d allows for forward expansion.

Responding to Councilmember Robinson, Ms. Helland said Options 8a and 8b are equally easy to apply because both provide a 200 square foot exception.

Responding to Councilmember Robertson, Ms. Helland said the 200-, 500-, or 600-square foot exceptions apply to the footprint of the structure or impervious area.

Ms. Robertson said she did not realize from the written description that Option 8b applies only to lateral expansion. She said she does not support this option and observed that, by preventing expansion into the 50-foot buffer (i.e., no touch buffer), the option is more aggressive than the Critical Areas Ordinance which has a 25-foot buffer.

Ms. Helland said the intent was not to restrict expansion toward the shoreline. When this option was discussed with The Watershed Company, their staff felt it was important that, if the City was giving an outright exception and not requiring mitigation, the exception should be retained as lateral. She said there is other flexibility in the Code, however, to expand forward up to 25 feet from the OHWM with appropriate mitigation.

Mayor Balducci observed that the use of the term “no touch buffer” in the Code language is misleading. She said the Code allows a number of ways to develop into the buffer with required mitigation, which she does not interpret as a no touch buffer.

Councilmember Stokes said 8a and 8b together provide good flexibility and a number of options.

Mayor Balducci said the current Code language is adequate, and she does not believe any of the options are necessary.

Deputy Mayor Wallace concurred with Mr. Stokes and expressed support for Option 8b, which includes the provisions of 8a.

Mayor Balducci noted Council majority support for Option 8b.

Mayor Balducci noted that a number of options still need to be addressed. She indicated the topic would be continued under Unfinished Business toward the end of the Regular Session.

At approximately 8:02 p.m., Mayor Balducci declared recess to Regular Session.

Myrna L. Basich, MMC
City Clerk

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