

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Extended Study Session

July 14, 2014  
6:00 p.m.

Conference Room 1E-108  
Bellevue, Washington

PRESENT: Mayor Balducci, Deputy Mayor Wallace<sup>1</sup>, and Councilmembers Chelminiak, Lee, Robertson, Robinson, and Stokes

ABSENT: None.

1. Executive Session

Deputy Mayor Wallace called the meeting to order at 6:04 p.m., and declared recess to Executive Session for approximately 20 minutes to discuss one item of potential litigation and one item of property acquisition.

The meeting resumed at 6:43 p.m., with Mayor Balducci presiding.

2. Oral Communications

(a) Kladno Student Exchange Introductions

Gregg Schrader, Bellevue Sister Cities Association President, introduced two exchange students from the sister city of Kladno, Czech Republic: Veronika Menclova and Matej Fiser. The students are being hosted by Newport High School student Juanita Alspaugh, her mother Pamela, and their family.

Matej said this has been a good experience with a great host family. His English has improved significantly over the past month and he looks forward to coming back. Veronika said she is grateful to have this experience, and her English has improved greatly as well. Juanita said her family has enjoyed having the guests in their home and she looks forward to visiting Prague and Kladno later this summer.

Mayor Balducci commented on the importance of the exchange program and thanked them for coming to the meeting.

---

<sup>1</sup> Deputy Mayor Wallace left following the Executive Session and returned to the meeting at approximately 7:18 p.m.

- (b) Aaron Dichter, Government Relations Chairman of the Meydenbauer Bay Neighbors Association, said the organization supports the Planning Commission's recommendations in the Shoreline Master Program (SMP) Update related to the development of Meydenbauer Bay Park. This includes a full public hearing with an appeal option to the City Council. This approach will ensure that the community has the opportunity to voice concerns after City staff complete their work. The alternative is that the public would be limited to written comment only at the beginning of the process and before staff's recommendations.
- (c) Marty Nizlek, Washington Sensible Shorelines Association, noted his written comments to the Council provided in the desk packet. He expressed support for the Planning Commission's proposal in the Shoreline Master Program (SMP) Update related to the ordinary high water mark (OHWM). He said the water level of Lake Sammamish has been artificially high since the mid-1990s due to inadequate maintenance by King County. He encouraged maintaining the flexibility for a site-specific determination of the OHWM. He commented on the hardships related to the designation of residential nonconformities, including the ability to obtain insurance.
- (d) Anita Skoog-Neil commented on regulations for setbacks and vegetation under the Shoreline Act, which allows all structures (i.e., primary and accessory) to be declared conforming. She asked the Council to approve applying the Footprint Exception to all structures. She said a fixed setback of 35 feet is more acceptable than a flexible setback of 50 feet because the menu options proposed under the 50-foot setback are punitive. Ms. Skoog-Neil commented on the topics of the string test, variance, vegetation mitigation and retention, landscape development, and lawns. [These topics are addressed in the written submittal from Mr. Nizlek.]
- (e) Erica Tiliacos, an Issaquah resident, said staff's previous presentation on the SMP Update demonstrated improvements to shorelines under the current City Code. The current Code allows one boat lift per residential dock, and there is a proposal to allow up to four lifts per dock. She suggested allowing more boat lifts for shared docks to encourage their usage over individual docks. Ms. Tiliacos said the purpose of the SMP Update is to preserve habitat and ecological function, and that is what should be considered as the Council makes changes to the proposed SMP.
- (f) Joanna Buehler, Save Lake Sammamish, thanked the Council and Planning Commission for their extensive work on the SMP Update. She encouraged the Council to adopt changes to the Planning Commission's recommended plan to better protect the water quality and fish habitat in Bellevue lakes and to better meet the mandates of the Shoreline Management Act. She expressed support for retaining the Lake Sammamish static elevation (31.76) for the ordinary high water mark and for allowing any property owner to conduct a biological assessment as an option. She said Save Lake Sammamish does not support granting credit in the setback area for pervious parking areas because there is insufficient space for the filtration of pollutants before they enter the lake. She expressed support for native vegetation and for no development within the floodplain.

- (g) Gerry Lakin, speaking on behalf of the Meydenbauer Bay Yacht Club, commented on the SMP Update. With regard to shoreline stabilization, he asked that residents be allowed to replace a bulkhead in its entirety at one time. He described and showed photos of improvements to piers and docks. Mr. Lakin asked that the Yacht Club and residents be allowed to replace a pier in its entirety as well.

