

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

June 23, 2014
6:00 p.m.

Conference Room 1E-108
Bellevue, Washington

PRESENT: Mayor Balducci and Councilmembers Chelminiak, Lee, Robertson, Robinson, and Stokes

ABSENT: Deputy Mayor Wallace

1. Executive Session

Councilmember Robertson called the meeting to order at 6:01 p.m., and declared recess to Executive Session for approximately 15 minutes to discuss one item of property acquisition.

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

2. Oral Communications

- (a) Marty Nizlek spoke to items he had submitted in writing. Regarding docks, Mr. Nizlek said everyone recognizes that the U.S. Corps of Engineers and State Fish and Wildlife regulate just about any action a shoreline property owner would take from maintenance to replacement of the dock. These require permitting and mitigation. With regard to shore stabilization, everyone realizes that bulkheads are not the most green treatment of the shoreline. However, the Planning Commission process identified a preference for angled riprap because it attenuates the wave action and provides some fish habitat. Soft stabilization has been recommended by some. However, Lake Sammamish shorelines are subjected to high wind and wave action, and large woody debris breaking loose and floating around the lake is hazardous. Mr. Nizlek thanked the Council for their time and asked them to review his written materials.
- (b) Charlie Klinge, speaking on behalf of the Washington Sensible Shorelines Association (WSSA), said the greenscape provision is flexible. The Draft Shoreline Master Program (SMP) adopts the Critical Areas regulations by reference to ensure that any streams, wetlands or steep slopes within the shoreline area are regulated with the same exact rules as the rest of the City. Mr. Klinge said lake shorelines are not critical areas. Critical salmon habitat areas include Kelsey Creek and Issaquah Creek where salmon are spawning. Mr. Klinge said salmon are spawning in Kelsey Creek Park very close to the parking lot and trails. He said there is no justification to impose no-touch buffers on

reasonable conditions for lake property owners when lake shorelines are not a spawning or rearing habitat like the streams. Mr. Klinge said the proposed flood hazard rules are consistent with every other jurisdiction on Lake Sammamish and with FEMA requirements. He said the rules are more restrictive than the 25-foot setback on 56 percent of Lake Sammamish homes. He said the City has substantial discretion to adopt local regulations to fit the City's circumstances. He submitted his comments in writing.

- (c) Scott Sheffield commented on water quality and additional actions the City could take to create a better and more effective Bellevue Shoreline Master Program. He said the lakes of Bellevue need to be monitored and measured in order to know whether regulations are successful. He said that current monitoring is inadequate given today's complex environment. At one time, Lake Sammamish had six monitoring stations. He believes there is now just one. Mr. Sheffield suggested that the City create a SMP coordinated stormwater monitoring measurement program, encourage local and federal government officials to monitor local fish of importance to see if good or bad fish numbers are due to Bellevue lake conditions or other factors, educate all citizens, and monitor non-point-source water runoff to fully understand its impact and contribution. He suggested the City create and distribute an annual report card to Bellevue citizens to help keep everyone focused on lake-related issues. In seven years when the SMP is updated, the collection of data would benefit that process greatly.
- (d) Blaise Bouchand, owner of Maison de France, read a declaration from Blue Sky Church regarding the recreational marijuana dealer opening in July at 1817 130th Avenue NE. The letter indicates that the church has already experienced individuals selling and using medical marijuana behind the church's building. This has been reported to the Police as a recurring problem. The church's letter thanked Mr. Bouchand for his efforts with the City Council to address this issue. He also read a declaration from Goudy Construction which expressed concern about the potential for robbery and theft so close to a marijuana outlet. The company supports Mr. Bouchand's efforts.
- (e) John Tymczyszyn recalled that, in 1987, hundreds of families and corporations got together to build the Downtown city park. Since that time, many have passed away. Mr. Tymczyszyn said a donors monument was installed at the park. However, some of the names have eroded and the monument is in need of maintenance. He has contacted the Parks Department but has not received any answer on a timeline for the repairs.

Mayor Balducci said she will ask staff to look into this issue and report to the Council.

- (f) Terre Olson said she is a small business owner located directly across the street from the proposed retail marijuana outlet. She is opposed to the idea because crimes have increased in Colorado around retail marijuana shops. She submitted copies of a NBC news article about crimes associated with the shops including robberies of the pot and of large amounts of cash kept on hand.
- (g) Mark Olson, representing Unique Art Glass, expressed concern about the impact of a nearby marijuana store on his business and ability to attract and retain customers. He

noted that he is a Bellevue resident living in Cherry Crest. Mr. and Mrs. Olson submitted their comments and the news article for the Council.

Mayor Balducci said a public hearing on marijuana regulations will be held soon before the Planning Commission.

- (h) Erica Tiliacos, representing Save Lake Sammamish, said vegetative shorelines are the most effective means for stabilizing shores. Bulkheads are to be discouraged because they are destructive to the shoreline and will eventually fail. She submitted comments in writing which contain links to a shoreline erosion control handbook and to an article on the biological conditions of the nation's lakes by the U.S. EPA. Ms. Tiliacos said Save Lake Sammamish requests the addition of shoreline revegetation and natural soft shore armoring in the updated SMP.
- (i) Heather Trescases, Eastside Heritage Center, invited the Council and the public to the annual Strawberry Festival at Crossroads, which is supported by 50 community sponsors and 150 volunteers. The festival is a celebration of the regional cultural heritage, including agriculture, and the community's diversity. The event includes games, a giant slide, a train, and interactive heritage activities.

3. Study Session

- (a) Council Business and New Initiatives

Mayor Balducci said that Councilmember Chelminiak had a discussion with Mayor Marchione of Redmond at the Association of Washington Cities (AWC) meeting regarding Eastside cities working together on a common vision for an Eastside-centric bus plan and working with King County Metro to gain support. Ms. Balducci said that other Eastside mayors have expressed an interest in working together on this issue. She said Bellevue Transportation Director Dave Berg has indicated that staff of different cities have been working together already in this area.

Councilmember Chelminiak said this is a good opportunity for elected officials to work on this topic on behalf of residents, visitors, and businesses.

