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**CITY OF SHORELINE**  
**SHORELINE CITY COUNCIL**  
**SUMMARY MINUTES OF WORKSHOP MEETING**

Monday, May 5, 2003  
6:30 p.m.

Shoreline Conference Center  
Mt. Rainier Room

**PRESENT:** Mayor Jepsen, Councilmembers Chang, Gustafson, Hansen, Montgomery and Ransom

**ABSENT:** Deputy Mayor Grossman

1. **CALL TO ORDER**

The meeting was called to order at 6:30 p.m. by Mayor Jepsen, who presided.

2. **FLAG SALUTE/ROLL CALL**

Mayor Jepsen led the flag salute. Upon roll call by the City Clerk, all Councilmembers were present, with the exceptions of Councilmember Gustafson, who arrived shortly thereafter, and Deputy Mayor Grossman.

**Upon motion by Councilmember Hansen, seconded by Councilmember Montgomery, and unanimously carried, Deputy Mayor Grossman was excused.**

- (a) Proclamation of "Shorecrest Marching Band and Highland Dancers Week"

Mayor Jepsen read the proclamation recognizing the accomplishments of the Shorecrest High School Band and Highland Dance members, who recently participated in two competitive parades in Ireland. Shorecrest Director of Bands Dave Johnson and four Shorecrest musicians accepted the proclamation. Mr. Johnson thanked the City for the recognition.

3. **CITY MANAGER'S REPORT AND FUTURE AGENDAS**

Steve Burkett, City Manager, congratulated the Shorecrest students. He pointed out that a memorandum was distributed to Council members relating to concerns expressed about the Hillwood Estates subdivision. He reported that the project is under construction but will have to comply with all permit conditions to receive a certificate of occupancy

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Councilmember Ransom said the memorandum makes it sound as if the issues at Hillwood Estates have not been resolved. He felt that a firm agreement between the City and the developer should have preceded the construction permit.

Mr. Burkett reiterated that a certificate of occupancy will not be issued for any of the buildings at the site until all street, utility, building, and landscaping requirements are met.

## 4. COUNCIL REPORTS

Councilmember Gustafson reported on his attendance at the King County Transfer Station open house, noting that the meeting was positive and informative. He said at this point the project appears to comply with all environmental standards.

Councilmember Hansen reported on his attendance at the Suburban Cities Association Retreat. He speculated there could be procedural changes in the relationship between the Management Board and the Policy Committee.

Councilmember Ransom reported that he will attend a meeting of the National League of Cities Steering Committee for Human Development, which has been working on mental health issues. He said his subcommittee will actually write the mental health policies used by the NLC.

Mayor Jepsen reported on several topics discussed at the monthly Northend Mayors meeting. He pointed out that the special election for the regional parks levy will be held on May 20. He noted that the King County Council requested that Executive Ron Sims delay the change in municipal and district court services for an additional year. He reported on the success of the Richmond Beach Strawberry Festival, and the Richmond Beach Library's plans for landscaping improvements.

## 5. PUBLIC COMMENT

(a) Anthony Poland, Shoreline, expressed opposition to the new format of Council meetings. He said the new format violates the state law that requires public comment on each action item at public meetings. He said the recent Council Retreat was an illegal meeting because it was not properly noticed to the public.

(b) Robert Vreeland, Seattle, a member of the Thornton Creek Legal Defense Fund, said the proposed changes to the Critical Areas Procedures constitute substantive changes to decision-making criteria and protection standards. He said the categorical SEPA exemption the City claims does not apply in this situation. He said the City should not obligate itself to grant permits that allow development in critical areas and/or buffers, and the City must explain the difference between buffers and critical areas in the proposed amendments. He said both special use and reasonable use permits must explain whether they apply to the buffer, to the critical area, or to both. He asserted that the changes do not enforce mitigation for impacts associated with special use and reasonable

use permits. He suggested changing the amendment to ensure that only utility companies can apply for special use permits.

(c) Janet Way, Shoreline, Thornton Creek Legal Defense Fund, objected to the term "procedural" because she feels the changes to the Critical Areas Procedures are substantive. She said people should be allowed to participate, and the SEPA process should apply in this situation because of the scope of changes proposed. She said the new language implies that an applicant is granted the "right" to a permit under the special use provisions. She said the definition of "footprint" must include the impacts of driveways, walkways, landscaping, mailboxes, patios, etc., on critical areas. She stated that Thornton Creek is the largest watershed in Shoreline and Seattle, and as such, the City's standards have a cumulative impact on the entire area. She said citizens expect the City to uphold the highest standards and prohibit any negative impacts to the watershed.

(d) Pat Crawford, Shoreline, read parts of a letter from Planning and Development Services Director Tim Stewart to the Washington State Department of Fish and Wildlife(WDFW), explaining that the City is challenging the findings of the WDFW regarding Thornton Creek. She said the City's efforts have not resulted in restoration, but have served to stop the rehabilitation of Thornton Creek. She stated that the WDFW has been found to be correct in every Superior Court challenge. She said the proposed changes to the Critical Areas Procedures are not procedural or administrative changes. She felt the City is trying to extend its deadlines in Superior Court so that it can change its Development Code to finish uncompleted projects that do not conform to code.