3. Study Session

(a) Council Business and New Initiatives

Mayor Balducci said that she, the Arts Commission Chair, and staff conducted interviews for three vacancies on the Commission. She recommended appointing Becky Lewis and Carl Wolfteich to fill two of the positions. Ms. Lewis is a potter and Mr. Wolfteich is a writer. Ms. Balducci indicated that additional recruitment would occur to fill the third position.

→ Councilmember Robertson moved to appoint Becky Lewis and Carl Wolfteich to the Arts Commission. Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

(b) Briefing on Natural Gas Franchise

City Manager Brad Miyake opened staff's presentation regarding the renewal of the expired Puget Sound Energy natural gas franchise agreement.

Transportation Director Dave Berg said two agencies regulate Puget Sound Energy (PSE): the Washington Utilities and Transportation Commission (WUTC) and the City. Bellevue City Code 14.20 addresses the basic terms and conditions of granting a franchise agreement for the use of public lands.

Mr. Berg said the natural gas franchise agreement protects the City in a number of ways. The City has two franchise agreements with PSE. The electric franchise covers electric power distribution throughout Bellevue, and the natural gas franchise addresses PSE's natural gas system within Bellevue. The natural gas franchise agreement expired on November 3, 2013. However, the City and PSE agreed to continue under the same terms while City staff reviewed the elements of a new franchise.

Mr. Berg described the key elements addressed in the review of the franchise agreement.

[Deputy Mayor Wallace returned to the meeting at 7:18 p.m.]

Titus Butcher, Right-of-Way Engineer, said staff compared Bellevue's franchise agreement with two other jurisdictions, and Bellevue's was found to be the most robust agreement. A review of WUTC records indicates there have been 23 significant incidents within the state over the past 10 years. PSE was the operator of the system for eight of the events; however, that does not mean that PSE's system was the cause of the incident. There was only one instance of corrosion

within PSE's infrastructure over that time period, and PSE is proactive in addressing pipe leaks and replacements. Mr. Butcher said PSE natural gas rates published by the WUTC show that PSE has both lowered and raised its rates appropriately to meet market demands. Rate changes are reviewed by the State to ensure they are fair, reasonable and sufficient.

Mr. Butcher said the only material change from the 2003 agreement is a section stating that, upon the City's reasonable request and consistent with the Natural Gas System Integrity and Safety Memorandum of Understanding (MOU) between the City and PSE, PSE will make available for review by the City information, records and reports related to maintenance, inspection, and the safety of PSE's natural gas facilities within Bellevue's franchise area.

Mr. Butcher said staff recommends Council adoption of the proposed franchise agreement.

Responding to Councilmember Robinson, Mr. Butcher said PSE conducts tests for leaks every three years in residential areas and every year in commercial areas.

Councilmember Robertson recalled an incident a few years earlier which required significant emergency response by the City. She would like the City to be able to be reimbursed for the costs related to similar future emergency response incidents.

Mr. Berg said the franchise agreement covers facilities within the franchise area, which is typically public rights-of-way. Ms. Robertson confirmed that the incident she was referring to was on private property.

Jerome Roache, Assistant City Attorney, said the City does not have control over what happens on private property. Under BCC 14.20.190, the grantee accepts responsibility for certain incidents that could occur in the ROW.

Ms. Robertson clarified that she is talking about the emergency response required to fight a fire, including closing down the road, fighting a fire, etc. She would like to see that in an agreement with PSE, if other Councilmembers agree.

In further response to Ms. Robertson, Mr. Butcher said there are three MOUs associated with the PSE natural gas franchise: Records, Relocation, and Integrity/Safety. He said the latter applies to PSE's entire system and not just to the franchise area. It is important because it enables the City to request records and information.

Councilmember Robertson noted an article in *The Seattle Times* within the past week about a court in Thurston County ruling that PSE's rates have not been fair and/or equitable. Mr. Butcher said staff will provide more information to the Council on that case.

Responding to Councilmember Lee, Mr. Berg said the franchise agreement only covers equipment and activities in the public ROW. Mr. Roache suggested the Council could cover the topic of public education in a separate MOU if desired. Mr. Berg observed that, if the City wanted to do so, staff would want to learn more about PSE's customer service and education policies. He said the WUTC's review includes a customer service element as well.

Councilmember Stokes thanked staff for the presentation. He supports the recommendation to adopt the franchise agreement renewal. With regard to Councilmember Robertson's suggestion about seeking reimbursement for emergency responses related to the natural gas infrastructure, he questioned whether other jurisdictions explicitly address that issue.