Councilmember Robertson reported that she attended the AWC conference, including a session by the State Liquor Control Board about recreational marijuana. Retail licenses will begin issuing on July 7.

Councilmember Lee expressed support for the suggestion to work with Eastside cities in advocating for appropriate bus service.

- (b) Ratification of Proposed Amendment to the King County Countywide Planning Policies (CPP) designating the Central Issaquah Urban Core area as an "Urban Center"

City Manager Brad Miyake opened staff's presentation regarding a proposed amendment to the Countywide Planning Policies designating the Central Issaquah Urban Core area as an Urban Center. If supported by the Council, staff anticipates requesting final action on July 7.

Mike Kattermann, Senior Planner, said proposed amendments to the Countywide Planning Policies first go through the Growth Management Planning Council. Councilmember Robertson is the City's representative on that group. The GMPC recommends approval of this proposed amount, as does the King County Council. Following the latter's approval, there is a 90-day period for cities to ratify the amendment.

Mr. Kattermann said the three options before the Council are to: 1) Direct staff to prepare a resolution disapproving the amendment, 2) Take no action, which is deemed approval, and 3) Direct staff to prepare a resolution ratifying the amendment.

Councilmember Chelminiak said that one of the other things in process in terms of urban centers is whether or not the urban centers that have been designated are actually developing in that manner. The Puget Sound Regional Council (PSRC) is working to monitor this development, which he believes is an important component of the process.

Mayor Balducci said the last time the Council considered an amendment to the Countywide Planning Policies was when Redmond was looking to designate the Overlake area as an urban center. The issue at the time was that Bellevue was creating its Bel-Red area as well, and increased densities were anticipated in both areas. This raised the issue of ensuring there would be adequate transportation capacity. Similarly, in Bellevue's Eastgate planning process, there was concern about the need for enhanced mobility in that area.

Ms. Balducci expressed support for the proposed CPP amendment and said this again highlights the need to jointly advocate for appropriate transportation services in the I-90 corridor. She said the urban center designation will enable the City of Issaquah to achieve improved high-capacity transit.

Councilmember Robertson said this urban center designation is different than the PSRC urban center designation. She questioned whether Issaquah will be seeking the designation from PSRC as well.

Mr. Kattermann said he was not sure, but he suspects the City of Issaquah will do so. He said this is the first step in the process of achieving the designation as a core city under PSRC's Vision 2040 Plan.

Ms. Robertson expressed support for the proposed amendment. She is pleased that PSRC is monitoring the development of designated urban centers to determine whether they are effectively functioning in that way.

Responding to Councilmember Lee, Mr. Kattermann said the King County standards are typically higher than the PSRC standards for the urban center designation.

Mr. Kattermann said that approval of the CPP amendment will be brought back to the Council as a consent calendar item.

(c) Review of the 2013 Wastewater System Plan

Mr. Miyake introduced discussion regarding the City's 2013 Wastewater System Plan, noting that Council action on the plan is anticipated on July 7.

Utilities Director Nav Otal introduced Paul Bucich, Assistant Director of Engineering, and Doug Lane, Senior Engineer for system planning.

Ms. Otal said the Wastewater System Plan guides long-range planning, operations, capital expenditures, and fiscal planning for the wastewater system. A major component of the plan is to recommend new capital investment proposals and to evaluate ongoing capital programs. Update of the plan every six to 10 years is required by the State, County, and Bellevue City Code.

Ms. Otal said the City contracts with the King County Wastewater Treatment Division for wastewater treatment. The City provides services outside of Bellevue to the Points Communities, Beaux Arts, southern portion of Issaquah, and a small portion of unincorporated King County. The total customer base is approximately 137,000.

Ms. Otal said the Washington State Growth Management Act requires that municipalities address a number of issues to ensure they are ready and able to accommodate future growth. One of these issues is long-range planning for capacity and for the longevity of the infrastructure. Comprehensive Plan policies UT-4 and ED-21 address those needs.

Mr. Bucich reviewed the history of the Wastewater System plan, which originated during the 2008-2010 budget process. The Environmental Services Commission issued its recommendation on the plan update in March 2014, and Council adoption of the plan is anticipated on July 7. Mr. Bucich described the public outreach process involving citizens and neighboring jurisdictions throughout the update work. City staff have also been working with the State and King County in updating the plan.

Mr. Bucich said existing wastewater policies address customer service, service area, water quality, and financial management. The plan update recommends minor language revisions to policies regarding sewer system ownership and maintenance and the inflow/infiltration function. It introduces a new Regional Wastewater Policy as well.

The proposed new regional policy is intended to guide Bellevue's role in influencing regional, state and federal wastewater requirements, policies and programs. Mr. Bucich said that many of the activities listed in the proposed policy language are already being done by the Utilities Department. However, staff wants to ensure the Council understands the level of engagement and to make sure the Council agrees with the policies and activities.

Mr. Bucich described three new findings since 2003 regarding lake line deterioration, inflow and infiltration, and the potential Downtown capacity issue. With regard to lake line sewers, there are

indications that the asbestos cement pipe will begin experiencing structural failures in 10 to 15 years. Another issue is that sedimentation in flat pipes is causing some overflows. The rough replacement cost estimate for this infrastructure is \$73 million in 2022-2033 and \$79 million in 2055-2068. The updated Wastewater System plan recommends continuing the lake line assessment and mapping to support future replacement.

Mr. Bucich described the third issue, which is the identification of inflow and infiltration problem areas that have experienced overflows including Evergreen East, Yarrow Point, Cozy Cove, and the Newport Basin. Mr. Bucich said modeling predicts a future potential capacity issue on Bellevue Way from SE 3rd Street to Main Street. The plan recommends installing flow monitoring equipment to validate the I&I assumptions regarding capacity and coordinating with development opportunities as they arise to be cost-effective in any infrastructure projects.

Mr. Bucich said the City's Wastewater System Plan Update requires the approval of the City Council, King County Council, and the Washington Department of Ecology.

Councilmember Robertson said this is great work by the Environmental Services Commission. She noted that Councilmember Stokes has been the Council liaison throughout the bulk of the update process. Ms. Robertson expressed support for the plan.

