

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

November 18, 2015
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Hilhorst, Commissioners Carlson, Barksdale, deVadoss, Laing, Walter

COMMISSIONERS ABSENT: Commissioner Morisseau

STAFF PRESENT: Mike Kattermann, Patti Wilma, Emil King, Department of Planning and Community Development; Patricia Byers, Tom Campbell, Department of Development Services

COUNCIL LIAISON: Not Present

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:33 p.m. by Chair Hilhorst who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Laing, who arrived at 6:34 p.m., and Commissioner Morisseau, who was excused.

3. APPROVAL OF AGENDA

A motion to approve the agenda was made by Commissioner deVadoss. The motion was seconded by Commissioner Walter and the motion carried unanimously.

4. PUBLIC COMMENT

Ms. Barbara Benson, 14405 SE 17th Street, said as a resident of Spiritwood she was happy when she received an update from Code Compliance regarding their investigation of the single room rental violation reports she had submitted. The city appears to be taking the appropriate steps to determine and act upon any infractions while respecting lifestyles and privacy. She said she is concerned about repeat violators and what measures will be taken when they are encountered. She noted that in the spring she reported a Craigslist room rental advertisement for all six bedrooms of a Spiritwood property that even featured a three-day open house. What was

troubling was the fact that the owner had previously rented rooms, then advertised the house as a single unit rental, then reverted to room rentals after the permanent ordinance was passed. Four months after filing a complaint with Code Compliance, another Craigslist room rental ad for the same property was posted. Hopefully the city will impose stiff penalties for multiple infractions, and a citywide registration for home rentals. Both would serve as deterrents for those who believe they are above the code.

Ms. Betsi Hummer, 14541 SE 26th Street, said she was elected in 2014 to Position 2 of the East Bellevue Community Council. She said her constituents continue to be concerned about violations of the single room rental ordinance. In November the East Bellevue Community Council received a letter from Tom Campbell of the city's Code Compliance section in which he noted the status of the single room rental enforcement actions. His letter indicated 109 homes had received complaints about violating the ordinance. She said she used the information in the letter to map the location of the homes in question and found that they are located throughout the city. Most of the complaints, however, are centered in the Lake Hills/East Bellevue neighborhoods where the residents love their single family neighborhood and feel that single room rentals are contributing to a trend toward multifamily housing that the East Bellevue Community Council has been addressing since its inception in 1969. Early on, Dr. Howard Wilson, longtime chair of the East Bellevue Community Council, reviewed the historical zoning and is on record stating that on the eve of incorporation into Bellevue, King County zoned Larson Lake, also known as the Lake Hills Greenbelt, for commercial and high-density housing. Over the years the East Bellevue Community Council has worked diligently to keep the area's open use zoning available for enjoyment by all. Through the effort, Lake Hills anchors Bellevue's city in a park image. Bellevue College plans to build student housing in the area, which sounds a lot like multifamily high-density housing in a neighborhood that is zoned single family. The owner of a half-acre lot asked about building an apartment development but was told it would take too much time and money to get the necessary rezone, which does not mesh with Bellevue College's proposed actions. A Lake Hills resident recently learned her next-door neighbor rents a 2000-square-foot home to four other people for \$650 per month each, but the resident is unwilling to file a complaint, preferring instead to keep peace in the neighborhood. By not reporting the issue, a precedent could be set for renting out more homes in a similar fashion. Renter registration would help with compliance issues. It certainly would help the compliance department, and it would keep neighbors from having to inform on one another.

Ms. Kathy Nye, 14508 SE 19th Place, said there appears to be no good way to enforce the rules about renting single rooms. Some say they do not know what the rules are, while others simply ignore the rules. Something like 183 people have filed reports with the city but nothing has been done to enforce the rules for some reason.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS -- None
6. STAFF REPORTS

Senior Planner Mike Kattermann informed the Commissioners that March 2, 2016, from 6:00

p.m. to 9:00 p.m. has been confirmed for planning commissioner short course training. The session will occur at City Hall.

Mr. Kattermann noted that November 13 marked the 25th anniversary of passage of the Growth Management Act.

The Commissioners were told that there was still room for the cultural competence training session on December 17. Anyone wanting to attend was asked to let staff know.