(e) Tim Crawford, Shoreline, said the City cannot avoid responsibility for the damage it had caused to Shoreline and the Thornton Creek watershed. He said the City Manager violated the Freedom of Information Act (FOIA) because he did not notice the Council Retreat last month, noting that the Council is not concerned about FOIA violations. He said the code amendments do not employ the "best available science," and that there are substantive changes in protection standards and decision-making criteria. He said buffer width performance standards and other specific limitations are being deleted from the code. He said the proposal should be changed to ensure that only utilities can apply for a special use permit.

(f) Walt Hagen, Shoreline, concurred with the previous testimony regarding the Critical Areas Procedures and requested Council to remove it from the agenda until inaccuracies can be corrected. He emphasized that the City Manager did not say he would stop development of Hillwood Estates, just that he would not issue an occupancy permit until the development meets all codes. As a member of the Council of Neighborhoods and Chair of the Hillwood Neighborhood, he requested all e-mail correspondence the Council receives each week in its packet on a regular basis. He said he should not have to request it every week. He opposed the use of consultants in the Retail Market Survey, noting that Shoreline citizens know what is best for their community. He requested that Council listen to its citizens rather than out-of-state consultants.

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Mayor Jepsen noted that Council will respond to questions regarding Critical Areas Procedures during the workshop discussion. He asked staff to respond to Mr. Hagen's request for e-mail correspondence.

Mr. Burkett said the City can discuss arrangements with Mr. Hagen if he wishes to receive certain information.

Mayor Jepsen asked staff to respond to the concern about lack of notice on the Council Retreat. He said the Council is concerned that the public is made aware of all open meetings.

City Clerk Sharon Mattioli apologized to the citizens of Shoreline for her oversight in failing to notice the Council Retreat before she went on vacation. She noted that all previous retreats have been noticed and that the City Council has always supported adherence to the Open Public Meetings Act.

Mr. Burkett pointed out that the City has provided notice of the meeting in its year-long calendar, and it has also sent notices and agendas to the Shoreline Enterprise. He said many people were aware of the meeting, although it was not posted.

## 6. WORKSHOP ITEMS

### (a) Proposed Revisions related to Critical Areas, Procedures, and Administration

Anna Kolousek, Assistant Director, Planning and Development Services, began the staff report by noting that the amendments presented tonight are the first phase of a two-part project with regard to the Critical Areas. Phase I deals with procedures and administration. Phase II will involve the larger issues of amending the Comprehensive Plan and the substantive protective measures for critical areas. She explained state requirements with regard to the Growth Management Act (GMA) and said that in designating and protecting the critical areas, the City is now required to use the "best available science" to protect their functions and values. The City is also required to preserve or enhance anadromous fisheries. Because the stream inventory was not yet available for updating the protective standards, these initial changes to the critical areas regulations only involve procedures and administration. Such changes do not require reference to "best available science."

Continuing, Ms. Kolousek said that the Planning Commission met four times in March and April before making its recommendation. The proposal was sent for review to the appropriate state agencies or other agencies with jurisdiction in February. Under GMA, these agencies have 60 days in which to review the proposal and provide comments. Ms. Kolousek stated that she was notified last week that the state, Office of Community Development, felt that everything was appropriate and they were not going to provide comments because they are very short-staffed.

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Turning to the question of the categorical exemption from the State Environmental Policy Act (SEPA), Ms. Kolousek pointed out that SEPA is intended to work with other regulations to provide a comprehensive review of a proposal's significant impacts on the environment. She quoted the Washington Administrative Code Chapter 197.11: "The proposal or adoption of legislation, rules, regulations, resolutions or ordinances or of any plan or program relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment, shall be exempt. . ." She recalled that the first phase of the amendments to the Development Code of 2000 were also exempt from SEPA review for the same reason. Thorough SEPA review of substantive regulations will occur in Phase 2. She also pointed out that environmental review is required for all individual projects located within critical areas.

Ms. Kolousek explained why the critical areas procedures need to be changed, noting that the City originally adopted the King County Sensitive Areas ordinance. When the Development Code was updated in 2000, a critical area overlay district was created during the Phase 2 of the Development Code. This resulted in a duplication of procedural requirements created for the overlay district. Another reason for change is that there are two different processes used for the review of proposals located in critical areas, the Critical Areas Special Use Permit (CASUP) and the Critical Areas Reasonable Use Permit (CARUP). Having two parallel processes was very confusing.

