



Memorandum

DATE: November 6, 2006

TO: Planning Commission

FROM: Paul Cohen, Senior Planner

RE: South Echo Lake Development Update

At your next meeting, staff will show the Commission the recently submitted proposed site plan for the South Echo Lake development. We will compare the current site plan proposal with the one shown to the Commission and Council during the rezone deliberations and discuss why staff believes that the proposal meets the requirements of the rezone as it was conditioned.

At Commissioner Hall's request, I have included copies of the minutes from the Planning Commission discussions of South Echo Lake, focusing on the public hearings for the rezone and the comprehensive plan amendment.

If you have specific questions that you would like me to address at the meeting, please contact me at 546-6815 or email me at pcohen@ci.shoreline.wa.us.

Attachment

Planning Commission Minutes Excerpts

Designation, and it would provide a greater degree of flexibility for land use. It is hoped that this change would encourage the consolidation of properties for higher density redevelopment.

Introduction to Echo Lake Site-Specific Comprehensive Plan Amendments and Rezone

Mr. Stewart advised that the Echo Lake Comprehensive Plan amendment is being submitted independently from any City ownership in the project. As the Commission reviews the proposal, they must understand that it was submitted in such a way that it may or may not include City ownership of the City Hall. He said it is also important to keep in mind that if the City Hall purchase is approved and moved forward, the City would be in the position of both owner and regulator. He explained that an internal firewall has been built between the regulator (Planning and Development Services) and the project management (Public Works Department).

Mr. Stewart said the proposal is from Echo Lake Associates LLC, and they propose to modify the existing Comprehensive Plan designation for an 8.61-acre split-zoned parcel located on the south shore of Echo Lake. He advised that, currently, the western portion of the site (2.21 acres) is designated as Mixed Use with an underlying zoning designation of Regional Business. The eastern portion of the property (6.4 acres) is designated as High Density Residential. The proposal is to amend the Comprehensive Plan so that the entire parcel would be designated Mixed Use.

Mr. Stewart referred to the map and pointed out the location of Echo Lake, Aurora Avenue North, and the Interurban Trail. He noted that to the north of the subject property is a narrow strip of land that is designated as Park and Open Space. He recalled that when the City's first Comprehensive Plan was created, this strip of land was debated at length. The idea was to indicate the City's strong desire to provide public access to the lake and to create some type of park setting at the south end.

Mr. Stewart advised that the project proposal is for a contract rezone of the entire property to Regional Business, allowing for mixed-use development. The contract associated with the rezone would nail down the specific limits of future development. He pointed out that under the current split-zoning conditions, up to 240,000 square feet of commercial uses and up to 357 housing units could be developed on the subject property. The proposed contract rezone would limit the intensity of the development to about 182,000 square feet of commercial uses and about 350 units of housing. This would ensure that future development is consistent with the intensity anticipated by the existing Comprehensive Plan designations for the property.

Mr. Stewart advised that the subject property is currently being utilized by a number of different uses such as a gas station, convenience store, commercial establishments, and a trailer park that is moving towards vacation in the spring. He noted that the trailer park vacation is taking place independent of the proposed amendment.

Mr. Stewart reported that the owners of the single-family residences along the lakefront expressed concern about how they would be impacted by the redevelopment of the site. He explained that the contract rezone proposal contains general schematics of massing and scaling of the buildings, and there are basically five sites that are identified. There are four building sites: one on the northeast corner, one

on the southwest corner, and two on the east side of the property. The remaining parcel would be designated as an open space and common area.

Mr. Stewart referred to the elevation drawing of the proposed Echo Lake Development and pointed out that the residential area to the east would be stacked on top of underground parking, and the property on the northeast corner would have structured parking underneath, and the buildings would be designated as the new City Hall or an office building. There would be retail development along the frontage of Aurora Avenue North. The gap between the two buildings would be designated as a potential future police station. The area in the southwest corner would be designated as either a YMCA or an office building. The two parcels on the east would be designated as high-density residential, with parking being located under the building.

Mr. Stewart briefly reviewed some of the features of the proposal. There would be an open, public gathering space, with steps leading down from the Interurban Trail. There is discussion about providing access to the water, as well. He advised that one of the most important elements of the site is Echo Lake, which has been designated as a Type II Wetland. This means that the current regulations would require a 100-foot buffer from the edge of the wetland out into the site. The proposed Critical Areas Ordinance would increase that buffer to 115 feet, and the proposed development includes a buffer that would be in conformance with the new requirement.

Mr. Stewart noted that there is a difference between the site plan that is being contemplated by the City and the one that is before the Commission at this time. On the City's site plan, a park is being proposed for the open area. The nature and characteristics of the park have not been finalized yet, but critical area protection would be one of the primary issues involved in the park design. Mr. Stewart cautioned that the Commission would also have to deal with the question of land use for the subject property if the City does not move forward with the City Hall and park project. He said that the site plan provides an opportunity for small neighborhood retail uses, as well as civic uses. There would be a great opportunity for overflow parking across the street to accommodate large civic uses.

Mr. Stewart announced that the City and the YMCA are currently engaged in negotiations with the owner, and they expect these discussions to be concluded in the near future. However, he emphasized that the project proposal is not dependent on the outcome of the negotiations.

Commissioner Hall asked what is currently happening in the area that is designated as Public Open Space in the Comprehensive Plan. Mr. Stewart answered that this property is privately owned. He further explained that the current land use designation is intended to identify the City's desire for this property. Commissioner Hall inquired if the current land use designation of public open space would legally permit the existing uses. Mr. Stewart answered affirmatively.

Since the proposal is for a contract rezone, Commissioner Phisuthikul asked if the Commission would have the ability to review the rezone application in a level of detail that would include specific site plans. Mr. Stewart explained that the level of detail involved in a contract rezone review would include massing, height, and the intensity of land use. A contract rezone process is used for situations where the impacts from a proposal are too high to allow an outright rezone. In this case, the applicant has chosen

to limit the maximum development to 186,000 square feet so they won't have to worry about analyzing the impacts associated with more intense development. Commissioner Phisuthikul suggested that perhaps the contract rezone could include a restriction related to the height and mass of the building that is located adjacent to the proposed open space buffer to prevent shadows from being cast into the park. Mr. Stewart agreed that this would be an appropriate and important issue to consider.