Mr. Kattermann called attention to an announcement for the Eastside Rail Corridor Summit scheduled for January 9, 2016, at Meydenbauer Center. He said there is a cost for attending which the city will pay for any Commissioner wanting to go. The Commission will be given a briefing on the Eastside Rail Corridor on December 9.

7. DRAFT MINUTES REVIEW

A. October 28, 2015

A motion to approve the minutes as submitted was made by Commissioner Laing. The motion was seconded by Commissioner deVadoss and the motion carried unanimously.

8. STUDY SESSION

A. Single Family Rental Housing Ordinance

Code Compliance Supervisor Tom Campbell explained that the issue of unrelated adults living in single family homes in single family zones came to a head in September 2013. The residents who voiced the issue were primarily concerned with external impacts and with the notion of allowing large homes to be built for the purpose of renting out single rooms. The housing stock in the area around Bellevue College was mostly constructed in the 1960s and has been largely inhabited by long-term residents. Large numbers of cars and traffic, increased noise, and generally not knowing who the neighbors are were listed as concerns. The Council directed staff to study the issue following which an emergency ordinance was approved that focused primarily on the definition of family and the number of unrelated adults. It did not get into how to document whether or not the residents were all part of a single family or whether the group functioned as a single housekeeping unit, making documentation and enforcement of the requirements difficult. A two-year study followed adoption of the emergency ordinance during which it was renewed a number of times. After two years of work, the Planning Commission recommended an approach which ultimately was adopted by the Council as a permanent ordinance in April 2015.

Mr. Campbell said the permanent ordinance established a new definition for rooming house as a non-owner-occupied dwelling subject to multiple leases. The ordinance allows owners who occupy their property to rent rooms to up to two unrelated adults. The specific zones in which rooming houses are allowed are spelled out in the ordinance, and additional standards for

rooming houses are established, including requiring off-street parking spaces equal to the number of bedrooms leased.

The key change brought about by the ordinance is a change to the definition of family to mean not more than four adult persons unless all are related by blood, marriage or legal adoption. More than four unrelated adults are allowed provided specific requirements are met that show they are functioning as the equivalent of a single family sharing household expenses under a single lease.

Mr. Campbell said the news coverage of the ordinance has raised awareness of the single family room rental issue, and that has generated more complaints. The city has also received inquiries from possible landlords, something that was not happening before the permanent ordinance was enacted. As of October 26, the city has investigated 109 properties; 43 of the investigations are ongoing. Several of the cases that have been closed were found by the investigation to be in compliance or to not have had a violation at all. Some property owners chose to come into compliance voluntarily. Given that the burden of proof rests with the city, there were some issues encountered related to actually proving what was going on inside some houses. Good information has been submitted to the city regarding Craigslist ads for rental houses. In several instances, when contacted by the city the landlords were not willing to talk. Tenants also on occasion refused to volunteer any information, though information in some of the more developed investigations came from tenants who were being evicted.

There is no requirement in the code for evidence of compliance be provided to the city ahead of time. That has proved frustrating both for the neighbors and the staff. The city's legal department has a meeting planned with code enforcement early in December where the focus will be on developing specific investigation strategies and evidence standards in order to improve the investigative process. There are a handful of cases ready to be moved to a hearing before the hearing examiner in January. The hope is that successful outcomes will have a synergistic effect on landlords.

Commissioner Carlson asked if anyone has been penalized for violating the ordinance. Mr. Campbell allowed that no one has. Asked if the ordinance is enforceable, he said his staff have been finding it difficult to get the level of evidence needed to take cases to a hearing, particularly from property owners and those living in the homes. Commissioner Carlson asked if the ordinance needs to be rewritten or if there needs to be an application of legal strategy. Mr. Campbell said sometimes the issue is as simple as determining actual ownership. Many of the houses, especially those in the Spiritwood neighborhood, are owned by LLCs that may in fact be owned by foreign investors. The registered agent of the LLC can be brought in, but if they refuse to cooperate there is little that can be done. It will be necessary to give the current ordinance a chance before the hearing examiner based on the tools it provides before it can be said with any degree of certainty that a rewrite of the ordinance is needed. Getting some cases upheld by the hearing examiner will go a long way toward getting more compliance, voluntary or otherwise.