Moving on, Ms. Kolousek addressed the major changes to the critical areas regulations, noting that all proposed changes reviewed and recommended by the Planning Commission are in the Attachment A of the Council packet. The first change is to consolidate all of the procedures and criteria in one code chapter, Procedures and Administration. She specifically stated that the repetitive and inconsistent procedures from Chapter 20.80 would be consolidated in the Chapter 20.10, Procedures and Administration. She also noted that the staff had proposed to the Planning Commission to clarify the criteria and make the CARUP a Type B, administrative action instead of a Type C. However, the Planning Commission was not comfortable with this change, so the CARUP remains a Type C action. She concluded that now all the review criteria for the various types of permits will be in the same place, Chapter 20.10.

Another change is that the decision-making authority for the CASUP has been changed from the City Council to the Hearing Examiner. The CASUP itself has been changed so that it is only applicable to a proposal made by a utility or other public agency, such as the City. It was thought that there might be an appearance of fairness issue if City Councilmembers decided on City applications; whereas the Hearing Examiner would be perceived as a completely unbiased decision-maker. She reiterated that now the criteria for the CASUP has been tailored specifically for public agencies and utility projects. She emphasized that changes to criteria are considered procedural, not substantive. She said that, for example, the Aegis Corporation would not be able to apply for a CASUP under the new criteria. Private proponents will have to apply for a CARUP. The criteria, found on pages 24 and 25 of the Council packet, have been tightened up.

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At this point, Ms. Kolousek introduced the Vice Chair of the Planning Commission, David Harris. She said he could speak to the Planning Commission's recommendations.

Ms. Kolousek said that the criteria for the CARUP is based on the litigation experience of many jurisdictions. She said that the legal reason for allowing some development in the critical areas is to avoid "a taking." There were also legal reasons for the elimination of criteria five on page 25, which uses the word "economic." The emphasis now is on what is acceptable to vary in order to allow development in critical areas that would be "reasonable." Subsections C allows the decision-maker some flexibility to move the building footprint and reduce the impact on the critical area without going through additional procedure. The criteria also sets up a priority (Item D) of the order of protecting various types of critical areas.

Ms. Kolousek continued by describing some additional revisions proposed to "clean up" the procedures for the critical area district. One was a change under the scope to apply to both the critical areas and their buffers. Two new definitions are proposed and two definitions have been amended. The definition for "development" is revised to ensure inclusion of development activities. The definition of "building footprint" was added prior to the Planning Commission review and recommendation to leave CARUP as a Type C action. Based on the Commission recommendation, there are no changes or additional criteria for the threshold of a building footprint, so this definition is no longer necessary. The definition of a "qualified professional" is added to ensure that technical studies are completed only by those with appropriate expertise. And the definition of "utility" is clarified.

Next Ms. Kolousek referred to page 22, noting that if this is adopted, general modifications to critical area buffers will be considered through the application of the critical areas regulations rather than through the variance process. The section allowing buffer modifications without a variance is eliminated. Under the proposal, an applicant wanting to make a change or modify the buffer would have to go through the CARUP. She reiterated that now all the general provisions, the applicability, and the authority are in the same part of the Development Code. And Section 20.80, Special Districts, which was only the Critical Areas Overlay District, has been renamed to Critical Areas. She pointed out that when the North City Business District was adopted it was done as a new chapter and not a Special District. So a Special Districts chapter is not necessary.

Ms. Kolousek concluded that the proposed changes will simplify and integrate the review processes, enhance the predictability of the Code, and make it easy for anyone to know where to find the procedures and where to find the protective standards.

Tim Stewart, Director of Planning and Development Services, pointed out that under the current code a developer has four avenues to vary the buffers: a variance, a CASUP, a CARUP, or a buffer modification. This is confusing to everyone. Under the new proposal the variance option and buffer modification are eliminated; and the CASUP is now limited to utilities. So the private developer must apply for a CARUP, which involves demonstrating that the regulations prohibit getting a reasonable use from the

property without a modification. He said without this type of permit, the alternative would be that the City would wind up buying, or taking, property.

Mr. Stewart also clarified the issue of the SEPA categorical exemption. He emphasized that all the staff, including the City Attorney, and the City's consultant, concur with the assessment that these amendments are exempt. He added that staff believes there are some indications from state agencies that they concur as well. However, if evidence is provided that would lead staff to the conclusion that some part of the amendments is not categorically exempt, staff would come back to Council prior to the decision on this amendment. He added that after adoption of the ordinance, a judicial interpretation can always be sought through an appeal.

Concluding, Mr. Stewart said that the letter from the WDFW, put into the record by Ms. Crawford, is two years old and addressed the original variance granted to the Aegis Company under the old King County regulations.

Councilmember Ransom began the Council comment period by addressing the new definition of "qualified professional." He said that in some cases a qualified professional would have a national professional certification rather than a state license. He felt such national certification should be accepted. Councilmember Hansen commented that if the field is not licensed, the regulations say a national certificate would be fine, as long as it meets the BS/BA equivalent degree in a related field.

Councilmember Ransom felt there are occasions when experience and a national certificate should be acceptable and this should be explicit in the definition.