Mr. Roache said he reviewed the franchise agreements of a number of cities including Burien, Issaquah, and Kirkland, and none contain the language suggested by Ms. Robertson.

Deputy Mayor Wallace said he supports staff's recommendation. However, he noted that Section 5.2 creates a separate standard for PSE's restoration obligations related to digging up the roadway. He questioned the rationale for that provision.

Mr. Berg said staff will review that language. He said the paragraph goes on to say that restoration should be pursuant to the provisions of applicable City Codes, regulations and standards. He said staff will review to ensure the agreement is not sending a mixed message and holding a different standard.

Mr. Wallace observed that it is not fair to require that PSE only patch a section of roadway while everyone else is required to resurface a larger portion or all of the road.

Mayor Balducci said she feels reassured that Bellevue's franchise agreement is thorough and more robust than other cities. With regard to resurfacing, she suggested coordinating work between PSE and the City with regard to the regular overlay program schedule and major public works projects. She noted the interest in reviewing public education policies and activities. She said PSE made changes to its practices following the incident several years earlier.

(c) King County-Cities Climate Collaboration (K4C)

City Manager Miyake recalled that Councilmember Robinson previously raised the issue about whether to consider formally joining the King County-Cities Climate Collaboration (K4C).

Dan Stroh, Planning Director, said Bellevue has been working since 2007 to address greenhouse gas (GHG) emissions. The K4C is a partnership between King County and cities to increase the effectiveness of local sustainability and climate change solutions by working together. Mr. Stroh recalled comments by Councilmember Robertson the previous week about her involvement with the regional Growth Management Planning Council and its work to set a new countywide target for greenhouse gas emissions. He said 13 cities have agreed to formally join King County's collaboration.

Mr. Stroh said staff is seeking Council direction about whether to join the regional collaboration, which would be formalized through an interlocal agreement.

Mr. Stroh described K4C's activities to date which include hosting elected officials working summits, monthly roundtables for local government staff and the public, outreach to City

Managers and upper-level staff, and the development of Countywide Planning Policy EN-17 establishing greenhouse gas reduction targets.

Councilmember Robinson has participated in the two elected officials working summits which were held in February and June. The four key areas of focus for the organization are outreach, coordination, solutions and funding/resources. Mr. Stroh said K4C's efforts are consistent with a number of initiatives including the work before the Puget Sound Regional Council (PSRC) Growth Management Planning Council, the Mayors' Climate Protection Agreement adopted by Bellevue in 2007, the City's Comprehensive Plan Policy EN-3, and the City's Environmental Stewardship Initiative.

Paul Andersson, Program Coordinator, described Bellevue's policies and programs since the Council adopted Resolution No. 7516 in 2007. The subsequent Environmental Stewardship Initiative led to the adoption of an ESI Strategic Plan in 2008, which was updated in 2013. The City's actions have included the designation of a Resource Conservation Manager, Parks lighting upgrades, increased use of LED traffic signals, paperless permitting, conversion to a hybrid and electric fleet, greener buildings and infrastructure, real-time carbon footprint monitoring, a U.S. Department of Commerce grant for a municipal solar system, and a proposed revolving energy fund.

Mr. Andersson said community actions have included electric vehicle infrastructure; home energy reports; tree canopy analysis; efforts by the Eastside Sustainable Business Alliance, Green Business Challenge, and GreenWA.org; the Energy Efficiency Market Transportation Study; Solarize Bellevue; and preparing to compete for the Georgetown University Energy Prize.

Mr. Andersson described the tracking of municipal GHG emission trends and community GHG emission trends. Municipal trends show a steady reduction in GHG emissions since 2006, and community GHG emissions have remained essentially level from 2006 to 2011. Mr. Andersson highlighted elements of Bellevue's Sustainability Projects Portfolio published in October 2012.

Mr. Stroh commented on the implications of joining K4C, including giving Bellevue an active role in planning and decisions. It meets the Council's priority regarding regional leadership and influence, provides benefits in pooling resources, is consistent with the City's Environmental Stewardship Initiative, and is not legally binding. The cost of Bellevue's membership will be \$2,500 annually plus some modest staffing support.

Mayor Balducci thanked staff for the presentation. She noted that Councilmember Robinson has been involved in K4C efforts to date, and Councilmember Robertson represents the City on the PSRC Growth Management Planning Council which has been discussing the issues as well.