Chair Harris requested that staff address the SEPA and Environmental review requirements associated with the proposal. Mr. Stewart reported that a SEPA notice has been posted. While the City has not issued a determination yet, the review process is moving forward. They expect there will be a SEPA determination coming forward with the staff report prior to the Commission's deliberations.

Commissioner MacCully asked where parking would be provided for the proposed YMCA building location. Mr. Stewart said it is his understanding that there would be an agreement between the four pad owners and the common open space to share the cost of construction and the operation and maintenance of the parking. Commissioner MacCully said he assumes that the transportation and parking aspects of the proposal would be carefully reviewed by staff. Mr. Stewart said staff would review the project at a high level to ensure that the total on-site parking is sufficient to accommodate the land uses that are proposed.

Commissioner Kuboi inquired if the staff envisions that the proposed project would have a significant impact on the neighboring streets over what currently exists. Mr. Stewart said the traffic would be intensified, but it would not exceed the impacts identified by the current Comprehensive Plan land use designation. The main access point would be at the signalized intersection. Commissioner Kuboi said he anticipates that a number of citizens would testify at the public hearing regarding the traffic impacts. Therefore, he asked staff to provide additional information related to traffic.

Commissioner Broili recalled Ms. Way's previous comment regarding an underground creek. Mr. Stewart pointed out the location of the creek. He said the site is located at the base of the drainage basin and collects stormwater from a very large area. He described the location of the drainage pipes. He reported that one opportunity that is also being considered is the utilization of this development site to improve water quality and quantity of Echo Lake where there is a problem as a result of sheet runoff from parking lots and roads. Building a centralized system for water quality improvements might result in dramatic improvements to the water quality of Echo Lake. He further explained that the water drains off the urbanized areas of Shoreline down into Echo Lake. From Echo Lake it flows into Lake Ballinger and then into McAleer Creek. Improving the water quality at the headwater would result in very positive effects through the whole entire system.

Vice Chair Piro inquired if there are any known soil contamination issues on the subject property. Mr. Stewart said a Level I Environmental Assessment has been completed, and no issues were identified. While he has not yet reviewed the report, it will be part of the "due diligence" the City is now going through for its purchase agreement. There has also been extensive soil testing to determine the quality and characteristics of the soil.

Vice Chair Piro inquired if the City would require a market analysis as part of their review of the residential component. Mr. Stewart said he does not anticipate that a market analysis would be done. The number of units being proposed is fewer than the number of units that the current zone would allow.

Commissioner McClelland said she would be interested in learning more about how the lake is currently being used by the residents on the eastern side. She also would like more information about what is currently developed on the west side. Mr. Stewart said there are very high-density condominiums located on the west side of the lake. Commissioner McClelland asked if it would be possible for the City to provide public access all the way around the lake at some point in the future. Mr. Stewart said this desire has been discussed by a number of groups, but it is not included as part of the proposal. He noted that it would be a difficult task to accomplish. Lastly, Commissioner McClelland inquired if a parking study would be required for the proposed development. Mr. Stewart answered affirmatively.

Commissioner Kuboi asked if the contract rezone would have to come back before the Commission if the applicant wanted to exceed the square footage identified in the contract. Mr. Stewart explained that the contract rezone would establish the general development pattern for the area. If the applicant wants to deviate from this pattern, the contract rezone would have to be amended.

Commissioner Hall requested information about the elevation level of the lake's surface given that underground parking is being proposed in close proximity to the lake. Mr. Stewart said staff recognizes that this is an issue. He said the elevation change is not great, and one of the conceptual stormwater management ideas being considered would collect the storm water, clean it at a centralized location, use some type of fountain mechanism to bring it to the surface, then run it down the surface and into the lake. This would result in a water feature amenity and an aeration and cleansing process that would discharge the water into the lake in a more natural way.

Commissioner Hall said that because of the way water moves in a headwater area around a lake, he would presume that the water table is at or very near the lake level or slightly higher. Therefore, the idea of excavating a large parking garage below the water table has the potential to interrupt the subterranean floor ground water and reduce the underground storage of water. He would be interested in hearing further analysis regarding this issue.

Commissioner Kuboi pointed out that the proposal is conceptual at this point. The only thing that is really locked in is the 182,000 square feet of commercial and 350 housing units. The contract does not include any restrictions associated with underground parking. Mr. Stewart said the contract would be directed to a site plan, and the details of the site plan would need to be articulated. Any particular development conditions or notes could be added to the site plan for clarification. Commissioner Kuboi inquired how much an applicant could deviate from the site plan before the changes would trigger a review of the contract rezone. Mr. Stewart said this would all depend on the specific wording of the contract agreement.

Commissioner MacCully asked how likely it is that the rezone would not be considered until negotiations with potential occupants have been completed. Mr. Stewart again pointed out that the proposal is not dependent upon the agreement negotiations. The staff is not concerned with negotiations

with the ultimate users since their responsibility is to process the application as a Comprehensive Plan amendment. Vice Chair Piro asked if there are other sites being considered for possible location of a new City Hall. Mr. Stewart answered that he does not know the answer to this question, and again, he cautioned that this is not something the Commission should be concerned about when reviewing the application.

Vice Chair Piro asked regarding future proposals for the redevelopment of the park-and-ride site. Mr. Stewart advised that State ownership has indicated that they are reluctant to relinquish development rights for this property. The proposal cannot move forward until this issue is resolved.