Ms. Kolousek responded that it is important to consider which items in the code require a qualified professional. She listed several types of reports that are required to be submitted by qualified professionals. For example, geotechnical engineer would clearly be licensed in the State of Washington.

Councilmember Ransom pointed out that in federal court, under the U.S. Supreme Court Daubert decision, new standards are being set for professional qualifications. These are usually set on a national level for national certification. That option is not included here. This definition states that anyone with a bachelor's degree in the field meets the qualified professional standard if there isn't a specific state license. In fact in many professions, there are professional designations that are accepted by courts as the professional qualification in that field.

Mayor Jepsen suggested that staff should look at circumstances in which a qualified professional would be necessary per the requirements in the procedures, and research if there are cases where a person might not be licensed by the State of Washington but could have a national certification.

Continuing, Councilmember Ransom said he had a problem with the basic approach demonstrated by the amendments. He called attention to the decision-maker for Type C

approvals, numbers 3, 4, and 5 on page 19 of the Council packet. He recalled that under the former rules, the Hearing Examiner would conduct a hearing and then make a recommendation to the City Council. His recommendation would include detailed findings of fact and conclusions for Council consideration. Then the Council would make the final decision.

Councilmember Ransom felt the City Council is becoming less and less involved. He used as an example the Aegis situation, where the north end of the development was heard by a Hearing Examiner and then that decision was appealed to court, without any City Council involvement. He felt through this process the Council was not well-informed and is being left out. With regard to the south end Aegis project, the Hearing Examiner conducted the hearing, but the recommendation was brought to the Council for the decision. Councilmembers still felt involved. He recommended that CASUP and CARUP decisions should be made at the City Council level. In this way, the public would feel that the Council has some role in these critical areas decisions. He recommended the chart on page 19 be changed to reflect this approach

Mr. Stewart said that, of course, that is the Council's option. He pointed out that under the current ordinance the CARUP approval is done by the Hearing Examiner. There is no change proposed. The reason for the proposed change for the CASUP is that there could potentially be an appearance of fairness issue if the Council is acting on decisions involving public entities, including actions related to CIP projects that are proposed by the City itself.

Councilmember Ransom responded that years ago, the Council did hear the CARUP and this was changed during an earlier set of Code amendments.

Mr. Stewart thought he might be referring to the decision on Special Use Permits (SUPs) under the old King County regulations. He emphasized that the Council would continue as the decision-maker on other types of land use actions such as SUPs or rezones.

Mayor Jepsen expressed the view that the CASUP, for public utilities and other public agencies, should go to the Hearing Examiner; but he was open to a recommendation to switch the CARUP back to City Council with review through Hearing Examiner. He had a question related to the box on page 19, which talks about review of technical information. He wondered what type of technical information would be involved with CARUP versus a SUP, which the Council does decide on.

Mr. Stewart said the review criteria for the CARUP involve technical information and data. He said the criteria for the SUP, 20.30.330, is not in tonight's packet because it is not proposed for change.

Councilmember Gustafson questioned why the Hearing Examiner is more qualified to deal with this criteria than the City Council.



Mr. Burkett explained that the courts have required the City to allow some "reasonable use of the property." Otherwise it becomes "a taking." The issue is finding the balance of what would be considered a reasonable use in the critical area where otherwise the kind of use would not be allowed. This balance must be maintained no matter who the decision-maker is, Hearing Examiner or City Council. He emphasized that it becomes more of a legal issue involving interpretation of past court decisions than it is a value issue for the City Council to decide.

Ian Sievers, City Attorney, said there has been quite a bit a debate on this particular type of permit. The issue is very legalistic and reasonable use is really whatever the courts say it is. So it does require a trained professional to evaluate the factors, which are quite complex. He said that at the Planning Commission meeting most objections were from developers who thought the criteria were too tight and that there should be more ambiguity and flexibility for particular properties, particularly in high-end residential areas.

Continuing, Mr. Sievers said that Washington State case law looks at "reasonable use" from a functional perspective. In other words, for a residential property, what is the minimum residence that is reasonable for a person to build. For commercial property, what is a reasonable footprint for a commercial space. Of course, this is somewhat relative. For example, if the property is huge, should the footprint still be limited to the minimum size? The Planning Commission decided to leave reasonable use as a Type C decision. So a developer on this application won't be deprived of any reasonable economic use of the property. The Hearing Examiner is involved to develop as detailed an analysis of what factors should be considered. The Examiner could recommend to Council, as Councilmember Ransom suggests, if the Council wants to stay involved. Mr. Sievers did not feel strongly about who should be the decision-maker because, for this permit, the Council would need to rely very heavily on the Hearing Examiner for an analysis of cases and the parameters for the decision.

Responding to Councilmember Gustafson's question about how the Hearing Examiner was chosen, Sharon Mattioli, City Clerk, said a Hearing Examiner was selected when the City first incorporated through a Request for Qualifications process. She said the current Hearing Examiner, Bob Burke, is a land use planner. Only if he has a conflict does the City select a pro tem Examiner to hear a particular case.