Councilmember Stokes said a great deal of work went into the plan, which reflects the Utilities Department's ongoing repair and replacement approach. He expressed support for the proposed plan update.

Responding to Mr. Stokes, Mr. Bucich said the I&I modeling related to Bellevue Way needs to be validated to avoid overbuilding for capacity that might not be needed.

Councilmember Lee said he would like to know more about maintenance and replacement, which are specific to the City's needs and demands. He said he does not understand why those items need to be approved by the State.

Mr. Bucich said the plan covers all functions related to wastewater and it demonstrates that the City is following approved and acceptable processes. He said the longevity of the system is directly related to the City's maintenance practices.

In further response to Mr. Lee, Mr. Bucich said the City needs approval from King County because the agency is the City's wastewater treatment provider.

Mr. Lane said that King County is generally concerned with the quality and quantity of water it receives from the City. With regard to operations, the State DOE is interested from an environmental protection standpoint.

Mayor Balducci suggested that staff follow up in writing to Councilmember Lee's interest in King County's authority. However, she noted that the issue at hand is approval of the plan by the City Council.

Councilmember Stokes said King County wants to ensure that the City identifies its current and future capacity needs and has a plan to meet those needs.

Councilmember Robertson said the lake lines are expensive and a big concern for future capital needs. One of the reasons the lakes are doing as well as they are is due to the City's lines. She questioned whether there is an expectation that the plan will be used as part of the cumulative impact analysis for the Shoreline Management Program (SMP) Update.

Mr. Bucich said that is not an anticipated use of the Wastewater System Plan.

Ms. Robertson believes it should be considered. If the City is replacing the lake lines, this will ensure fewer breaks into the lake and helps to improve water quality.

Ms. Robertson questioned whether there is a recommendation from the City to add any components to the plan to ensure the system is improving and not degrading any of the lake shoreline with the City's sewer line plan. She said she will be asking the same questions during the review of the stormwater plan, which has an even higher impact on the water quality of lakes and streams.

Councilmember Robinson said she is pleased the City is addressing lake lines in its long-range planning.

Mayor Balducci observed that the Council is comfortable moving forward. She suggested setting aside one Council meeting a year to discuss utilities issues in greater detail.

Mayor Balducci thanked staff for the presentation.

- (d) Public Hearings on Wilburton Land Use Code Amendment (LUCA) and related Development Agreement implementing the Comprehensive Plan Policies for the Wilburton/NE 8th Street Subarea related to Retail Development along the 116th Avenue NE Corridor
 - (1) Public Hearing on Wilburton Land Use Code Amendment

Mr. Miyake introduced two public hearings related to development within the Wilburton/NE 8th Street Subarea.

Carol Helland, Land Use Director, said the first public hearing addresses a proposed Wilburton Land Use Code Amendment (LUCA). The Subarea Plan was updated in 2008 and key components are the extension of NE 4th Street and enhanced retail opportunities. Ms. Helland referred the Council to page 41 of the meeting packet for the proposed Ordinance. The provisions of the LUCA allow for an increase in the square footage of retail uses and an increase in the maximum height limit of CB (Community Business) uses.

Ms. Helland recalled that the Council initiated the proposed LUCA on May 19 and directed staff to bring it forward for a public hearing and formal consideration.

- Councilmember Robertson moved to open the Public Hearing, and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 6-0.

The following citizens came forward to comment:

1. Dan Renn said he is Vice President of the Wilburton Community Association but speaking as an individual because the Association has not yet formally addressed this issue. He expressed concern regarding the increase in building height from 45 feet to 75 feet. He said the CB zoning is not just along 116th Avenue NE but it is also along 120th Avenue NE which is closer to the residential area. He suggested a midpoint between 45 feet and 75 feet. Mr. Renn commented on the importance of extending 120th Avenue NE north of NE 8th Street before the extended NE 4th Street is open. He hopes that is the plan. He noted concerns that failing to do so will push traffic into the neighborhood.
 2. John Dietrich, representing Target Corporation, expressed support for the proposed LUCA. He noted plans to develop a large Target store on 116th Avenue NE. He submitted his comments in writing.
 3. Jay Hamlin said he serves on the Planning Commission but was speaking as an individual and resident of the Wilburton neighborhood. He recently completed his urban design certificate and conducted a study of the Wilburton commercial area as part of the program. He supports the potential for redevelopment in conjunction with expanded retail uses and the future light rail station. Mr. Hamlin said he believes the higher building heights will provide desired mixed uses. He observed that the Subarea Plan guidance retains the character of a community. In completing his project, he became aware of the asset of the 120th Avenue NE corridor and its potential as a great pedestrian experience. Mr. Hamlin proposed adding a footnote to the design guidelines regarding the pedestrian experience and other aesthetic considerations.
 4. Jack McCullough spoke on behalf of KG Investment Management, which owns the property slated for development of the Target store. He said this is the culmination of a seven-year process which reflects the good planning that led to adoption of the Wilburton/NE 8th Street Subarea Plan in 2008. Mr. McCullough said the increased building height limit was anticipated in the Subarea Plan and applies to the area between the railroad tracks and 116th Avenue NE. He said there is clear linkage to having NE 4th Street completed but not explicitly with improvements at NE 8th Street. However, he understands the importance of the City's goal to extend 120th Avenue NE through NE 8th Street in the future. Mr. McCullough asked that his comments be applied to the Public Hearing on the Target Development Agreement as well.
- Councilmember Stokes moved to close the Public Hearing, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

Ms. Helland requested Council direction that staff bring back a Land Use Code Amendment similar to the draft Ordinance provided on page 41 of the meeting packet. She noted that the public testimony highlights a deficiency in the LUCA as presented to the Council. On page 42 of the meeting packet [Page 2 of Ordinance], a footnote refers to the maximum building height of 75 feet in CB districts in the Wilburton Subarea. Ms. Helland said it would be reasonable and helpful for the public to add clarification that the 75-foot building height limit is restricted to the area between the railroad right-of-way and 116th Avenue NE. The height limit does not apply to 120th Avenue.

Councilmember Robertson expressed support for the proposed clarification. Councilmember Lee concurred.