Commissioner Kuboi asked what physical parameters the contract rezone would entail. Mr. Stewart said it is likely that the contract rezone would contain images showing the site plan and cross section. It is likely to address the size and include words that would qualify the intensity of use. The contract agreement might also contain other qualifications of the site development such as the use of the open space at the north end of the lake if it is not developed as a City Park. The bulk and scale would be addressed, as well. The square footage of the open space area could also be part of the contract rezone. Mr. Stewart explained that the Regional Business Zoning Designation has specific design standards associated with it, and these design standards would have to be met in addition to the contract rezone. The contract rezone would consider issues such as mass, bulk, scale, etc. The design standards and other zoning criteria placed upon the property would be consistent with the underlying zoning, so that a complete new zoning text would not have to be written for this one development.

Commissioner Kuboi suggested that it might be appropriate for the contract rezone to deviate from the normal standards that would be applied because the subject property is a special and sensitive site. He asked if the Commission would have the ability to modify the normal requirements. Mr. Stewart answered that this type of deviation might be appropriate. He said it would be important for the Commission to have a clear understanding of the scope of their work. He said he anticipates that during the public hearing, citizens will present ideas and concepts that are outside of the Commission's scope of work, and it will be important for the Commission to manage these comments and expectations.

Commissioner McClelland suggested that the City do everything they can to require the applicant to notify all members of the public who have a stake in the proposal of the public hearing that is scheduled for March 3rd. Mr. Stewart reported that the applicant has already conducted two neighborhood meetings, and the project has received a lot of public attention. He noted that the property is bordered on three sides by 192nd Street, Aurora Avenue North, and the Interurban Trail. And because of the grade elevation, much of the site would be shielded from the neighborhood to the east. He summarized that most of the property owners who abut the site have indicated that they are very pleased to see the land use change to a much higher level. However, he anticipates others will present different viewpoints as they move through the public hearing process.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

7. PUBLIC HEARING

Type C Quasi-Judicial Public Hearing: Echo Lake Site-Specific Comprehensive Plan Land Use Map Amendment

Vice Chair Piro emphasized that the public hearing would be on the proposed Echo Lake Site-Specific Comprehensive Plan Land Use Map Amendment only, and not the rezone proposal. In addition, he noted that the Echo Lake site is no longer under consideration for a new City Hall Complex. Therefore, no public comments would be accepted related to the rezone request, the SEPA appeal, or the City Hall Project. The rezone request and the SEPA appeal would be heard at a joint Planning Commission/Hearing Examiner public hearing scheduled for May 4th and May 5th. He reviewed the rules and procedures for the public hearing. He also reviewed the Appearance of Fairness Rules and inquired if any of the Commissioners had received any ex-parte communications. None of the Commissioners indicated any ex-parte communication. Next, he asked if anyone in the audience had concerns related to Appearance of Fairness.

Brian Derdowski, 70 East Sunset Way, Issaquah, WA 98027, said he represents the Echo Lake City Hall Oversight - People Against Rezone (ECHO-PAR), the appellants of the rezone application and SEPA Determination that is directly related to the proposed Comprehensive Plan amendment. He pointed out that the Comprehensive Plan amendment proposal is a quasi-judicial action, as is the rezone proposal. Therefore, the Commission's determinations must be made based on the record, which must be fairly constructed with a reasonable opportunity for all sides to provide information. He stated that the Commission meeting minutes show that there have been numerous instances in which the Commission has heard information about the rezone and Comprehensive Plan amendment proposals, as well as the various proposed site configurations for the purchase and sale agreement for city hall, which is no longer an active proposal.

For example, Mr. Derdowski referred to a situation that occurred several weeks ago in which his client, Janet Way, was prohibited from making any comment to the Commission about a matter related to the proposed Comprehensive Plan amendment and rezone request because it was considered a quasi-judicial matter. However, the City staff later provided a 20-minute pitch describing all of the wonderful features of the proposed Comprehensive Plan amendment, rezone and site configuration. Again, Mr. Derdowski pointed out that both the Comprehensive Plan amendment and the rezone proposal are quasi-judicial issues. He said that while the record for the Comprehensive Plan amendment would be opened and closed tonight, the Commission has already received extensive information about the application, and this should be considered ex-parte communication. A reasonable person could conclude that the Commission has prejudged the Comprehensive Plan and rezone actions.

Vice Chair Piro said the initial briefing the Commission received from staff a few weeks ago followed the standard procedures that are in place to provide an introduction to the issue prior to holding a public hearing. He pointed out that the Commission has also appropriately received communications that have been submitted to the City from the applicants and public. Mr. Stewart added that it is important to

remember that ex-parte communications refer to communications that occur outside of the public record. The communications that have taken place between the staff and Commission are all part of the public record and can be fully disclosed to anyone who wants to review them. Therefore, he disagreed with Mr. Derdowski's opinion.

Commissioner Hall invited Mr. Derdowski to identify any Appearance of Fairness issues he might have regarding specific Commissioners. Mr. Derdowski responded that he has deep concerns about the construct of the record and when it was opened. He suggested that since the public hearing is just being opened tonight, all other information the Commission has previously heard regarding this matter should not be part of the record. Mr. Derdowski stated his belief that Commissioner Hall had prejudged the matter and that he had extensive communications with staff and the applicant both orally and in writing. He noted that none of Commissioner Hall's individual conversations with staff have been included in the record.

Commissioner Hall emphasized that he has had no communication with the proponents of the project. However, he has had communications with City staff on a number of occasions, seeking their advice on what can and cannot be done when reviewing the written public comments. There were concerns raised regarding the Public Open Space, so he wanted further information regarding the City's open space policies. At the last meeting, he mentioned that he had asked staff if it was within the Commission's authority to amend the proposal, and the yellow handout that was provided by staff is related to this inquiry. Commissioner Phisuthikul said that he, too, communicated with the staff regarding the proposals. He asked for clarification and additional information that he felt was pertinent to the application. The intent of his inquiries was to gain a better understanding of the issues.