Responding again to Councilmember Gustafson, Mr. Stewart said that it is the practice of most governments to review the Hearing Examiner contract from time to time.

Councilmember Chang asked about the letter from the WDFW and whether WDFW was not one of the state agencies contacted for comment. Ms. Kolousek said the amendments were sent to all state agencies, including the WDFW, and no official comments were received back.

Responding to Councilmember Chang, Mr. Stewart said the City has received comments from WDFW relating to the stream inventory, which is currently at the Planning

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Commission. These are being reviewed by staff. When the Planning Commission forwards a recommendation on the stream inventory, these comments will have been investigated and addressed.

Councilmember Chang questioned whether it would not be better to finish up the stream inventory before making a decision on the regulations.

Mr. Stewart said he would agree if these amendments dealt with substantive issues. For the substantive changes in Phase II, the stream inventory will be critical. It will provide the best available science to assist in the judgments on how to protect the functions and values of these critical areas. He reiterated that Phase I addresses only administration and procedures.

Councilmember Chang referred to the document from Mr. Gaston's attorney that implies that the changes being made will affect the outcome of his lawsuit.

Mr. Sievers provided an update on the status of the Gaston case. He said Mr. Gaston has been following these amendments because the only method for private parties to get variances or exceptions to critical areas buffers is the CARUP. If this is adopted, Mr. Gaston could apply for that permit, which might obviate the need to pursue the appeal.

Councilmember Gustafson noted that most Planning Commission votes were almost unanimous. He asked if Mr. Harris could comment on the Planning Commission's thinking and whether the amendments are tightening down the process and clarifying the procedures.

David Harris, Vice Chair of the Planning Commission, said the Planning Commission debated the CARUP issue extensively. Its main focus was on protection of the critical areas. The Commissioners generally felt that "reasonable use" is not reasonable use of the property per se, but what is reasonable to protect the critical areas, in other words, the minimum use of the critical areas. The Planning Commission had some feeling that the best protection for the critical areas might be with having the Hearing Examiner, rather than the City Council, make the final decision

Councilmember Chang said he was concerned with moving forward in light of the possible WDFW concerns and the consequences for developers such as Mr. Gaston. Ms. Kolousek responded that WDFW would probably be very concerned if the City were changing the protective standards. However, when it comes to procedures, as a state agency, it would probably respect the jurisdiction's right to formulate its own procedures. She said that every time she has dealt with WDFW, it has always addressed substantive issues. Procedures are not their sphere, so they wouldn't make a decision or recommendation on those.

Councilmember Hansen commented that it is possible that WDFW "dropped the ball," but it is more likely that they saw these as procedural changes and didn't have any comment or any reason to comment on them.

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Ms. Kolousek concurred and said everyone who has reviewed the amendments feel they are procedural and that the tightening up has increased the protection of the critical areas and eliminated the confusion caused by having both CASUP and CARUP actions available to applicants.

Councilmember Hansen clarified that Mr. Harris and the Planning Commission were not looking at reasonable use from the perspective of the contractor/developer, but from the perspective of what would be reasonable to do in the critical areas from the point of view of their protection. The regulations prioritize the types of critical areas from those where some reasonable use would have the least impact to the most impact. So the decision-maker would have more leeway on what was at the top of the list and extremely little leeway on what is at the bottom of the list.

Mr. Harris concurred and pointed out that monetary considerations have been left out of the equation. It is what will reasonably protect the critical areas.

Councilmember Hansen commented that certain members of the public commented they feel the substantial protective provisions are being affected. He asked staff to provide information on exactly which provisions in particular are referenced by those comments.

Mayor Jepsen asked staff to clarify this with the people making these comments. He said that he was inclined to think that the changes are strictly procedural.

Mayor Jepsen referred to public comments regarding the granting of a CASUP if the applicant meets all the criteria. Some wish the City to retain some flexibility in granting the permit even if the criteria are all met. Currently the document says the City "shall" grant the permit, rather than "may" grant the permit.

Mr. Stewart confirmed that if the applicant demonstrates it has met the long list of criteria, it does become a mandatory approval. He added that it works the other way as well. If one of the criteria is not met, then it is a mandatory denial. Ms. Kolousek added that this language is consistent for the all the permits. She said the burden of proof is on the applicant to show compliance with all the criteria.

Responding to Mayor Jepsen's question about Section 20.30.336, D(7), Councilmember Hansen explained number 3 refers to the geologic hazard area buffers and in number 7, the reference is to a geological hazard area.

Ms. Kolousek added that number 7 is more critical because it is the hazard area itself, while numbers 3, 4, 5 and 6 focus on buffers. Numbers 1 and 2 relate to the whole area, and number 7 ties it together.

Referring to the document from Mr. Gaston's attorney, Mr. Spence, Mayor Jepsen said he would like to understand the context of the letter. He said Mr. Spence obviously

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believes there is some connection between the lawsuit and these regulations. Mayor Jepsen wondered whether this would have to be discussed in executive session.