Councilmember Stokes expressed support for the LUCA and said he appreciated the perspectives of the speakers.

Mayor Balducci asked that staff respond to the Council and to the Wilburton Community Association confirming the schedule for building the 120th Avenue NE crossing of NE 8th Street. She recalled the Council made a commitment that should happen simultaneously with or before the NE 4th Street extension project.

Ms. Balducci recalled a Wilburton Subarea study a few years ago that resulted in plans for the mixed use redevelopment of the area. The area is in transition and it is important to review the zoning now to guide development consistent with the City's vision for the area.

(2) Public Hearing on Development Agreement relating to retail development along 116th Avenue NE

Kate Berens, Deputy City Attorney, introduced the Development Agreement related to retail development along 116th Avenue NE, which is a tool that allows the development of retail uses exceeding 100,000 square feet. The purpose of the agreement is to establish design guidelines that help address any potential bulk and scale impacts from a retail use of that size. This development agreement between the property owner, City, and Target Corporation relates to the development of a Target store exceeding 100,000 square feet. The Development Agreement mechanism is allowed under the State Growth Management Act, and the Council is required to hold a public hearing on the agreement before taking action.

→ Councilmember Robertson moved to open the Public Hearing, and Councilmember Chelminiak seconded the motion.

→ The motion carried by a vote of 6-0.

The following citizens came forward to comment:

1. Jack McCullough, representing KG Investment Management, urged the Council to adopt the LUCA and the Development Agreement. He thanked City staff for their work and efforts to get to this point.
 2. John Dietrich, Target Corporation, thanked City staff as well and expressed his support for the Wilburton LUCA and the Target Development Agreement.
- Councilmember Robertson moved to close the Public Hearing, and Councilmember Chelminiak seconded the motion.
- The motion carried by a vote of 6-0.

(3) Council Discussion

Deputy City Attorney Berens said there are several design guidelines attached to the Development Agreement that address features related to the relationship of the proposal to the Burlington Northern right-of-way.

Responding to Councilmember Robertson, Ms. Berens said the building height of the proposed Target store is less than 75 feet. The expected size is 150,000 square feet for the store plus pedestrian-oriented retail frontage (approximately 15,000 square feet) separate from Target and accessible from 116th Avenue NE.

Ms. Robertson suggested referencing a maximum size in the Development Agreement. She supports the Development Agreement, but is not comfortable with a perpetual agreement. She believes it should expire when buildout is complete, which she noted is a more common practice. If the City wants to change the zoning to be able to provide design guidelines for future renovations, the guidelines should be incorporated into the Code.

Ms. Robertson would like to avoid the problem experienced in other areas of Bellevue related to underlying concomitant zoning agreements, some of which date back to the 1970s. She strongly objects to contractual, perpetual zoning on any property.

Responding to Ms. Berens, Councilmember Robertson said her concern is that the Target store could renovate its development in 20 years and it would be required to follow design guidelines established now. She believes future renovations should follow future design guidelines.

Ms. Berens said that was not the intent of the language. She will work on revising the language. The intent was to use language that would be consistent with design review approval and to put the Development Agreement on the same par as the design review.

Ms. Robertson said she prefers the Development Agreement process over the old concomitant agreements, and she wants to avoid problematic issues that resulted from the older agreements.

Councilmember Lee questioned the concerns about extending 120th Avenue NE to north of NE 8th Street.

Ms. Berens said that, under a previous settlement agreement with the property owner, it is possible that the driveway that would access Target's parking from NE 4th Street could become a turnaround before NE 4th Street extends to 120th Avenue NE. Separately the Mayor has requested an update to the Council and the Wilburton community regarding the scheduling of opening NE 4th Street to 120th Avenue NE, and extending 120th Avenue NE to the north side of NE 8th Street.

In further response, Ms. Berens said the Development Agreement is independent of that timing. The Target store could potentially be accessible only from 116th Avenue NE and NE 4th Street, with a turnaround on NE 4th Street guiding traffic back to 116th Avenue NE. Ms. Berens said staff will provide an update on the anticipated extension of NE 4th Street to 120th Avenue NE.

Mayor Balducci concurred with Councilmember Robertson's concerns about perpetual concomitant or development agreements.

Ms. Balducci said the vision for extending transportation capacity from the Downtown to the east and to SR 520 has been in place for some time. For the benefit of the public, Mayor Balducci said the LUCA and Development Agreement stem from the property owner's desire to do something useful with the property and the City's desire to facilitate redevelopment of the Wilburton area. She observed it is a good location for a Target store to serve the Downtown, Bel-Red corridor, and regional customers traveling via I-405.

At 8:35 p.m., Mayor Balducci declared a short break.

The meeting resumed at 8:42 p.m.

- (e) Shoreline Master Program Update Study Session 7 - In-depth review of Draft SMP Update provisions relating to critical areas, moorage and shoreline stabilization.

Carol Helland, Land Use Director, noted ongoing discussions regarding the Shoreline Master Program (SMP) Update. The topics for this meeting are critical areas (including the floodplain), residential moorage, and residential shoreline stabilization. Development of the draft SMP Update package will be completed for the public hearing on August 4. Staff requests that the Council provide direction to staff on September 8 to submit the SMP package to the State Department of Ecology (DOE).

After the Council provides direction, staff will move forward with drafting the related Code amendments and conducting the SEPA (State Environmental Policy Act) analysis. The consultant will prepare the Cumulative Impact Analysis.

Mayor Balducci asked the Council to hold their questions on each topical area until staff complete its presentation for a specific topic.

Ms. Helland said current critical areas regulations apply to streams, wetlands, shorelines, geologic hazard areas, habitat associated with species of local importance, and areas of Special

Flood Hazard. Current regulations are focused on protection based on the best available science and the Environmental Impact Statement (EIS), and shorelines are considered critical areas.

The first option considered by the Planning Commission was to incorporate existing critical areas regulations into the SMP by reference for all items except for shorelines, which will no longer be regulated as critical areas. This provides greater flexibility to balance shoreline protection objectives with the competing goals of shoreline access and recreation.