Vice Chair Piro again stated that he believes the disclosed contacts would be considered appropriate communications. He summarized that he sees no reason to limit any of the Commissioners from participating fully in the public hearing. Commissioner Kuboi agreed and stated his belief that Commissioner Hall's actions show that he is willing to do all appropriate due diligence in order to make a decision in concert with the goals of good public policy. He applauded him for his efforts. None of the Commissioners identified any additional issues related to the Appearance of Fairness rules and their ability to impartially participate in the hearing. Therefore, Vice Chair Piro opened the public hearing.

Ms. Lehmborg presented the staff report for the Echo Lake Comprehensive Plan amendment proposal and provided photographs of the site. She explained that the western portion of the property along Aurora Avenue is developed as commercial business. The interior portion of the subject property is developed as a trailer park. There is also a wetland area (Echo Lake) on the site. She said the applicant's proposal is to modify the existing Comprehensive Plan designation to make the entire parcel Mixed Use. Currently, the subject property has three different Comprehensive Plan designations: Mixed Use on the western portion, High Density Residential on the eastern portion and a 50-foot wide strip along the north property line that is designated as Public Open Space.

Ms. Lehmborg displayed a conceptual site plan, showing a configuration for mixed use development if the entire parcel was designated as Mixed Use. She noted that the current R-48 zoning would be compatible with the Mixed Use designation, as would the current regional business zoning. She

explained that the current development code requires a 100-foot buffer from a Type II Wetland (Echo Lake), and the proposed new Critical Area Ordinance would require the buffer to be 115 feet. The conceptual site plan shows a 115-foot wetland buffer.

Ms. Lehmberg advised that staff recommends that most of the developable area be changed to Mixed Use, and the area that encompasses the wetland area to Private Open Space. She explained that the underlying zoning designation would remain the same and would be compatible whether designated Public or Private Open Space.

Mr. Stewart referred to the alternative motions that were presented for the Commission's consideration. Ms. Lehmberg summarized that staff's recommendation is to change the Comprehensive Plan Map land use designation for the subject parcel from High Density Residential, Public Open Space and Mixed Use to Mixed Use for the developable portion and Private Open Space for the wetland buffer area. The applicant's request is to have the entire lot designated as Mixed Use. In addition, Commissioner Hall suggested that they could designate the area that is currently identified as High Density Residential as Mixed Use, and keep the area designated as Public Open Space as it currently exists.

Michael H. Trower, 2077 East Howe Street, Seattle, WA 98122, advised that he is a development consultant working with Echo Lake Associates. He said the applicants support the staff's recommended Option 1 (Mixed Use & Private Open Space). He asked that staff provide clarification regarding the recommendation to designate the Private Open Space as the wetland's buffer. This appears to be redundant because it would already be identified as open space. Otherwise, he said the applicants understand the need for open space, and they are in support of providing Private Open Space as per Option 1.

Mr. Trower referred to staff recommendation Option 2, which suggests that the existing public space remain as Public Open Space. He noted that if the area were designated as Public Open Space, the public would use it. However, the City has not come forward to purchase this property or to pay for the operation and maintenance associated with it. In addition, he noted that the strip along the northern edge of the property, starting at Aurora Avenue and going east, is necessary to the development for access to the parking. In addition, the Fire Department has indicated an interest in this area for emergency access to the development, and they are also interested in the applicant providing access from the subject property onto the property to the north since their access is currently tenuous.

Mr. Trower summarized that the applicants support the application they submitted to change the Comprehensive Plan land use map to Mixed Use. They feel this change would improve the options for developing the property in a very positive way for the community.

Mr. Stewart pointed out that both the Public and Private Open Space designations in the Comprehensive Plan contain very specific words that the underlying zoning would prevail. Therefore, the designation on the plan for Public Open Space includes the intent for acquisition or the possibility for future acquisition for public use. Since the underlying zoning would not change, the City would rely upon the zoning on the land and not the Comprehensive Plan designation. With a Private Open Space designation, the property would be designated for private use only, but the underlying zoning would prevail. The current

underlying zoning would prohibit development within 100 feet of the wetland. Mr. Stewart reminded the Commission that the proposed new Critical Area Ordinance would increase the buffer requirement to 115-feet. The applicant has indicated that he would be willing to designate 115 feet in anticipation of the new Critical Area Ordinance and to designate a portion of the site as open space as part of the development project.

Commissioner Kuboi questioned why a site plan has been submitted for the Commission's consideration when the issue before the Commission is related to the land-use designation only. He suggested that a proposed site plan should not be part of the Commission's consideration. He noted that if the Comprehensive Plan amendment were eventually approved, development of the site could be completely different than what is being identified on the site plan map. Ms. Lehmberg agreed but pointed out that if approved as presented, the 115-foot buffer would be enforced no matter what is developed on the site. Mr. Stewart reminded the Commission that right now, a portion of the property is designated as Public Open Space, and staff thinks it would be appropriate to designate Private Open Space that would be essentially consistent with the buffer, so they can send a message to the community, the developer and the owner that the City would protect the wetland resource.

Commissioner Kuboi referred to the map and specifically pointed out the area that is being considered for the Private Open Space designation. Mr. Stewart further pointed out the boundaries of the proposed buffers, which are consistent with the portion of the property that is being recommended as Private Open Space. He explained that under the land use regulations, a development proposal would be reviewed under the current Critical Area Ordinance. Once the application is approved, the project would be vested under the land use rules in effect at the time it was submitted. Expecting that the Critical Area Ordinance update would increase the buffer requirement, the developer is planning for that change. In any event, the City would utilize the land use law in effect at the time an application is submitted and complete.

Commissioner McClelland agreed with Commissioner Kuboi that it is inappropriate for the Commission to review the conceptual site plan at this time. However, she appreciates being able to see what a 115-foot buffer would look like in proportion to the rest of the site. She said it is important for the Commission to have a clear understanding about how Private Open Space or Public Open Space would protect the wetland. Her understanding is that a buffer is a protected area that protects a critical area from intrusion and harm. However, nothing about the term "private open space" would suggest to her that the buffer would be protected. Given the intensity that is being proposed for future development, she questioned how the City or a private property owner would be able to prevent people from encroaching into the wetland. She questioned if the 115-foot buffer would protect the wetland or not. If not, then it would be irrelevant whether the property is designated as public or private open space.