Mr. Burkett clarified that if these amendments are adopted, Mr. Gaston would have the option of applying for a CARUP. Then he would have to go to the Hearing Examiner and meet all the criteria.

Mr. Sievers explained that it is similar to the Aegis project on the south side. The applicant originally applied for a variance, as did Gaston, and then came back for an alternate approval method through the CASUP. So Mr. Spence is saying that if the CARUP becomes available, Mr. Gaston would apply for it and, if approved, probably would withdraw his appeal.

Mayor Jepsen didn't understand the relationship between the adoption of these amendments and the application for the CARUP, since the option for the CARUP exists in our current code.

Mr. Sievers said the significant difference to Mr. Spence from the current CARUP process is probably the removal of the reasonable economic use criteria, page 25 number 5. One of the issues that he had trouble with was the creation of a lot line adjustment that the court found to be a self-created hardship and a failure of that criteria. If this criteria is removed, Mr. Sievers supposed that Mr. Gaston would not see any other impediments within the CARUP criteria that would prevent him from getting the permit. Mr. Sievers said current thinking is that the CARUP is supposed to be a safety valve to protect the City from experiencing a ruling of invalidity or regulatory taking.

Mayor Jepsen wished to think about this issue and review the legal opinion submitted to the City Clerk. Mr. Sievers said an actual legal opinion did not appear to be attached to the speaking notes. He said he would also like to see a copy of the opinion.

Responding to Councilmember Ransom's questions about Mr. Vreeland's testimony at the Planning Commission, Mr. Stewart explained that Mr. Vreeland was commenting on the item that the Planning Commission did not choose to pursue.

Referring to page 26, Councilmember Ransom said that to allow setbacks to be reduced by up to 50 percent seems excessive. Mr. Stewart responded that this is a reduction of the setback requirements that would otherwise be required by the code. So, for example, a 30-foot frontyard setback could be reduced by half to allow more room in back for critical area, in other words, to avoid impacting the critical area. This was extensively debated by the Planning Commission and came through with a unanimous recommendation.

Councilmember Ransom wished to pursue his suggestion to make the City Council the decision-maker for the CARUP and asked staff to come back with some language as a basis for further deliberation on that change.

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Mayor Jepsen summarized the Council's issues and, asked staff to provide further information on:

- what qualified professionals are used but don't necessarily have a license within the state and what national certifications might be used as a substitute to a license;
- Councilmember Ransom's request to look at Hearing Examiner versus Council as the final decision-maker for the CASUP;
- decision criteria differences between the SUP and the CASUP;
- the legal opinion on procedures and SEPA from the Thornton Creek Legal Defense Fund; and
- Councilmember Hansen's request to know what specific provisions of the code the public is referring to as substantive rather than procedural.

Councilmember Montgomery commented that this was a hard issue for her. After reading everything, she concluded it was significant that no comments came from state agencies within the 60 day review window. This suggests they see these amendments as procedural. She said the goal was to get clarity on what is meant by reasonable use. She also commented that only 12 citizens participated at the Planning Commission on this issue and that the voting of the Planning Commission showed consensus. She supported everything as proposed.

Mayor Jepsen thanked Mr. Harris for coming to the meeting and explaining the Planning Commission's perspective.

## (b) Emergency Management Plan

Denise Pentony, Shoreline Police Chief and Emergency Management Coordinator, explained the components of the Emergency Operations Plan (EOP), noting it will be brought back for Council adoption on May 27, 2003. She said that this plan is an update of the plan adopted in 1998. She described how this process was accomplished through the establishment of the Emergency Management Council (EMC) in 2002, consisting of Shoreline Public Schools, Police, Shoreline Fire, Shoreline Community College, Crista Ministries, Shoreline Amateur Radio and Ronald Wastewater District. The EMC's purpose is to create partnerships to ensure pre-existing plans are in place to effectively respond to and recover from a disaster. To formalize this commitment, an Interlocal Agreement has been developed.

Chief Pentony went on to described the three levels of Emergency Operations activation: 1) monitoring; 2) partial activation; 3) full activation. She said the four phases of emergency management include: 1) mitigation; 2) preparedness; 3) disaster response; and 4) recovery.

Chief Pentony focused on the role of the Mayor and City Manager as lead in an emergency in order to provide guidance and direction. She noted the Council has delegated executive authority for direction and control to the City Manger, although Council will be responsible for developing any necessary ordinances, policies, or

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legislative actions in an emergency. Council is also responsible for reassuring the public and invoking funding from state and federal sources.

Continuing, Chief Pentony said that efficiency and coordination has been greatly improved since the plan was first implemented. The draft Washington State Law Enforcement Mobilization Plan and the draft Shoreline Emergency Operations Interlocal Agreement were introduced to Council on January 6, 2003 and adoption is forthcoming. Once the EOP is adopted the following tasks will occur:

- City staff will be trained on the Plan.
- The EPT will conduct exercises to test the Plan and to teach staff and emergency partners.
- The EOP Plan will be forwarded to the King County EOC, the State Emergency Management Council and FEMA.
- The Block Watch organizations and the Council of Neighborhoods will be trained on the plan and taught their role in 72-Hour Preparedness.
- Community Emergency Response Training (CERT) training will be provided beginning in May 2003 to the community.