The second option, which is the Planning Commission's recommendation, is to incorporate critical areas regulations into the SMP by reference, with amendments to Special Flood Hazard areas within the shoreline jurisdiction. The substantive change is that floodplains located in the shoreline jurisdiction maybe be developed without demonstrating that development in the floodplain is necessary to achieve the "reasonable use" of property. Approximately one-fifth of the floodplain area in Bellevue is located within shoreline jurisdiction.

Ms. Helland said concerns raised by stakeholders related to the layering of regulations, equitable application of critical area regulations citywide, equal protection of critical areas in the SMP, protection of fish and wildlife habitat for species of local importance, no net loss, timing of floodplain revisions as they relate to the upcoming critical areas update and FEMA litigation, and the inclusion of substantive changes in conformance amendments.

Professor Dick Settle, legal and technical consultant, commented on the range of options with regard to constitutional issues/property use takings. He said there are not serious constitutional issues with either option in terms of being too restrictive or burdensome with regard to the use of private property. One issue, however, is that the regulations are more lenient in the shoreline jurisdiction than in the rest of the city, which could raise a challenge from residents in other areas.

With regard to the criteria of SMA/SMP guideline compliance, Ms. Helland said the Planning Commission's recommendation (Option 2) raises concerns that requirements governing floodplains create the potential for a net loss of ecological function because the floodplain regulations based on reasonable uses since the 1970s have essentially created a development pattern, especially on Lake Sammamish. She said the existing location of most houses is far behind the floodplain.

Ms. Helland said there is also the requirement that critical areas in the shoreline jurisdiction be regulated similarly, which creates a differential between the way the floodplain is regulated in the shoreline versus regulations applied outside of the shoreline jurisdiction. As a result, the City might run into a Shoreline Management Act conflict. Lastly, the City's Comprehensive Plan regulations specifically (Environmental Policy EN-40) state that the City is required to preserve and maintain the 100-year floodplain in a natural and undeveloped state and to restore conditions that have become degraded. That policy has been in place since the 1970s. Without changes to that policy, the City risks creating a Comprehensive Plan consistency problem if it goes forward with the floodplain changes as recommended in the conformance amendments.

With respect to ease of use, Ms. Helland said prescriptive regulations offer a “safe harbor” for property owners, while deviation options are available. This can be confusing for property owners who typically require staff assistance in applying critical areas regulations.

Responding to Councilmember Robertson, Ms. Helland said she did not have a percentage on Lake Sammamish shoreline properties within the floodplain.

Ms. Robertson asked why the Planning Commission recommended this policy regarding floodplain rights. Ms. Helland said they wanted to address the issue of the layering of regulations. They believe the shoreline policies are going to be protective of floodplains. Ms. Helland said the floodplain actually extends beyond the 25-foot setback in many cases.

Ms. Robertson said one person who testified before the Council said the flood hazard rules/floodplain regulations in the draft SMP or conformance amendment are the same as every other jurisdiction on Lake Sammamish. She believes that is an important point. Ms. Helland said the regulations are quite similar but other jurisdictions’ rationale is a bit different. They do not have the same Comprehensive Plan policy, however, that specifies no development of the floodplain.

Responding to Councilmember Robertson, Ms. Helland said the critical areas update could change the floodplain rules. However, it would be necessary to change the Comprehensive Plan policy to allow for development in the floodplain. The City would also need to demonstrate to the Department of Ecology that the Planning Commission’s recommendation on the shoreline floodplain is as protective as the floodplain regulations outside of shoreline jurisdiction that require a showing of reasonable use.

Ms. Robertson said the Planning Commission was concerned about the onerous nature of working through layers of the Code and multiple overlays on a specific property. Their recommendation is based on regulations adopted in the other cities around Lake Sammamish.

Responding to Mayor Balducci, Ms. Helland said the floodplain development requirements are relatively similar across the adjacent jurisdictions. If development is permitted, the regulations about no rise in base flood elevation, protection of lower basement floors against flood damage, and other performance standards are essentially the same. However, the path for getting to those performance standards might vary. The City of Bellevue has always viewed that as a reasonable use requirement because floodplains are a critical area and the City does not allow development in critical areas. Floodplains do not have a buffer. In other cases (e.g. wetlands, streams, steep slopes), the City requires, under certain circumstances, development to encroach into the buffers and the setbacks for those critical areas, but not into the critical areas themselves. In order to encroach into a critical area, there must be a demonstration of reasonable use. This reflects consistency citywide.

In further response to Mayor Balducci, Ms. Helland said other jurisdictions have different approaches. Some require the demonstration of reasonable use while others do not.

Councilmember Stokes said he would like more specific information. He is concerned about what sounds like an effort to weaken or change the floodplain regulations across the city. He observed that this complicates the issues of the SMP.

Ms. Helland said there is an intersection between floodplain and shoreline because all of the lakes have floodplain to a certain extent. There has been concern about the accuracy of mapping associated with floodplains. The recommended policy would allow more people to take advantage of the regulations to developing floodplains than they currently can. So it is a liberalization. The City has a long history, since the 1970s, of being protective of development occurring in floodplains because of its participation in the National Flood Insurance Program. The Utilities Department has always been supportive of not allowing development in the floodplain.

Ms. Helland suggested that, if the Council wishes to change floodplain regulations, it would be more appropriate to do so in the context of the critical areas regulations update. The other issue is that the conformance amendments did not notify all of the property owners subject to floodplains about proposed regulatory changes.

Mr. Stokes reiterated his concern about changing floodplain policy through the SMP Update.

Mayor Balducci said that, in general, it seems like poor policy to allow or encourage development in the floodplain. There is a reason for the City's existing policy, which is the consequence of allowing development in a floodplain. Ms. Balducci said the issue of whether the floodplains are accurately mapped is important because the City should not be limiting property owners from building outside of the floodplain.

Ms. Helland moved to the next SMP Update topic of residential moorage (docks). Current regulations have maximum dock dimensions of 150 feet in length and 480 square feet in area. Up to 50 percent of an existing dock structure can be replaced as maintenance, and up to 100 percent can be replaced without triggering standard compliance. New boathouses are prohibited. These standards generally align with the U.S. Corps of Engineers and were developed as a component of the critical areas update. They focus on protection and providing predictability in applying the regulations. Departures must be based on science and documented in a Critical Areas Report.