Mr. Stewart explained that the designation of Public Open Space on private property, without the owner's permission, could be construed as a taking if development rights were taken from the property. Under the 1998 Comprehensive Plan and the current zoning regulation, the Private Open Space designation is advisory, and there is no authority for the City to take, use or acquire the property. The underlying zoning of R-48 would regulate the land use. The designation of Public Open Space on the subject property came out of the CPAC's and was a community policy statement that the City would like

something to happen in the future. The same holds true for the Private Open Space designation. The underlying zoning would govern the actual use, including the critical area. The designation in the Comprehensive Plan provides a benefit because it lets the community and developers know that, as per the Critical Area Ordinance, the property would not be developed.

Again, Commissioner Kuboi asked the staff to provide feedback as to how much project level detail must be considered as part of the Commission's review of the proposed Comprehensive Plan amendment. Mr. Stewart reminded the Commission that the applicant, the appellant and the City made a procedural decision to split the issues, but the staff report that was circulated regarding the proposal was issued prior to this pre-hearing decision. He agreed that project level detail should not be part of the Comprehensive Plan Map amendment discussion.

Commissioner Broili referred to Mr. Trower's comment that if the strip of Public Open Space were left as Public Open Space, it would have an impact on the applicant's ability to provide emergency access to the subject property. He inquired if this access could be moved to another location. Mr. Trower answered that there are likely other possibilities, but the access was planned along the corridor because it works best in terms of siting the buildings and providing access to the property to the north.

Vice Chair Piro inquired if the 50-foot Public Open Space that exists now would be from the proposed building in the north to the property line. Mr. Stewart said the 50 feet would run along the edge of the lake over to the Interurban Trail. Vice Chair Piro inquired if anything would preclude the construction of an emergency access in Public Open Space. Mr. Stewart referred to Land Use Policy 69 in the current Comprehensive Plan regarding the definition for Public Open Space. Commissioner Hall read the policy as follows: "Public Open Space shall be applied to all publicly owned open space and to some privately owned property that might be appropriate for public acquisition. It is anticipated that the underlying zoning for this designation shall remain." He summarized that this policy is advisory rather than a development code. However, since the people who worked hard to designate the Public Open Space on the subject property saw potential for public acquisition, the Commission should be deliberative and sensitive before they consider extinguishing the Public Open Space designation. Vice Chair Piro again inquired if the Public Open Space designation would preclude an emergency access for fire equipment. Mr. Stewart answered that it would not.

Ann Wennerstrom, 19243 Ashworth Avenue North, said she lives across from Echo Lake Elementary school. She said she is opposed to the proposed Comprehensive Plan land use change from high-density residential to Mixed Use. The 1998 Comprehensive Plan places a lot of emphasis on keeping and protecting the character of the neighborhood and accommodating new residential units. The Echo Lake area is lovely, with a school, a park, a sports field, numerous churches and a lot of families. Changing the eastern parcel to Mixed Use would bring more businesses to the area. This would result in more traffic, especially on 192nd as people speed towards Meridian Avenue to get to Interstate 5 and from Costco up Ashworth Avenue. This increase in traffic would significantly change the character of her neighborhood. She pointed out that while the development plan depicts a charming "European Village," it is important to remember that once the designation is changed, the applicant could develop something entirely different. The Mixed Use designation would allow all business uses, without any additional residential units. She noted the significant wording change proposed for Comprehensive Plan Goal 2.

The current language states that “adequate residential land and encourage a variety of quality housing opportunities and appropriate infrastructures suitable for the needs of Shoreline’s present and future residents.” The proposed language would “encourage attractive, stable, high-quality residential and commercial neighborhoods.” There is a significant difference between these two goals. She suggested that there was a reason why this area was identified in the 1998 Comprehensive Plan as residential.

Brian Derdowski, 70 East Sunset Way, Issaquah, WA 98027, said he represents Echo Lake City Hall Oversight - People Against Rezone (ECHO-PAR) who filed the SEPA Appeal on the rezone application. He said that since the rezone proposal is directly related to the Comprehensive Plan amendment, the two actions are linked. Since the SEPA Appeal was filed, ECHO-PAR has been engaged in some very productive discussions with the applicant. They found that they have much in common, and they are working to put together a collaborative, joint proposal. He said he is very impressed with the good will and the goals of the applicant group.

Mr. Derdowski reported that several of ECHO-PAR’s objections in the SEPA Appeal have already been addressed. He recalled that the City has determined that they should separate the Comprehensive Plan from the rezone proposal. Also, the elimination of the purchase and sale agreement has addressed one of the group’s most profound objections. However, they have some procedural objections, and for that reason, he referenced their March 2, 2005 appeal, as well as their comment letter dated February 4, 2005. While these documents were related to the rezone, they also raised substantive issues regarding the procedure for the Comprehensive Plan amendment. The group would also like to add the City’s stream inventory to the record.

Mr. Derdowski reviewed that ECHO-PAR has the right to appeal the City’s SEPA Determination to Superior Court, after the City Council takes action. Therefore, including the SEPA documentation in the record is intended to create the basis for a possible SEPA Appeal. Mr. Derdowski said the group is particularly concerned that the proposed action is based on an outdated and incomplete previous SEPA review and documents. They are also concerned about the construct of the public record, which has apparently been open for months for the staff and applicant, but not for the public. This presents an unfair situation that raises profound Appearance of Fairness problems. He said the group applauds Commissioner McClelland’s initiative in visiting the site. However, she should have put this information in the record prior to the hearing. It would be inappropriate for her to base her decision on something other than the record.