Councilmember Gustafson thanked Chief Pentony for her leadership in creating the plan. He expressed relief that the City now has a coordinated plan that is aligned with state, county, and federal entities. In response to Councilmember Gustafson, Chief Pentony clarified that most other cities have already adopted documents similar to the Emergency Operations Plan. Councilmember Gustafson emphasized the need to provide regular training and keep all contact numbers updated. He suggested the City conduct training sessions annually for at least the first two years, and then less often as people become more familiar with it so it is not forgotten. He asked if there are funds available to provide continued training.

Chief Pentony said the City has \$50,000 for this function, but state grants will be available for hazard mitigation planning and for completing the current plan.

Responding to Councilmember Gustafson, Chief Pentony clarified that the County will help in the financing effort through a grant process.

Councilmember Gustafson expressed an interest in establishing a regular schedule for updating the document so contact information remains current.

Mr. Burkett discussed the challenge of trying to balance the needs of the emergency plan with other important projects in the City. He noted that while the plan is important, it is not urgent due to the unpredictability of emergencies. He said discipline is needed to maintain balance between all the City's priorities.

Councilmember Hansen noted that the massive destruction left by recent tornadoes in the Midwest demonstrates the need for an emergency program. He emphasized that individual preparedness is as important as a top-level emergency plan, because people must be able to sustain themselves for at least 72 hours.

Councilmembers commended the group who worked on the plan for a job well done.

(c) Retail Market Analysis Report

Jan Knudson, Economic Development Coordinator, presented an overview of the staff report. She said that based on the City's interest in retail consulting for cities, Shoreline entered into a contract with the Buxton Company to analyze the potential of three sites in Shoreline to attract and expand retail. The three sites are: Site 1: The North City Business District; Site 2: The Central Shoreline Subarea; and Site 3: The Aurora Square/Westminster Shopping Center

Continuing, Ms. Knudson said that with the information provided in the report, the City can make more informed decisions about investments in infrastructure and can focus resources on areas of higher retail development potential. She described how the retail market potential for the three locations was determined and said now the Council should choose which of the three sites should be analyzed further in Phase II of the contract. Phase II which will compare the research results from Phase I with customer profiles of thousands of retailers. After finding retailer matches for the City's preferred location, the Buxton company will provide customized marketing packages for the City to use in recruiting those retailers.

Ms. Knudson explained that all three designated retail sites have characteristics that make each one a viable option for future retail development. Of the sites analyzed, the Aurora Square/Westminster site had the greatest concentration of desirable customer characteristics (psychographics), the highest average household income, the highest median property value and the highest traffic volumes. These factors give it the greatest potential for additional retail development and make it the most logical site for Phase II analysis. Ms. Knudson concluded that staff recommends that Council select the Aurora Square/Westminster site for Phase II of the Retail Market Analysis, based on site size and the demographics/psychographics of the drive time area.

Mr. Burkett pointed out that the consultant used outdated residential property values in the analysis.

Councilmember Ransom concurred, noting that household incomes and property values differ from the figures in the 2000 Census. He said the Census indicates much lower household incomes and much higher property values. He said inaccurate figures will undermine the credibility of the Phase II analysis.

Ms. Knudson said the consultant will be made aware of those concerns.

Councilmember Ransom also doubted the accuracy of the drive time estimates. Ms. Knudson said the consultant arrived at the drive time estimates based on a traffic modeling mechanism. Mayor Jepsen felt the drive time estimates were fairly accurate based on his driving experience.

Ms. Knudson noted that updated maps will be needed to reflect areas of the Ballinger neighborhood that are included in the analysis.

Ms. Knudson also explained the components of the three predominant household profiles, or psychographics. She said Site 3 is recommended for Phase II because of favorable household profiles.

Mr. Burkett noted that size and potential for redevelopment is another reason for the recommendation. He explained that the Buxton company acquires the psychographic information by purchasing databases and creating customer profiles for a given area based on customer's shopping habits.

Responding to Councilmember Chang, Ms. Knudson explained that in Phase II the City will receive a marketing package consisting of a list of 20 retailers, their contact information, and a recruitment script. She noted that although the City can only facilitate, it can create a targeted contact list to attract potential retailers. She explained that the psychographics of the three sites are similar enough that one marketing package could work for all three.

Responding again to Councilmember Chang, Ms. Knudson clarified that the 20 retailers will be new retailers, not existing businesses in the area. She said Phase II could also help existing businesses make their own marketing and business plans more successful.