Councilmember Robinson observed that King County will be creating guidelines for cities and it would be beneficial for Bellevue to be involved in that effort. One of the K4C goals is to encourage transit-oriented development (TOD), which is consistent with the City's objectives for certain areas of Bellevue. Ms. Robinson noted the potential for attracting businesses and residents who want to live in a community that values the natural environment.

Councilmember Robertson recalled that she commented on the K4C initiative late during the previous week's meeting. She said the GMPC is drafting proposed changes to Countywide Planning Policies related to this initiative.

Deputy Mayor Wallace expressed support for the K4C's endeavor and commented on the technological changes in developed as well as his involvement in green development. He said participation in K4C is consistent with the Council's priority of regional involvement, and it will provide a forum for ideas that can benefit the City. Mr. Wallace suggested that per capita emissions have likely decreased with the South Bellevue annexations.

Mr. Andersson said the tracking does account for per capita emissions, which have decreased. However, the primary focus for community GHG emissions is on aggregate and gross numbers. The GMPC's goal is an 80 percent reduction in emissions by 2050. The City does track water usage per employee and similar measures.

Deputy Mayor Wallace commented on the challenge of balancing growth, economic development, and maintaining a desired quality of life with reducing GHG emissions. He appreciates the City's accomplishments to date. He noted that every utility that works with Bellevue has a sustainability program that encourages conservation.

Councilmember Lee said Bellevue should take a strong leadership role with K4C. He said Bellevue is already working effectively to reduce GHG emissions. The membership cost of \$2,500 is minimal, and Bellevue will benefit itself and other jurisdictions with its involvement.

Councilmember Stokes expressed support for providing Bellevue a seat at the table and the opportunity for regional leadership and influence. He agreed with Mr. Lee that the City is already doing a good job in this area and involvement will provide mutual benefits.

Councilmember Chelminiak recalled that former Mayor Degginger raised the issue of joining this collaboration in approximately 2007, but he was reluctant to support it at that time. However, based on the group's objectives and efforts since that time, he strongly supports joining with the K4C. He noted the negative impacts of climate change and said it is critical for Bellevue to be involved with the region in achieving goals and solutions.

Councilmember Robertson spoke in favor of joining K4C. She said Bellevue has a strong environmentally embracing community. She recalled reading a year earlier that King County has the lowest per capita carbon emissions in the country. She said conservation efforts provide the benefit of cost savings as well. She would like Bellevue to advocate for market-based approaches that will provide benefits as technology continually improves. She noted the potential benefit of natural gas for fleet vehicles. Ms. Robertson said she is excited about the \$5 million grant, which she suggested provides an opportunity for a community challenge to raise additional funds.

Councilmember Robertson said she would like to read the interlocal agreement before taking action.

At 8:23, Mayor Balducci declared a short break.

The meeting resumed at 8:34 p.m.

(d) Shoreline Master Program (SMP) Update Study Session 8 – Development of Council SMP Package for Public Hearing

Mayor Balducci described the plan for the evening which was to go through the topical areas previously discussed with the Council and to provide direction to staff for each item. The goal is to provide clear direction to enable staff to prepare the draft package for the public hearing.

Carol Helland, Land Use Director, said the public hearing is tentatively set for August 4. September 8 is slated for the Council to provide direction to staff on the Shoreline Master Program (SMP) Update package to be submitted to the Washington State Department of Ecology. Draft Code language will be presented at that time as well.

Ms. Helland described the options for approaching public access to shorelines. The Planning Commission recommends public access to public uses. The variation requested by the Council is requiring public access for all new and expanded public and recreation uses. Ms. Helland described a map showing the 14 Bellevue parks with shoreline jurisdiction.

Dick Settle, legal counsel, said it is not uncommon to require public access to privately owned recreation uses. He said he was not aware of any constitutional challenges. However, he acknowledged there could be some vulnerability there. The Washington State Department of Ecology (DOE) favors this approach and would go beyond private recreation uses to multifamily developments and other uses.

Ms. Helland requested Council direction about which option to include in the SMP Update. She said Option 2 would require public access for new development; expansions of public and private recreation facilities and of utility facilities that exceed 20 percent; and for expansions of transportation facilities that exceed the limits of the existing right-of-way.

Councilmember Robinson would like, for private marinas, yacht clubs and community clubs, to provide public accessibility in the form of the ability of the public to enjoy views of the shoreline. Ms. Helland stated her understanding that Ms. Robinson is suggesting that private uses provide some type of visual access.

Responding to Mayor Balducci, Ms. Helland said there are currently Code provisions that state, for security risks and safety hazards, private uses can provide visual access such as a bench.