Mr. Derdowski said the group also objects to the lopsided and unfair access to the present public hearing. The staff has had apparently unlimited opportunity to enter information into the record, but the public is limited to three to five minutes. There is no sworn testimony, despite the Commission’s rules and procedures. Neither is there an opportunity to offer expert testimony or cross-examination. The applicant, whom they support, has been invited to provide special testimony, but ECHO-PAR has not.

Mr. Derdowski said the group is in agreement with the intensive Mixed Use designation for the site. They think the applicant is on the right track, and they applaud his efforts to design a high-quality project. After evaluating the City’s mixed use development regulations and those of several other jurisdictions, it is apparent to them that the City’s definition of Mixed Use is ill defined. There are many

uses that fall within Mixed Use, and their impacts have not been evaluated. The City's previous SEPA review considered R-48, but not the full range of impacts of all the uses that are included in the Mixed Use land use designation. The proposal before the Commission and what the applicant has in mind fits within the SEPA review and is probably in the public interest. But if something should happen and the applicant moves on, there are no protections to make sure the impact would not be greater than anticipated.

Mr. Derdowski said the group shares many of the applicant's concerns about the designation of any portion of the site as open space. The City's authority to designate critical areas is very clear, but it is not clear that they have the authority to designate open space as part of zoning. Commissioner Hall pointed out that the open space would revert to the underlying zoning, but one must ask what the underlying land use designation would be.

In summary, Mr. Derdowski said ECHO-PAR has had excellent discussions with the applicant and the YMCA, which is seeking to locate on the subject property. However, they continue to have certain procedural issues. They support Mixed Use, but they believe the City's definition is too broad and ill defined. In addition, they strongly support the protection of the wetland as a critical area. While they do not believe the City has the authority to zone the open space, they could adopt a land use designation of Mixed Use, with a P-Suffix condition that relates to the critical area.

Barbara B. Lacy, 19275 Stone Avenue North, said she lives on Echo Lake. She invited the Commissioners to visit the lake from her house to get a feeling for the ambiance that exists in the area. Ms. Lacy said she has heard concerns about the lake not being clean enough to swim in. She has also heard that it is important to build on the property surrounding Echo Lake because it is all undeveloped on the south end. She said she was excited about the plans for the City to construct a City Hall and park, but now these plans have changed and the site would be used for something else instead. She said she is concerned that the proposed site plan is only a potential plan, and what is actually developed on the subject property might be totally different. She noted that a Mixed Use designation would allow industrial uses and development up to five stories high, and this type of development could significantly change the existing character of the neighborhood. Tragic things could happen if the property were simply changed to a Mixed Use designation. Ms. Lacy suggested that the Growth Management Act thought of Shoreline perhaps a little differently. She said she feels Shoreline is a suburban community, with a lovely lake. They should look very carefully at what they are doing when they consider usage changes.

Commissioner Hall requested that staff explain the SEPA appeal process for the Comprehensive Plan amendment. Mr. Stewart said Mr. Derdowski has also appeared before the City Council indicating his intent to appeal the SEPA Determination on the major update of the Comprehensive Plan, and he has raised various procedural objections in that regard. The City Council has adopted a resolution, merging the 2004-2005 annual Comprehensive Plan review that the subject application is part of and the 2003-2004 major review. As part of the merger, additional SEPA work would be completed prior to the final City Council action. He noted that in the City's development code there are two different types of procedural appeals under SEPA. One type of appeal is to the Hearing Examiner, which is what they are following for the contract rezone. The other type of appeal is on legislative decision. He advised that

while the City is engaged in a quasi-judicial like process, the City Attorney has indicated that it would be appropriate to follow the Appearance of Fairness Doctrine because it is a site-specific process. In the end, the proposed Comprehensive Plan amendment would be a legislative decision, and the SEPA decision could be appealed to Superior Court after City Council adoption.

Commissioner Kuboi asked if a SEPA appeal on the proposed Comprehensive Plan amendments were filed, would it be possible for the City to meet the June deadline and would the City still have an opportunity to apply for grant funding for the Boeing Creek Rehabilitation Project. Mr. Stewart said his understanding is that the final action of the City Council would be sustained until a judge overturns it. While the Superior Court may eventually overturn the decision under the Land Use Petition Act, the City Council's action to approve the Comprehensive Plan amendments would be presumed valid until a court overturns it. Grant funding for the Boeing Creek Rehabilitation Project would be at risk if the City does not complete its adoption of a new parks plan by June 6th. Staff believes the new parks plan should be adopted concurrently with the Comprehensive Plan update.

Commissioner McClelland said that as she reviewed the public comment letters, she noted issues that were not addressed in the staff report. In addition, at some point she would like a clear definition for open space and whether it would be a passive recreation area or a protected buffer. She would also like more information about whether the lake is safe to swim in. She said one public comment letter raised a question about the displacement of wildlife, and she questioned if this is something the Commission should discuss. She would also like to know more about the location of the piped stream and how it would be impacted by the proposed change. In addition, she would like more information about the Weimann house and whether or not it has any historic significance. Lastly, she said traffic was raised in a number of the public comments. Specific concerns were expressed about opening the traffic along 192nd to become a pass through to Ashworth, Meridian or the freeway.

Mr. Stewart said the staff originally consulted with the King County Historic Preservation Planner who advised them that there was no significant historic value to the Weimann property because of its highly denigrated nature. After this was initially entered into the record, staff received a subsequent communication from the planner indicating that after rethinking the issue, he could think of measures the City could take if the house were slated to be destroyed. Ms. Lehmberg said that, typically, these measures include photographic documentation, historic research on the previous owners, putting the house up for sale for a small amount, and having a 90-day waiting period before the house is demolished. Mr. Stewart said issues related to the historic value of the Weimann house would be dealt with at the site planning and project review level.

If the City were to approve a Comprehensive Plan Map amendment to designate the property as Mixed Use as proposed and historic status is given to the property in the future, Vice Chair Piro inquired if the historic status would then be relevant to anything that happens to the property beyond that point in time. Mr. Stewart answered affirmatively and added that this would be the case independent of whether the property is designated in the Comprehensive Plan as Mixed Use or High Density Residential.