Commissioner Walter asked how the closed cases were resolved and if any individual room rentals were stopped as a result of enforcing the code. Mr. Campbell said there were some individual room rentals stopped. Some of the cases were closed following voluntary compliance.

Most of the cases that were closed were the result of not being able to proceed with an investigation due to lack of cooperation. Commissioner Walter suggested that in the case of uncooperative property owners, the cases should be put in a category other than closed. Mr. Campbell pointed out that each closed case file includes a notation as to whether it was closed because no violation was found, closed as a result of voluntary compliance, or closed because the investigation could not proceed. A data file is being put together regarding all the cases for submission to the East Bellevue Community Council. Commissioner Walter asked to have the file provided to the Commission as well.

Commissioner Walter asked if Code Enforcement has the staff needed to fully enforce the code. Mr. Campbell said the cases have been found to take longer to investigate than first anticipated, though when the first ordinance was enacted there really was no way to accurately predict how much time it would take per case. Commissioner Walter suggested the more cases there are that essentially never get resolved because enforcement cannot go forward, the larger the problem is going to get. She asked if a budget request will be made for an additional code enforcement officer and stated that the fact that some landlords are not willing to share information highlights the need for a rental registration approach; if security systems can be registered, rental registration is possible as well. There also needs to be something put in place to deal with repeat offenders and owner groups that have multiple properties. Mr. Campbell said the existing code provides for a doubling of penalties in the case of repeat offenders. Violations are per property and not per owner, though in the case of a person owning several single-room rental properties, the argument could be made that all violations after the first one could be considered a repeat violation. The maximum penalty is \$500 per violation per day, and doubling that would be significant. With regard to staffing, the hours being put in are being tallied and the question of whether or not more staffing is needed will become clear down the road. The issue of rental registration was considered when the original ordinance was adopted. Several dozen jurisdictions around the nation were contacted and the common element found was rental housing for college students. In Bellevue, affordable housing is a crying need and so it is not just students who opt for single room rentals.

Commissioner Barksdale asked about the tenants who occupy single-room rental operations and he was told by Mr. Campbell that from information that has been gathered the tenants are more than just college students. Many are low-income residents who work minimum wage jobs in the city and cannot afford to live far from where they work. The largest number of rooming houses are located near Bellevue College, but in fact they are scattered throughout all Bellevue neighborhoods, including West Bellevue and Bridle Trails. Commissioner Barksdale asked if the city is developing any positive inducements to help fill the need but in accord with the ordinance. Mr. Campbell said the type of rooming house the neighborhoods are complaining about follows a particular business model that divides older existing single family homes into multiple bedrooms for occupation by individuals who are unrelated. The need for affordable housing generally is not something Code Enforcement deals with directly. The city has responded through ARCH and other means to address the affordable housing issue.

Chair Hilhorst noted that while ARCH is one means of solving the affordable housing problem in Bellevue, the work under way with regard to downtown livability and the work under way in

the Eastgate corridor will also result in more affordable housing. The single family rental housing ordinance was created to protect single family neighborhoods at their request.

Commissioner deVadoss said it was disappointing to learn that some cases have been closed due to an inability to gather evidence. With regard to the penalties, he suggested they should be in proportion to the profits made by the landlords. Mr. Campbell said the same penalty is in place for all civil code violations; it is spelled out in Chapter 1.18 of the Bellevue city code. Consideration to imposing a different penalty scheme was not considered when the ordinance was looked at by the Commission and the Council. The key, of course, will be in getting a case before the hearing examiner and having it upheld. Commissioner deVadoss suggested that the question of the penalty should be reopened.

Commissioner deVadoss suggested the Commission would benefit from having a map showing the location of the homes against which complaints have been filed. Mr. Campbell said he would deliver it as soon as it is available.

Commissioner deVadoss asked if there is any follow-up where landlords have voluntarily come into compliance just to ensure they are still in compliance. Mr. Campbell said cases are closed where it can be documented that compliance has been achieved, and there is no additional monitoring unless another complaint is filed regarding the same property. Most civil code violations are complaint based; the exceptions as dictated by Council direction are those that involve serious life and safety hazards, serious environmental violations, and sign code violations. Commissioner deVadoss suggested that given the nature of voluntary compliance it would behoove the city to have some level of follow-up accountability.