The Flexible Design option considered by the Planning Commission allows docks 150 feet in length except for Phantom Lake, which is limited to 100 feet, and the total area allowed is more flexible than current regulations. Expansions and reconfigurations can retain the existing platform size but must meet other new dock standards. Repairs are allowed without complying with new dock dimensional standards. The setback is 10 feet unless reduced in a recorded agreement with neighbors. This option allows for two boat lifts instead of one and the setback is decreased from 12 feet.

Ms. Helland said Option 2, which is the Planning Commission's recommendation, allows departures from the Washington State Department of Fish and Wildlife provisions and from the U.S. Corps of Engineers' approval. The maximum dimensions for new docks are 150 feet, with the exception of 100 feet for Phantom Lake. Existing legally established residential docks may

be repaired or replaced in the existing configuration up to 100 percent of the structure. Four boat lifts are permitted per dock, new boathouses are prohibited, and the setback is 10 feet unless reduced in a recorded agreement with neighbors.

Stakeholder concerns raised regarding docks included the adequacy of dock size to support recreational boating and water use, adequacy of dimensions to provide safe and stable watercraft access, and the layering of regulations between the City and other agencies. There was a concern that the unique mitigation requirements imposed by the City are inappropriate and unnecessary given state and federal oversight. Another concern was that the allowance of both increased overwater coverage and in-kind replacement of docks is anticipated by some to result in a net loss of shoreline ecologic function.

Ms. Helland said the State DOE has raised concerns regarding allowing departures from the SMP with Washington Department of Fish and Wildlife and/or U.S. Corps of Engineers' approval but without a variance from the DOE. State and federal agencies do not review for no net loss, except for the State DOE. As a result, the DOE is concerned that the no net loss standard will not be appropriately applied.

With regard to constitutional issues/takings, Dr. Settle said that none of the options present any serious constitutional issues. With regard to ease of use, he said there is an eternal conflict between predictability and certainty on the one hand and flexibility on the other. Greater flexibility results in less certainty, however.

Councilmember Stokes observed that going from allowing one boat lift to four seems like a large increase. Responding to Mr. Stokes, Ms. Helland said allowing two boat lifts is fairly common around the lake. She said these refer to full watercraft lifts and not to jet ski lifts.

Dr. Settle said boat lifts are similar to the distinction between wet moorage and drystack moorage. The DOE is encouraging drystack moorage as opposed to having boats in the water. While it sounds like more intense development, DOE often supports more boatlifts because it gets the boats out of the water.

Responding to Mr. Stokes, Ms. Helland said the four-foot width for walkways has been largely endorsed by the DOE and the U.S. Corps of Engineers. There is a provision to allow reasonable accommodation, especially for individuals with physical challenges. Mr. Stokes observed that the width seems somewhat arbitrary.

Dr. Settle said the City of Mercer Island seeks a five-foot width and is currently in a dispute with the DOE regarding this issue.

Responding to Councilmember Robinson, Dr. Settle said he is surprised the DOE is taking just a strong position on this regulation.

Councilmember Chelminiak said he has heard concerns from citizens about the cost of meeting certain requirements. He would like to make docks as simple as possible. If an individual can obtain approval from the State Department of Fish and Wildlife and the U.S. Corps of Engineers,

what does the City need to add onto that as a regulation that is helpful? He would prefer to see a more streamlined approach requiring a decision by just one agency.

Ms. Helland said she does not disagree. However, the issue relates to the fact that Shoreline Master Programs regulate for no net loss of ecologic function. The U.S. Corps of Engineers and the Department of Fish and Wildlife do not use that standard.

Ms. Helland said a related issue is that SEPA review is required for anything over water, including docks. The local jurisdiction is required to conduct the SEPA review before federal agencies will even look at the permit. She noted the comment on the comparison table under ease of use indicating that administration between agencies might not work smoothly in practice. Ms. Helland said staff would like a more streamline approach. However, she does not believe the City can remove itself from the process.

Mr. Chelminiak questioned how the City could demonstrate no net loss of ecologic function with regard to docks. Ms. Helland said if the City can create a strong “safe harbor” in this area in terms of prescriptive requirements, the City can grant a presumption of no net loss. The SEPA process would be more straightforward with that approach.

Councilmember Stokes said the concept of no net loss seems ambiguous yet it seems to be driving much of this effort.

Dr. Settle said the concept of no net loss is used in the broad sense that the SMP as a whole, both the planning and regulatory components, shall achieve no net loss of shoreline ecological functions. It is also used in the narrower sense that each development on the shoreline shall achieve no net loss. Dr. Settle observed that this language is somewhat inconsistent with what it says about balancing and tradeoffs as a whole. He said this overall concept has not been tested in court. In either of these senses, the standard of no net loss is applied to existing ecological functions. For the most part, new moorage facilities and/or replacement or expansion will improve the situation in terms of ecological function due to the use of new materials.

Councilmember Robertson concurred with Mr. Chelminiak’s interest in streamlining the regulatory process. While the Department of Fish and Wildlife does not explicitly use the concept of no net loss, the agency is focused on preserving favorable fish habitat. The U.S. Corps of Engineers requires more mitigation than the City has in its Code, including requirements for native vegetation and other items. She is comfortable with using the SEPA checklist and letting the other layers of government perform their roles. She believes that review by these two agencies is sufficient and there is no need to add more red tape to the process.

Councilmember Robertson suggested that the standards need revisions with regard to the width of walkways. She agrees that four feet is too narrow, and she does not believe that a special exception for someone in a wheelchair living on the property is adequate. A property owner spends a considerable amount of money on a dock, and being mobile today does not mean that person will not be a wheelchair tomorrow. It makes sense that when docks are constructed, they should be functional for visitors and all stages of the residents’ lives.

Mayor Balducci asked Councilmember Chelminiak if he was wanting to find a way to back the City out of this process. Mr. Chelminiak said he would like the City to have as minimal role as possible in this. He does not want to get into a fight over four feet versus five feet with a federal agency, and he does not want to get into a discussion about whether the City needs to mandate on private property that everything be constructed to an ADA standard.