Mr. Stewart explained that the level of intensity of development that is allowed under a High Density zoning district is very high, with high coverage of impervious surfaces. This would not be significantly

different than what could occur under a Mixed Use designation. Both the existing designations and those that have been proposed are very intensive land uses.

Commissioner McClelland questioned if the purpose of the required wetland buffer would be to protect habitat. Mr. Stewart answered that this function would be protected under the Critical Area Ordinance at the project level. The State law requires the City to protect the functions and values of the resource.

Mr. Stewart advised that the City's stream and wetland inventory clearly identifies the various watercourses throughout the City. Ms. Lehmberg used the inventory map to describe the location of the piped stream on the subject property. Commissioner McClelland referred to the pipe that runs along Aurora Avenue and questioned if it is a piped stream or a drainage pipe. Mr. Stewart said this pipe has not been formally classified at this point. It is shown in the stream inventory as a piped watercourse.

Commissioner Kuboi reminded the Commission to focus their comments and questions to issues that are directly related to the proposed Comprehensive Plan amendment. Many of the written public comments were related to the contract rezone proposal rather than to the land use change. He emphasized that the underlying zoning would not be changed if the Comprehensive Plan amendment were approved. However, approval of the Comprehensive Plan amendment would set the stage for a future change in zoning when a project level contract rezone is submitted to the City. At that point, many of the issues raised by the public would be addressed.

Vice Chair Piro said it has been suggested that a Mixed Use designation would not actually require a mix of uses. If a Mixed Use designation were approved, there might never be a residential project developed on the site. Mr. Stewart explained that the City of Shoreline determined that its Mixed Use designation under the Comprehensive Plan could be very flexible and allow a multiplicity of various districts to occur within that broad category. The mixture includes Neighborhood Business, Community Business, Office, Regional Business, Industrial and Residential (R-8 through R-48). The Mixed Use designation consolidated a number of the highly fragmented spot zones that were in place when the City incorporated. It encouraged high-quality development by allowing the consolidation of parcels and creativity in land uses. He said specific criteria must be met before rezone proposals could be approved. The criteria would be evaluated when the Commission considers the proposed change to the zoning designation, and the zoning designation determines the types of development allowed on a property.

Commissioner Kuboi inquired if all three of the criteria found on Page 8 of the staff report must be satisfied before the Commission could make a recommendation for approval of a change in a land use designation. Mr. Stewart pointed out that the three criteria contain the word "or" at the end of each. Therefore, the amendment must only be consistent with one of the following criteria:

- The amendment is consistent with the Growth Management Act, countywide planning policies or other Comprehensive Plan policies.
- The amendment addresses changing circumstances.
- The amendment will benefit the community as a whole.

Commissioner Kuboi requested staff to provide insight on how the Commission might approach the evaluation of a proposal to determine whether or not there would be a benefit to the community as a whole. Many people see the Comprehensive Plan amendment as setting the stage for ultimately making the property much more developable, marketable and economically valuable for commercial uses. This represents a significant benefit to the property owner and/or developer. He questioned what public benefit would result from the change. Mr. Stewart advised that there are a number of policies in the Comprehensive Plan to encourage and facilitate economic development, high-quality infill, and creative mixed use developments. Part of the foundation for doing this is to create a larger pallet upon which a developer could draw, and this could be considered a public benefit. Secondly, he said that while high density residential development would be allowed on the eastern part of the site, it would also be allowed under the new Mixed Use designation. But if the property were rezoned to Regional Business, residential development would also be allowed as part of a mixed use building. This multiplicity of uses would not be allowed under the current zoning designation.

Mr. Stewart said there has been a lot of discussion about whether or not a sport or social club (YMCA) would be permitted under the current zoning. He clarified that a sports and recreation club is an allowed use in the R-48 zone with a conditional use permit. It would also be allowed in a Regional Business zone. Therefore, the YMCA issue is not dependent upon either a Comprehensive Plan designation change or a rezone. It could be built on the site now with a conditional use permit.

**COMMISSIONER BROILI MOVED THAT THE PUBLIC HEARING BE CLOSED.
COMMISSIONER HALL SECONDED THE MOTION.**

Although the public portion of the hearing was closed, Commissioner Hall said he had several issues for which he would like the staff to provide further information. He said the land use policies are well addressed in the staff report. However, he referred to public comments related to parks and recreation. He said that while there are no parks on the subject property at this time, removing the Public Open Space designation could foreclose future opportunities for public park space.

Commissioner Hall requested that staff provide additional information to show how the proposed Comprehensive Plan amendment would either advance or hinder the following policies:

- **Parks and Recreation Goal 1** related to preserving open spaces and maintaining a quality parks and recreation system.
- **Parks and Recreation Goal 2** regarding the protection and enhancement of areas with critical or natural features where practical, especially if endangered by development.
- **Parks and Recreation Goal 4** related to a citywide trail system that provides linkages between parks, greenways, open spaces, regional trail systems, residential neighborhoods and community businesses. He said he is having a difficult time contemplating the difference between a strip of open space versus a consolidated area of open space.
- **Parks and Recreation Goal 24** related to opportunities for developing pedestrian and bicycle connections throughout the City to connect neighborhoods.

CITY OF SHORELINE

SUMMARY MINUTES OF SHORELINE PLANNING COMMISSION SPECIAL MEETING

May 4, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili (arrived at 8:10 p.m.)

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Kim Lehmberg, Planner II, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Commissioner Sands
Commissioner MacCully

1. CALL TO ORDER

Chair Harris called the meeting to order at 7:03 p.m.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners Kuboi, Hall, McClelland and Phisuthikul. Commissioner MacCully and Sands were excused. Commissioner Broili arrived at 8:10 p.m.