Councilmember Stokes questioned how Option 2 would actually function. Ms. Helland said one example could be a marina expanding by more than 20 percent. As part of that project, the marina would perhaps be required to provide one walkway for public access. It does not mean the public could wander around the entire private property. If there were security concerns, the marina could argue that these concerns preclude them from providing physical access. In that case, the City would discuss as part of the permit process what type of visual access they could provide.

Councilmember Robinson provided an example of a private wedding, which participants would not want to be interrupted by members of the public. She reiterated her proposal to require visual access only.

Councilmember Robertson said she was leaning toward Option 1, requiring public access for public uses, but she observed that the rest of the Council appears to not support that approach. She questioned whether any existing yacht clubs block the view of the water from the public ROW. Ms. Helland said she was not sure.

Councilmember Robertson said that, if existing private facilities generally already provide visual access and the Council adopts Option 2, this means that they could not develop in a way that would block existing visual access. She observed that this is less risky from the perspective of the takings issue.

Ms. Robertson referred to allowing the consideration of alternatives if there is an issue of safety on private properties related to public access. She would add liability to the list of conditions that would allow alternative access. She is concerned about the potential liability for private property owners, for example, if a member of the public accesses the private property and drowns.

Councilmember Chelminiak said the Meydenbauer Bay Yacht Club does currently allow some public access, at least in the form of education programs. Responding to Mr. Chelminiak, Mr. Settle said the State/public owns the water adjacent to a private property. Mr. Chelminiak said, if that is the case, he believes there should be some minimal amount of public access. He likes Option 2 and suggested clarifying that the Code would not be requiring unfettered access to private property. However, he likes the concept of providing a view corridor. He noted the lack of public access to Lake Sammamish.

Mayor Balducci reminded the Council that the goal tonight is to develop the SMP package. She indicated that that objective cannot be achieved if there is going to be a full debate on every topic. While the discussion is very good, she asked the Council to make a decision about whether it will complete its draft package tonight or whether the public hearing will be postponed to September.

Ms. Balducci said one of the major policies underlying the Shoreline Management Act is public access to lakes. However, she understands the position of Vasa Park not wanting to be required to allow unpaid public access to a paid facility. She encouraged moving forward with a motion.

Councilmember Robertson expressed support for Councilmember Robinson's proposal as a good middle ground. She suggested that, if physical access is provided for a fee, perhaps visual access would not be required.

→ Councilmember Robertson moved to approve Option 2, with an amendment requiring public visual access (instead of physical access) as the standard for new development or the expansion of a private facility. Councilmember Robinson seconded the motion.

Councilmember Lee expressed reluctance to require public access to private property.

Councilmember Chelminiak noted that the water belongs to the public.

Councilmember Stokes said that visual access is too limited.

→ The motion carried by a vote of 5-2, with Mayor Balducci and Councilmember Stokes opposed.

Ms. Helland moved to the next issue, park development, and summarized the three options.

→ Deputy Mayor Wallace moved to adopt Option 3, which is the variation requested by the Council to administratively approve the development of beach parks having a Council-adopted Master Plan. A general conditional use permit (CUP) would be required if there is no adopted Master Plan. Under this option, Meydenbauer Bay Park would be regulated in the same way as other Council-adopted Master Plans. Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

Ms. Helland moved to the next issue and the three options related to the Ordinary High Water Mark (OHWM).

→ Councilmember Robertson moved to adopt a middle-ground solution which is to determine the OHWM through site-specific evaluations.

There was no second to the motion.

→ Councilmember Robinson moved to approve Option 3, which adopts a static elevation of 31.76 NAVD 88 for measurement of the setback only. Councilmember Chelminiak seconded the motion.

Councilmember Robertson observed that this would be a huge mistake. The elevation is wrong. It is two standard deviations above normal and based on flooded conditions. The study is flawed. She said it changes the property line based on the OHWM which results in a physical taking of private property. She is strongly opposed.

Councilmember Stokes said he is unsure about the impacts of any of the options. He observed that the choices appear to both have a flawed basis. He suggested coming up with a new determination of the OHWM if possible.

Ms. Helland said Option 3 provides the opportunity for property owners to obtain a site-specific determination by a qualified professional if desired. Staff suggests that lake studies be undertaken for areas that do not currently have one available. She said staff looked at a number of aerial photos of Lake Sammamish, and the vast majority of bulkheads are built at elevation 32 now based on the code that has been in effect since the 1970s.