Commissioner deVadoss observed that the Achilles heel of the ordinance is the city's ability to gather evidence. Mr. Campbell agreed. He pointed out that with most building or Land Use Code violations, all that is needed is a drive by the site because the evidence is exterior to the house. In the instance where historically there have been one or two cars in a driveway and the number of cars suddenly increases substantially, there is circumstantial evidence that the number of persons living in the house has increased, but that is not direct evidence that the persons are unrelated, or of how many there are. Privacy rights make it very difficult to extract the evidence needed. Commissioner deVadoss commented that the inability to collect evidence denies any return on the investment of those involved in getting the ordinance passed.

Commissioner Carlson agreed with the comments of Commissioner deVadoss and said he would like to see very stiff penalties for repeat offenders. The question remains as to whether or not the problems associated with the ordinance can be fixed with a new legal strategy, or if the ordinance needs to be rewritten. Mr. Campbell said that question will be answered if the upcoming meetings with the legal department result in cases coming up before the hearing examiner in January.

Chair Hilhorst asked staff to put the issue on the Commission's agenda for February for follow-up.

B. Downtown Livability

Strategic Planning Manager Emil King informed the Commission that the Council is scheduled to look at some draft principles related to incentive zoning on December 7, and to reach some conclusions on December 14.

Chair Hilhorst commented positively on the workshop. Having the Council and the Commission together to discuss the issues was a great way to level set. It will be very informative to hear the Council's conclusions on December 7.

Commissioner Laing agreed that the workshop was fantastic. He said it was reminiscent of the discussions had by the Downtown Livability Initiative CAC. He said he would like to see how much FAR the parking and residential bonuses respectively have yielded by reviewing the permits for several downtown buildings over the past few years. That will inform what the impact would be of removing either of those bonuses.

Commissioner deVadoss concurred that the workshop was helpful and suggested there should be more of them in the future regarding various topics.

Commissioner Barksdale said he enjoyed the workshop. He said he would like to see some figures indicating how well the city is doing tracking toward its Comprehensive Plan and initiative objectives. The review should cover which amenities developers are taking advantage of.

Commissioner Carlson agreed that the workshop was helpful, though he said he was surprised to hear Deputy Mayor Wallace say that so many of the incentives are a waste of time in that they involve things that will happen anyway, and suggest that the list of incentives should be radically reduced.

Commissioner Carlson said he was taken by hearing the real success stories that came about as a result of the incentives. If only a quarter of the underground parking in the downtown was in fact on the surface, Bellevue would be a far different city. It was incentive zoning that brought about the locating of parking underground.

Commissioner Walter asked if there is any risk of incentives becoming a kind of currency that is traded among developers. She suggested that if the incentives do get traded, it will be best to have fewer of them so that their value can be more measurable. Ms. Wilma explained that some amenity points can currently be transferred within the downtown core, but only the points that are earned by building the pedestrian corridor. There are other relatively limited transfer opportunities, such as between adjacent properties that are owned by the same property owner, but then only up to 25 percent of the bonus.

Ms. Byers said the objectives of the Downtown Livability Initiative included a vibrant mixed use center, enhancing the pedestrian environment, improving the area as a residential setting, and enhancing the identity and character of the downtown neighborhoods.

Ms. Byers said as drafted, providing weather protection in the form of arcades, awnings and marquees will generate amenity points, even though providing weather protection is mandatory. Weather protection can be provided through other means, but only those elements are eligible for amenity points. Freestanding weather protection is included in the draft. As pedestrian activity increases, the percentage of overhead weather protection increases. For the streets with the highest orientation to pedestrians, 75 percent of the building frontage would be required to have weather protection. The required percentage would be reduced toward the outer edges of the downtown, falling to weather protection required only in all building entries on the edges of the downtown.