Mr. Chelminiak said he would like the City to have minimal regulations, prepare the SEPA checklist, and have “good neighbor” guidelines regarding how close development is to neighbors. Other than that, he suggests letting the other agencies deal with dock issues.

Mayor Balducci said she heard a suggestion by Councilmember Robertson that property owners should be allowed to build wider walkways if needed.

Mr. Chelminiak said he would prefer to avoid regulating items that will be regulated by other agencies, for example, if that applies to the width of walkways.

Councilmember Robertson said she would support not specifying any standard with regard to the width of walkways if that is possible. However, if the City must establish a standard, four feet as a maximum width is too narrow.

Mayor Balducci suggested moving on to the next topic.

Ms. Helland said current regulations regarding residential shoreline stabilization (bulkheads) allow new or enlarged bulkheads to protect existing primary structures. Soft shoreline stabilization is essentially the default unless you show that it is not technically feasible. Hard stabilization must be located at or behind the ordinary high water mark (OHWM), but soft stabilization can go below the OHWM because it can include things like beach augmentation and gravel placement. Height of a new or expanded hard stabilization starts at 30 inches and may go higher with approval by the City, as necessary to protect the primary structure. A mitigation and restoration plan is required. The current guidelines were based on the shoreline update guidelines at the time the Critical Areas Ordinance was adopted.

Ms. Helland showed a series of photos depicting “before and after” shoreline stabilization treatments. The City acknowledges that there are properties for which soft shoreline stabilization is not possible because the house is so close to the water. Ms. Helland showed drawings depicting possible stabilization elements depending on the steepness of the shoreline along the water.

Ms. Helland described Option 1, which provides increased guidance with replacement thresholds. New or enlarged stabilization is allowed to protect existing primary structures. Soft shoreline stabilization is required unless it is not technically feasible. A mitigation and restoration plan is required. Differences from current regulations are that reconstruction and replacement of up to 50 percent of the structure is allowed as a repair, and reconstructions greater than 50 percent are treated as a new stabilization structure. Deviations are allowed with a Shoreline Special Report and the demonstration of no net loss.

Ms. Helland said the Planning Commission's recommended Full Replacement option allows for the same protections to new or enlarged primary structures. The primary deviation is that total repair and replacement of existing hard stabilization is permitted, with the requirement that vertical bulkheads must be replaced with a 1:1 slope angled riprap revetment.

Stakeholder concerns raised with regard to stabilization/bulkheads included the need for shoreline stabilization measures to protect property, the need for bulkheads as demonstrated by the persistent wave action on Lake Sammamish and Lake Washington, wave reflection damage created by vertical bulkheads, and the use of mitigation sequencing in shoreline stabilization measures. The Planning Commission discussed the potential requirement for a geotechnical analysis to demonstrate the need for bulkheads but determined that was going too far in terms of regulations.

Ms. Helland highlighted items on the table comparing the current Code and the two options. No geotechnical report is required currently for either of the two options. However, the SMP guidelines indicate that geotechnical work should be required. The Planning Commission's recommendation takes the position that legally established stabilization is presumed necessary on Lake Washington and Lake Sammamish. There are essentially no constitutional issues and the approach is considered easy to use in terms of understanding the regulations to be followed unless a shoreline variance is required to depart from the standards.

Ms. Helland briefly highlighted the Council's previous direction on May 27 and June 9 regarding buffers, setbacks and vegetation conservation.

Mayor Balducci suggested considering ways to reduce the setback by applying a number of possible options. Ms. Helland said staff would provide a menu of options for property owners. Ms. Balducci requested that the Council receive written materials from staff on this topic as far in advance of the meeting on July 14 as possible.

→ Councilmember Robertson moved to extend the meeting to 10:30 p.m., and Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 6-0.

(f) Regional Issues

(1) King Conservation District

Joyce Nichols, Director of Intergovernmental Relations, and Alison Bennett, Utilities Policy Advisor, presented the King Conservation District proposed work program and requested feedback on whether the Council supports the work program. Ms. Nichols noted that Councilmember Stokes chairs the advisory committee to the KCD Board of Supervisors.

Councilmember Stokes provided a history of the King Conservation District. After the shift of the WRIA-8 monies to the King County Flood Control District, the state legislature reconfirmed the \$10 per parcel limit for the King Conservation District. At that time, there were concerns

about how the District was operating, how elections were held, and other issues. A Conservation Panel task force was established last year with representatives from Bellevue, Seattle, the Sound Cities Association and other jurisdictions, including rural areas.

Mr. Stokes described the extensive review of the King Conservation District the previous year, which involved Rhonda Hilyer as facilitator. The advisory committee was expanded to include both staff and elected officials, and Mr. Stokes was elected Chair of the committee. Jim Berger, Mayor of Carnation, was elected Vice Chair.

Mr. Stokes said the advisory committee recommends approval of the work program, which includes food programs supporting locally sourced foods, a high priority for the King County Executive and King County Council. Urban and rural forestry issues are important as well.

Mr. Stokes said Deanna Dawson, Executive Director of the Sound Cities Association, is participating in this process. The SCA public interest committee (PIC) approved the plan, with the City of Redmond opposed, and the plan will be forwarded to the SCA Board for consideration.

Councilmember Stokes acknowledged that the proposal is not consistent with the Council's current policy statement on the King Conservation District. He recalled that the policy statement was established during a difficult period for the District. He urged support of the work program. He spoke to the importance of maintaining good relationships between big cities, small cities, and rural areas and of preserving all types of lifestyles and experiences.

Mr. Stokes acknowledged that the increase in the property tax assessment from \$5 per parcel to \$10 per parcel is a significant change. However, he believes it would be money well spent for the region.

Mayor Balducci said she is a big supporter of regional approaches. Challenges, opportunities, problems, and issues do not begin and end at jurisdiction borders. However, she is concerned not only that the tax assessment is doubling but that it is increasing to its maximum allowed by state law. She noted that government agencies have been operating within constricted budgets, and this work program adds 11 full-time equivalent staff positions.