Deputy Mayor Wallace said he believes a static elevation is important because it provides predictability. His understanding of Option 3 is to designate a false line based on a water level that is higher due to King County's failure to properly maintain the weir on Lake Sammamish. He said this results in greater incursions into private properties. He questioned how this meets the goal of preserving ecological function. He suggested using an accurate OHWM and not using a false one based on a higher water level due to the failure of the weir. He does not see how this is preserving ecological function. Deputy Mayor Wallace expressed support for Option 2.

Councilmember Lee said he believes there needs to be some reference to a static elevation, which is consistent with public comments. Ms. Helland said the options related to determining the setback are Options 2 and 3. She said the existing conditions are what define the departure from no net loss. Option 1 measures jurisdiction, which is a legal concept, and setback. Ms. Helland clarified that only Option 3 is based on the lake study.

Mayor Balducci said Option 3 was based on the lake study conducted in 2006/2007 and Option 2 is based on public testimony.

Councilmember Robinson asked about the potential for updating the lake study. Ms. Helland said the benefit of a lake study would apply if, at some future time, the lake were to experience a decrease in the water level. However, the lake has gotten to the point that it fills up faster and drains slower. The reality is that the OHWM has been largely consistent over the years, and most of the bulkheads and facilities on the lake are constructed at roughly the 32 elevation. The 30.6 elevation reflected in Option 2 is under water and the City cannot actually measure that.

Mayor Balducci said there have been comments about the lake study being flawed. However, she is not certain that there is evidence to that effect. She noted that the cities of Sammamish and Issaquah have adopted Bellevue's OHWM. Ms. Balducci said the lake study is the best study the City has; however, she would like to conduct another study if there is information that would be helpful.

Councilmember Chelminiak said the lake study documented the state of the lake, and all bodies of water fluctuate. Ms. Helland said the U.S. Army Corps of Engineers created the design elevation for the weirs at 27, which was based on a datum from 1929. It is physically the same as the current OHWM of 31.76, which is based on a different datum. The City of Sammamish and the City of Bellevue use the same number but arrive at it through a different datum.

Councilmember Robertson said a scientist who reviewed the lake study found it deeply flawed. The study was conducted at a time in which lake levels were high. Data from recent years since the Sammamish River has been cleared out reflect lower lake levels that are much closer to the Corps of Engineers' level. Ms. Robertson said the 31.8 elevation is not the result of the study, but is a result of the study plus two standard deviations statistically above the study. She will vote no against the motion.

Councilmember Stokes noted that the current task is to develop a draft package for the public hearing. He said there might be additional factors to look at between now and then. He indicated

that elements can be changed later and he is ready to vote. Responding to Deputy Mayor Wallace, Mr. Stokes said if King County's future maintenance results in a lower lake level, perhaps it will be appropriate to change the elevation. However, the 31.76 elevation has been used for the past 10 years.

- The motion to approve Option 3, which adopts a static elevation of 31.76 NAVD 88 for measurement of the setback, carried by a vote of 4-3 with Deputy Mayor Wallace and Councilmembers Lee and Robertson opposed.

Deputy Mayor Wallace said there will be people upset over the vote. He said it would be nice to come up with a solution that property owners would perceive as accurate.

Councilmember Stokes reiterated that this is what the Council is presenting for the public hearing, but it does not mean this will be adopted for the final package. Mayor Balducci concurred, noting that it is important that the public understand this step in the process.

Mr. Settle said Options 2 and 3 designate a measurement to be used only for establishing the setback. In terms of fairness, this could also be brought to the table for further consideration through the setback requirement.

Ms. Helland said the next issue is nonconforming residential development. She noted the Council's previous indication in support of the Planning Commission's recommendation.

- Councilmember Robinson moved to adopt Option 1, in which all legally established boathouses are legally nonconforming and all residential development is conforming. Councilmember Robertson seconded the motion.
- The motion carried by a vote of 6-0, with Deputy Mayor Wallace away from the table.

Mayor Balducci suggested that the Council consider, in other parts of the City, that a legally established structure should also be able to be replaced (e.g., in case of fire or other incident).

The next topic was setbacks, buffers, and vegetation. Ms. Helland noted the table depicting the three options for consideration.

Responding to Mayor Balducci, Ms. Helland said Option 1 (Greenscape Option) reflects a minor drafting change to the Planning Commission's recommendation. The Commission's recommendation did not specifically describe the setback area between 25 feet and 50 feet. However, drafting is important to the DOE. The language was revised to indicate that the 25-50 foot area is a structure setback, and that development in that area is allowed in compliance with greenscape provisions.