Commissioner Laing commented that the draft in Attachment A through Attachment C jumps back and forth between using numbers and spelling out numbers. He said his personal preference for drafting any legal document is to spell out numbers as a word and then include the number in parentheses. Additionally, throughout the document the words “should,” “may” and “shall” are used; he said he would prefer to see “shall” used where something is mandatory, and “may” when not mandatory. Accordingly, the word “must” wherever used in the document should be replaced with “shall,” and the word “should” with the word “may.” Where the word “will” is used, it should also be replaced with “shall.”

Commissioner Laing commented that in order to be consistent with the recommendation of the Downtown Livability Initiative CAC, the recommendation of the Commission to the Council should be to strike paragraph B.4, and to also strike the weather protection element of the amenity table. That is because weather protection will no longer be an amenity, it will be mandated. Mr. King said there are two options: to require weather protection but still have it count as part of the amenity system; and to require weather protection and not count it as part of the amenity system. Ms. Wilma added that there are projects in process that are using weather protection as an amenity, which make things tricky with regard to simply eliminating weather projection from the current amenity system. Ms. Byers said she would provide the Commission with an update at its next meeting.

Chair Hilhorst suggested making it clear for purposes of the public hearing that the intent of the Commission is to ultimately remove weather protection as an amenity.

Commissioner Laing commented that in the draft there is some ambiguity about the idea of the planter strips being at least five feet wide and the tree pits being at least ten feet long, and the notion of having a continuous strip versus a tree pit. It should be clear that along streets that require a continuous strip there will be no tree pits. With regard to irrigation, he noted that while there had been several questions about using rain water, the draft is specific about having irrigation systems connected to metered city water. It makes sense to have a city connection in case of a lack of rainwater, but provision should be made to allow for the use of rainwater, either as a primary or backup means.

Calling attention to paragraph C.3.h, Commissioner Laing noted that as drafted the Director shall specify sign requirements including color, size, verbiage, type, placement and any other

necessary specification. He voiced concern that as drafted the approach does not conform with due process. Applicants should be able to look at the code to determine what they are supposed to do. There are multiple examples of directional signage, some that looks great and some that looks very bad. Even so, there should be flexibility allowed for proposing alternatives.

Ms. Byers said the desire of staff is to have a flyer that can be handed out describing how large signs can be, what colors can be used and so forth, and then include in the code specifications for how modifications can be achieved. The signs should be easily visible, readable and uniform.

Commissioner Laing called attention to paragraph D Minor Modification on page 19 of the draft and suggested that as drafted something is missing. Ms. Byers said the intent was to avoid having the Director making determinations on site distance or sidewalk width given that those issues fall under the jurisdiction of the Department of Transportation. She agreed the language could be clarified. Mr. Kattermann proposed having it read “...achieve equal or better results; provided that the sight distance requirements of...”

Commissioner Laing referred to paragraph 5.c.ii under the design guidelines and voiced concern about the language regarding the greater of 6:00 a.m. to midnight or hours of operation of adjacent uses. He pointed out that the area referenced is not the walkway but rather something like an alcove on private property, possibly associated with a restaurant where there is outdoor seating when the business is open. When the business is closed, however, the property owner should not be allowed to exclude the public from using the space. The code should reference the lesser of 6:00 a.m. to midnight or hours of operation of the uses on the property for which the agreement is to be recorded.

Commissioner Laing also clarified that the proposed code will not be applied retroactively. He noted that there are a significant number of spaces in the downtown that would fall under the category of minor publicly accessible spaces, which means there will be some spaces where the property owner will be permitted to do something to reasonably restrict access outside the normal hours of operation, and there will be other properties where the owner will not be allowed to restrict their space. Ms. Byers said she would take another look at the code language.

A motion to extend the meeting to 8:40 was made by Commissioner Carlson. The motion was seconded by Commissioner Laing and the motion carried unanimously.

Commissioner Walter asked who holds the liability for activities that occur on the through-block connections that the city requires to be open to the public. Commissioner Laing explained that the city typically has the liability for publicly dedicated rights-of-way. The language in the draft regarding reasonable rules and regulations comes out of case law. Where the government requires private property owners to make a portion of their properties publicly accessible, the property must be given some control over what happens on it, otherwise it is a de facto public right-of-way for which the government is fully liable.