Ms. Balducci expressed concern that not enough consideration is being given to a fair amount of collection and a fair amount of distribution. Bellevue receives no projects or services from the proposed tax assessment other than potential ancillary benefits related to the preservation of farmers markets and similar activities. The money is all directed toward rural programs.

Mayor Balducci said the City of Redmond objects to the proposed work program and tax, and it is likely that other jurisdictions will have concerns when the issue goes before the SCA Board. She would prefer to identify needs before approving expenditures rather than spending money just because it is available. Mayor Balducci acknowledged that the advisory committee was involved in a thoughtful process. However, the Council's existing policy with regard to the King Conservation District is to not approve an increase if there is no return or benefit to the City.

Councilmember Stokes said the City of Redmond and Councilmember Hank Margeson have submitted a series of questions for staff.

In the spirit of regional cooperation, Mr. Stokes asked that the Council consider changing its current policy and that the issue come back for further discussion before taking final action.

Councilmember Lee said he supports Councilmember Stokes' interest in regional collaboration and cooperation. However, he expressed concern about the rate increase. He concurred with the Mayor that the justification for expenditures, including 11 full-time staff, needs to be understood.

Councilmember Robertson said the proposal goes against two of the Council's guiding principles on the King Conservation District. If the Council wants to consider changing those principles, it would be necessary to evaluate the benefits and costs of remaining a part of the King Conservation District.

Ms. Robertson said she would feel better if the City were making a donation to this group. She feels protective of our citizens' money right now and is reluctant to take money from them that essentially does not come back to the City.

Ms. Robertson said she supports regional issues and loves farmers markets, drives in the country, and protecting the things that everyone values. However, at this time as the Council is going through the budget process, she feels protective of residents' and the City's money.

Councilmember Robertson thanked Councilmember Stokes for his work on the advisory committee. She said it has been important for Bellevue to have a role in the review and discussions.

Ms. Robertson noted that the Council's guiding principles regarding the King Conservation District were adopted just 14 months ago. She cannot support a doubling of the tax burden, and she said the City has many unfunded needs and priorities.

Ms. Robertson's other concern regarding the King Conservation District is its lack of transparency. She described learning of their election and finally finding the polling place in a room in the Bellevue Regional Library. As someone who supports elective government, she has fundamental concerns that this is not elective government at its best and that the District does not provide full and fair elections.

Ms. Robertson observed that many of the programs in the work plan are duplicative of existing programs in cities and agencies. One of the Council's guiding principles states that the King Conservation District should not duplicate or supplant programs that have been funded by other agencies.

Councilmember Chelminiak said that, in general, he likes conservation districts and believes they do a lot of good. However, the proposed work plan provides nothing back to the City, and there are conservation needs within cities that need to be funded. He expressed concern about the requested tax assessment and the lack of a demonstrated justification of needs.

Mr. Chelminiak said the Council struggles to identify resources to fund a long list of needs and priorities within the City. It is difficult to advocate for a tax assessment that only supports programs outside of Bellevue.

→ Councilmember Robinson moved to extend the meeting to 10:45 p.m., and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

Councilmember Stokes asked that the Council take this into consideration and allow staff to provide additional information. He will take the Council's comments back to the advisory committee, which is interested in feedback from the cities. He believes very strongly in the basis for the King Conservation District work plan, but understands that the Council would like more information. The advisory committee is scheduled to take action on the work program on July 23.

Mayor Balducci suggested that the Council do as requested by Councilmember Stokes and wait to receive additional information before the next discussion. She asked that the King Conservation District consider that it might have overshot the mark fairly significantly, at least as far as the Bellevue and Redmond City Councils are concerned. She suggested that the District might want to consider whether it wants to change its proposal in the interest of developing strong regional support.

(2) King Country Metro Transit Service Reductions

Ms. Nichols recalled a briefing to the Council on May 27 regarding the issue of buying back bus service as proposed by the King County Executive and Seattle's Mayor. Additional proposals have surfaced and are being discussed by the King County Council. Metro staff is working to develop cost information by the end of June for cities to consider.

Mayor Balducci suggested that the Council is a long way back from being ready to discuss buying back bus service. She believes this is a topic the Council would step into cautiously, if at all.

Mayor Balducci said the Council has talked about working with other Eastside jurisdictions to advocate for services. She suggested pursuing this avenue as well in addressing the service reductions.

Councilmember Lee suggested this might provide the opportunity to consider other options for transit service, including the model used by Microsoft with its shuttles.

4. Discussion

- (a) The application of Target Corporation (Bellevue Target) seeks to rezone 4.95 acres to change the land use district designation from General Commercial (GC)

to Community Business (CB). The request will allow General Merchandise uses per Bellevue Land Use Code 20.10.440. Currently, the General Merchandise use is not allowed in a GC land use district. The Bellevue Target site is located in the Wilburton/NE 8th Street Subarea at 200 116th Avenue Northeast.

Ms. Helland said final Council action is anticipated on July 7 regarding the application of Target Corporation to rezone 4.95 acres to change the land use district designation from General Commercial (GC) to Community Business (CB). This request will allow General Merchandise uses, which are not currently allowed in the GC land use district.

Responding to Mayor Balducci, Ms. Helland said both the Land Use Code Amendment (LUCA), which was the subject of the earlier Public Hearing, and the rezone request are needed to develop a Target store on the site.

- (b) The Hearing Examiner's Recommendation on the Tsai Family, LLC (Bellevue Heights Apartments) application for a rezone to replace the existing O zoning with R-30 zoning. This site-specific rezone would permit multifamily residential development of up to 30 units per acre and increase the maximum allowable density for the property from 39 units to 55 units. The site is located at 13902 NE 8th Street in the Wilburton/NE 8th subarea.

Ms. Helland said Council action is scheduled for July 7 on the Hearing Examiner's recommendation regarding the Tsai Family, LLC (Bellevue Heights Apartments) application for a rezone to replace the existing Office zoning with R-30 (30 units per acre) zoning. This would allow the development of additional units on the existing site.

Mayor Balducci declared the meeting adjourned at 10:45 p.m.

Charmaine Arredondo
Deputy City Clerk

/kaw