Councilmember Robertson said certain Councilmembers have expressed concern about having too many lawns.

→ Councilmember Robertson moved to approve Option 1, amended to state that only two-thirds of the greenscape requirement can be met with lawn. Deputy Mayor Wallace seconded the motion.

Councilmember Robinson said she likes Option 2 except for the stringent landscaping requirement. She prefers Option 2 with the same landscaping requirement stated by Ms. Robertson.

Mayor Balducci suggested that the Planning Commission's recommendation would result in a net loss of native vegetation and therefore shoreline function as its defined in the act. She is in favor of the 50-foot structure setback (what some have identified as the activation area) with a 25-foot shoreline setback. She is in favor of options to buy down and mindful of the commentary tonight about them being too stringent and potentially unrealistic. She is not in favor of substituting lawns for two-thirds of the setback. She does like the string test. However, she appreciates public comments that it might have unintended consequences.

Mayor Balducci expressed support for Option 2.

Councilmember Stokes concurred with support for Option 2. However, he believes a revision might be necessary after hearing more public comment.

Councilmember Lee said he would support Option 2 at this time.

Councilmember Chelminiak said he prefers Option 2, with the idea that he would like to hear more from the public about vegetation requirements. He does not think it is necessary to fit in all of the native vegetation possible going out to the lake. He would like to balance lawn with native vegetation. He believes this is similar to the Planning Commission's recommendation.

Councilmember Robertson reiterated her support for Option 1. She said Option 2 has a problem and caused the entire shoreline ownership to go before the Planning Commission. Ms. Robertson said Option 2 is inappropriate, demonstrates no nexus to shoreline impacts, and is inconsistent with how the City develops its own shorelines. If the City is going to require that residents plant bushes and trees along the shoreline, the City should do so as well. Ms. Robertson said no other city requires this type of expansion of native vegetation, and Bellevue will be leading the way with the most oppressive regulations on private property.

Ms. Robertson opined that Option 2 is constitutionally in question. She said the menu options are unreasonable and residents will not use them. She suggested this option takes a historic 25-foot setback and pushes it to 50 feet, with no chance for people to move forward. She said many of the lots are incredibly constrained. The vegetation conservation requirement essentially results in a no-touch buffer, which also requires people to put bonds in place and to put notes on their title about the vegetation. Ms. Robertson said she is not opposed to using a string line for a setback or having a 35-foot setback, but Option 2 goes too far.

Mayor Balducci said Council and staff are trying to do the best job possible, and no one wants to be the most oppressive government in the region.

Deputy Mayor Wallace said the SMP Update's most sensitive issues are the ordinary high water mark and setbacks/vegetation. He said the Planning Commission's review has been extensive and the goal is to provide no net loss of ecological function. He is not convinced that any or all of the options achieve that goal. However, he said the Council needs to collaborate with each other and the community for the best solution.

Mr. Wallace observed that if the OHWM is at a higher level, the setback will be farther back into private properties. He would like the Council to take that into consideration. He said there does not seem to be opposition to the string test method for determining the setback. With regard to vegetation, he would like to consider view protection as an important priority as well.

With regard to setbacks, Ms. Helland said there is the footprint exception that creates a new setback. If there is an existing home, the location of that home becomes the future setback, which is one way to deal with the standard of no net loss.

Deputy Mayor Wallace asked everyone to keep private property rights in mind.

- The motion to approve Option 1, as amended, failed by a vote of 3-4, with Deputy Mayor Wallace and Councilmembers Lee and Robertson in favor.
- Councilmember Chelminiak moved to select Option 2, with the caveat that the Council wants to understand how it can lessen the impact of the requirements for vegetation, including where grass might be appropriate. Councilmember Robertson seconded the motion.

Councilmember Stokes stated his interest in balancing private property rights with other issues.

Councilmember Lee said the Council is striving to do what is best for the public and right for Bellevue. He concurred with the importance of balancing public benefits and private property rights. He does not want to be too influenced by what the DOE might want and/or how they will react to the City's SMP Update package.

- The motion carried by a vote of 5-2, with Deputy Mayor Wallace and Councilmember Robertson opposed.

Moving on, Ms. Helland described the options regarding critical areas. Option 1 regulates critical areas in the SMP with changes to floodplain regulations in shorelines. Option 2 regulates critical areas in the SMP without changes to floodplain regulations in shorelines. The choice is whether to concur with the Commission's recommendation reflecting changes to the floodplain regulations and shorelines, or whether to adopt an approach that does not make changes to floodplain regulations now but waits until the FEMA litigation is concluded and the City completes its critical areas update.