Councilmember Hansen said if retailers do their own market surveys, they will already know the customer profiles and whether Shoreline is a match for them. He noted the consultant has successfully placed at least one company in Shoreline, so he was optimistic that the plan will attract more businesses. He noted the consultant also tries to avoid creating an overly competitive business atmosphere, so he was confident that it would create a "win-win" situation for everyone.

Councilmember Ransom reiterated his concern that the statistics may be unreliable, noting that the household income figure is about \$10,000 more than the Census indicated. He also expressed concern about recommending Site 3 for redevelopment, noting that it could take five to ten years due to the size, scope, and costs. He suggested that North City be the area of focus for Phase II since it is probable that there will be some concrete achievements there in the short term. Furthermore, the City could then use those achievements as a selling point to attract other businesses to the area.

Mayor Jepsen asked if the Buxton Company considers land availability in its analysis of psychographics. Ms. Knudson replied that land availability would be a City concern.

Mayor Jepsen felt comfortable the analysis could be applied to each of the three areas due to the similarity in demographic data. Ms. Knudson used an example of a bookstore to illustrate that options for each site can be derived from the same database. It was noted that the City could utilize a strategy to attract both large and small retailers.



Councilmember Ransom expressed concern that Aurora Square will take ten years and consume a great deal of staff energy and time due to the variety of issues there. He reiterated his preference that North City be considered for Phase II because of the relatively short time in which businesses could locate there.

Mayor Jepsen agreed, but felt staff should focus on all possible opportunities within the City.

Councilmember Hansen expressed a preference for concentrating on Site 3 but explained that the list of retailers, not the specific area, will be the determining factor. He said the reason for Phase II is not an attempt to overhaul Aurora Square, but to bring some economic development to Shoreline, regardless of where businesses locate.

Ms. Knudson pointed out that Site 3 has approximately twice the traffic volume of North City.

Councilmember Gustafson agreed that Councilmember Ransom brought up some good points, but felt that Site 3 is a more attractive package, considering its size and future improvements to the Aurora Corridor and Interurban Trail. He suggested that Site 3 may lend itself to a theme approach to development.

Councilmember Chang explained his idea that Shoreline's marketing approach needs to have a "theme." He suggested the City try to develop an "education" theme in its approach to retail development, since education is one of Shoreline's strengths. He said that no other city is claiming to be an "education center," and this might be a niche for the City.

There was general consensus to accept the staff's recommendation to concentrate on Site 3 but to use the information as broadly as possible.

(d) 2003 First Quarter Financial Report

Due to the late hour, the Council discussed whether this item should be heard or deferred to a future meeting.

MEETING EXTENSION

At 9:59 p.m. Councilmember Gustafson moved to extend the meeting until 10:20 p.m. in order to hear Item 6(d). Councilmember Ransom seconded the motion, which failed by a vote of 3-3, with Councilmembers Gustafson, Chang, and Ransom voting in the affirmative.

**Councilmember Ransom moved to extend the meeting until 10:15 in order to hear public comment. Councilmember Hansen seconded the motion, which carried 5-1, with Councilmember Montgomery dissenting.**

Agenda Item 6(d) was deferred to a future meeting.

7. CONTINUED PUBLIC COMMENT

(a) Robert Vreeland, Seattle, asked Council to clarify whether any state agencies responded to the City's changes in the Critical Areas ordinance. He said the City should not assume that agencies have no concerns simply because they failed to respond, adding that sometimes time and staff shortages prevent timely responses. He clarified that his earlier comments paraphrased the concerns of the attorney representing the Thornton Creek Legal Defense Fund.

(b) Janet Way, Shoreline, commented that the Thornton Creek Legal Defense Fund will respond to the Council's request for further clarification of its concerns regarding the Critical Areas ordinance. She restated her concern relating to building footprints, contending that many of the changes to the ordinance are substantive. She said while functions and values are important to creeks, habitat quality will actually determine the quality of the watershed. She concurred with Councilmember Chang's concern that complete analysis of the stream inventory should precede any changes to the ordinance. She inquired whether the SUP process would apply to the Fircrest property or the Shoreline Community College master plan. Finally, she questioned why Crista Ministries, a religious organization, is a participant in the City's Emergency Operations Plan.

(c) Pat Crawford, Shoreline, wished to ensure that Council received the complete packet of information she submitted to the Planning Commission concerning Critical Areas. She said the WDFW requires the City to protect future salmon habitat and recognize the channel as fish habitat protected by adequate buffers. She said the Shoreline code requires that the City recognize and consider the presence or potential for salmonid use. She contended the City wants to remove the Critical Area Overlay District (CAOD) from the code in order to allow development, such as the Gaston project, to occur, noting that the COAD protects buffers and salmon habitat. She said the Council must look at the entire code, and not just the staff report, in order to make an informed decision.

Mayor Jepsen said it would help him better understand the pros and cons of the Critical Areas amendments if people could also identify areas of agreement.

8. ADJOURNMENT

At 10:10 p.m., Mayor Jepsen declared the meeting adjourned.

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Sharon Mattioli, City Clerk