With regard to the proposal to extend the pedestrian corridor to include the area between 110th Avenue NE and 112th Avenue NE, running past the Bravern, Meydenbauer Center, City Hall

Plaza and the light rail station to be constructed, Ms. Byers explained that the design guidelines relative to the extension were not changed because no properties will be affected. The exception is any redevelopment of the site bordering NE 6th Street and 112th Avenue NE which is projected to be six to ten years out.

Chair Hilhorst asked if language concerning the pedestrian corridor's impact on the site to be developed should be included sooner rather than later given that it cannot be said with any degree of certainty just how the site will be developed. If the site were to be developed as a park, a different design plan might be called for. Ms. Wilma said it is certain that a building will be located on the site, along with additional open space. Mr. Kattermann added that the site will be used as a staging site for light rail construction activities, which is why the site will not redevelop in the near future.

Ms. Byers added that the extension of the pedestrian corridor is one link in the concept of the grand connection, a study of which will be kicked off in 2016. It will be helpful to have the pedestrian corridor extension spelled out in the code.

Answering questions previously asked by the Commission, Ms. Byers explained that there are currently 12 businesses with drive-through facilities in the downtown area. One bank and two restaurants already enjoy legal nonconforming status, but the code change would cause nine businesses to become legally nonconforming. Any redevelopment activity on those sites would trigger the need to conform with the code.

In two of Kirkland's nine central business district zones, drive-through banks, pharmacies and restaurants are allowed. Drive-through pharmacies and banks of any kind are not allowed in the Market Street corridor. Redmond allows sales and service drive-throughs in 11 of its downtown zones if combined within the garage of a multistory building more than three stories tall, provided there are adequate queuing lanes to serve the peak demand. Redmond's approach is similar to what is proposed in the draft for Bellevue.

Commissioner Carlson asked what the lead objections are to drive-throughs in the downtown core. Ms. Byers said they are car-oriented rather than pedestrian-oriented and the result is often surface queuing space. Drive-throughs also create a conflict between cars wanting to access them and pedestrians wanting to walk down the sidewalk. Ms. Wilma added that the highest and best use of land in the downtown is not the suburban model that includes exposed surface parking lots. The areas that are currently used for drive-throughs preferably will be turned into open space usable by residents, visitors and the workforce.

Commissioner Laing asked if anyone took a look at what the increased parking demand would be if the drive-throughs were to be removed from the banks. He pointed out that people will still arrive at the businesses by car, the real question is whether or not they will need to park and go inside or if they will be able to go through a drive-through. Currently at some drive-throughs, it appears the number of cars in the queue exceeds the number of parking spaces available to accommodate them, and removing the drive-through could result in cars queuing on the streets. Ms. Byers clarified that as drafted drive-throughs are not banned, rather they are required to be

located in underground structured parking. Mr. King said he would look to see if there is any empirical data regarding the amount of time people spend queuing in a line to use a drive-through versus how much time is needed to park and go in and use the business.

Chair Hilhorst stressed that while the more suburban areas of the city have business areas that allow drive-throughs, the downtown is the business area for the residents of Surrey Downs and Northtowne. Those residents should not be locked out of the conveniences those living in the suburban areas enjoy. Ms. Wilma stressed that drive-through food services are not currently allowed anywhere in the downtown; the ones in existence are legal nonconforming uses that will go away as properties redevelop. That has been the code since the mid-1980s.

Ms. Byers said the public hearing is slated for December 9. Study sessions will be scheduled as needed to formulate a recommendation to be sent to the Council.

9. PUBLIC COMMENT – None

10. ADJOURN

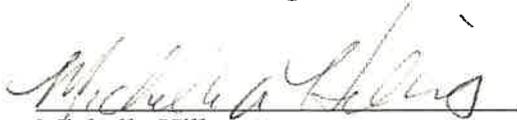
A motion to adjourn was made by Commissioner Walter. The motion was seconded by Commissioner Barksdale and the motion carried unanimously.

Chair Hilhorst adjourned the meeting at 8:37 p.m.



Michael Kattermann
Staff to the Planning Commission

1-13-2016
Date



Michelle Hilhorst
Chair of the Planning Commission

1/13/2016
Date

* Approved as corrected, December 9, 2015