- Councilmember Robertson moved to approve Option 1, which is consistent with all other jurisdictions. Deputy Mayor Wallace seconded the motion.

Responding to Mayor Balducci, Ms. Helland said floodplain regulations have been in place since the 1970s. This would be a fairly significant change to floodplain regulations in that a property owner would no longer need to prove that they must develop in the floodplain in order to have a reasonable use of their property. There is a consistency issue with state law, and the City's Comprehensive Plan Policy EN-40 specifically prohibits development in the floodplain. The Comprehensive Plan policy would require an amendment if Option 1 is ultimately adopted.

In further response, Ms. Helland said construction in the floodplain involves regulations that protect the home related to flood elevation and flood prevention measures.

→ The motion carried by a vote of 6-1, with Councilmember Robinson opposed.

Moving to residential moorage, Ms. Helland noted the two options for consideration.

→ Councilmember Robertson moved to select Option 1, amended to allow a five-foot walkway. Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

Ms. Helland highlighted the two options regarding shoreline stabilization.

Councilmember Chelminiak said he would like to know more on the reasoning behind two boat lifts versus four boat lifts and the concept of shared docks.

Councilmember Robinson suggested limiting boat lifts to two per dock, or to two lifts per family if the dock is shared.

→ Councilmember Robertson moved to select Option 1, and Deputy Mayor Wallace seconded the motion.

→ The motion carried by a vote of 7-0.

Ms. Helland said the draft SMP Update will be prepared for the public hearing on August 4. Staff will not have time to draft the actual Code language by that date but will outline the requirements for public comment.

Mayor Balducci thanked Ms. Helland and Professor Settle for their hard work.

- (e) Hearing Examiner's Recommendation on Bellevue 116<sup>th</sup> Avenue, LLC Rezone [aka Target Corporation Rezone]

Ordinance No. 6168 approving the rezone application of the Bellevue 116<sup>th</sup> Avenue, LLC to change the land use district designation from General Commercial (GC) to Community Business (CB) allowing General Merchandise uses per Bellevue Land Use Code 20.10.440 relating to approximately 4.95 acres

located in the Wilburton/NE 8<sup>th</sup> Street Subarea at 200 116<sup>th</sup> Avenue NE in Bellevue, Washington.

Mr. Miyake said staff is requesting action on two ordinances related to retail development in the Wilburton/NE 8<sup>th</sup> Street Subarea.

Kate Berens, Deputy City Attorney, said Ordinance No. 6168 approves the rezone application of the Bellevue 116<sup>th</sup> Avenue, LLC to change the land use district designation from General Commercial (GC) to Community Business (CB) for a site located at 200 116<sup>th</sup> Avenue NE. The application was originally filed by Target Corporation, and the property owner has subsequently taken over the application.

Ms. Helland said this item was presented to the Council on June 23.

→ Councilmember Robertson moved to adopt Ordinance No. 6168, and Councilmember Robinson seconded the motion.

Mayor Balducci said this is part of the City's longtime planning to extend NE 4<sup>th</sup> Street to 120<sup>th</sup> Avenue NE and to change some of the land uses in the area.

→ The motion carried by a vote of 7-0.

(f) Wilburton Land Use Code Amendment (LUCA)

Ordinance No. 6169 amending the City of Bellevue Land Use Code relating to retail uses and dimensional requirements in the Community Business (CB) land use district in the Wilburton Subarea, amending Section 20.10.440 (wholesale and retail use chart, note 36) and Section 20.20.010 (maximum building height), and adding a new note 46 to Section 20.20.010; providing for severability; and establishing an effective date.

Ms. Helland said Ordinance No. 6169 amends the Land Use Code relating to retail uses and dimensional requirements in the CB land use district in the Wilburton Subarea. In early 2008, the City completed updates to the Wilburton/NE 8<sup>th</sup> Street Subarea Plan and established a vision for the corridor.

Ms. Helland said the building height increase is limited to the CB district between the BNSF right-of-way and 116<sup>th</sup> Avenue NE.

→ Councilmember Stokes moved to adopt Ordinance No. 6169, and Deputy Mayor Wallace seconded the motion.

→ The motion carried by a vote of 7-0.

Mayor Balducci declared the meeting adjourned at 9:56 p.m.

Myrna L. Basich, MMC  
City Clerk

/kaw