3. TYPE C QUASI-JUDICIAL PUBLIC HEARING ON THE ECHO LAKE CONTRACT REZONE APPLICATION (FILE NUMBER 201372)

Chair Harris reviewed the rules and procedures for the public hearing. He emphasized that the Commission would only accept general testimony regarding the rezone application and not the SEPA appeal. The hearing regarding the SEPA appeal is scheduled to take place on May 5th. He reminded the

Commissioners of the rules regarding the Appearance of Fairness Law and also briefly reviewed the agenda for the hearing.

Chair Harris opened the public hearing and asked the Commissioners to disclose any communications they may have received about the subject of the hearing outside the hearing. Commissioner Hall disclosed that several weeks ago, prior to the Commission's deliberation on the site-specific Comprehensive Plan amendment for the subject property, he had dinner at Spiro's. While there, he asked the owner, Evan Volts, about the Fred Meyer remodel project and the impact it would have to his business. They also discussed the Gateway Project, and at that point Mr. Volts indicated that he was a partner with Harley O'Neil on the Echo Lake proposal. Commissioner Hall said at that point he indicated to Mr. Volts that this was the subject of a pending quasi-judicial hearing and he could not discuss the issue any further. No substantive discussion regarding the Echo Lake application took place. Members of the audience raised no Appearance of Fairness concerns.

Staff Report

Ms. Lehmberg reviewed the staff report for the proposed contract rezone for property on the south shore of Echo Lake from High Density Residential, R-48, and Regional Business (RB) to Regional Business with Contract Zone (RB-CZ), allowing for a mixed-use development. She provided a map illustrating the topography and location of the 30-inch drainage pipe that is about 20 feet deep on the subject property. She noted where the pipe discharges water into the lake. She also pointed out the location of a catch basin system that flows south through the subject property, catching site drainage and hooking up with the larger pipe that drains into the lake.

Ms. Lehmberg advised that the current zoning would allow the development of up to 240,000 square feet of commercial space and up to 357 housing units. The proposal for the contract zone would limit the intensity of development to 182,000 square feet of commercial space and 350 housing units. She explained that the purpose of the rezone is to allow for mixed-use development, which would be difficult to do with the split zoning that currently exists on the site.

Ms. Lehmberg referred the Commission to a conceptual site plan of the proposal, which identifies Echo Lake as a Type II Wetland. She noted that the applicant is proposing a 115-foot wetland buffer. Next, she referred to an elevation drawing of the proposed development, which includes structure parking and very little surface parking on the property. She explained that the proposed RB-CZ zone would allow development up to 65 feet in height, and the existing R-48 zone also allows development up to 65 feet in height with a Special Use Permit.

Ms. Lehmberg advised that, currently, the western portion of the site is designated in the Comprehensive Plan as Mixed Use, and the eastern portion as High Density Residential. However, on April 21st the Planning Commission recommended that the City Council approve a proposal to change the land use designation for the High Density Residential portion of the site to Mixed Use. If the City Council approves the change, the rezone would be compatible with the Comprehensive Plan. She pointed out that there is also a strip of property on the site that is designated as Public Open Space. The Planning Commission has recommended that this designation remain as is.

Ms. Lehmberg referred the Commission to the conditions staff is recommending for the rezone. She noted that the applicant's proposals in the initial application included some of the proposed conditions. In addition, the staff reviewed the comments that were voiced by the public and the Planning Commission regarding the proposal.

Ms. Lehmberg reviewed that if the application were approved, the zoning designation would be Regional Business with Contract Zone (RB-CZ). The uses and design of the property, including but not limited to provisions for critical areas, off-site improvements, site grading and tree preservation, landscaping, stormwater control, and dimensional and design standards, shall comply with provisions for mixed-use developments in the RB zoning district as set forth in the Shoreline Municipal Code (SMC). She said staff understands that the proposal has changed since it was originally submitted, and City Hall is no longer a part of the proposal. As a result, the applicant has presented some alternatives to the conditions that have been proposed by staff (Attachment J in the Staff Report). She reviewed the staff's proposed rezone conditions as follows:

- A. Site configuration and uses shall generally comply with the site plan submitted with the application (Attachment C).**
- B. Residential density shall be limited to 350 dwelling units, 40 percent of which shall be affordable to middle and low-income residents.** Ms. Lehmberg noted that this condition was part of the original application, and there were also a lot of public comments about the displacement of the existing trailer park that currently provides low-income housing.
- C. Commercial floor area shall be limited to 182,000 square feet.** Ms. Lehmberg reminded the Commission that this condition was proposed as part of the original application.
- D. The housing development shall be required to provide a minimum of 420 parking spaces within the structures.**
- E. The commercial developments shall be required to provide a minimum of 600 parking spaces within the structures.** Ms. Lehmberg explained that the minimum parking space requirements are intended to encourage structure parking under the buildings. They are also intended to discourage a strip mall type of development.
- F. A parking reduction of up to 20 percent from the maximum required by SMC 20.50.390 would be allowed pursuant to SMC 20.50.400.** Ms. Lehmberg advised that a parking reduction would be allowed because of the site's proximity to transit. The site is less than ½ mile from the Metro Transit Center.
- G. The upper floor "step back" on the north sides of the buildings abutting Echo Lake and the sides of the building facing the common open space shall be required to allow sunlight into the open space. Each floor shall be setback 10 feet further than the floor below.** Ms. Lehmberg said staff proposed this condition to address the concerns that were raised regarding the scale and bulk of the buildings. Concern was expressed that 65-foot high buildings could cast shadows on the open space.
- H. Maximum impervious surface allowed on the site shall not exceed 90 percent. The open space area required for 100 feet of the wetland buffer shall not be included in this calculation.** Ms. Lehmberg said that normally, the City would not exclude a wetland buffer from an impervious surface calculation. However, staff proposed the condition based on a lot of public comment and

concern about the amount of impervious surface that would be allowed in an RB zoning district. Staff felt the proposed restriction would encourage a little more pervious area throughout the development. This is a large site, and tree retention and landscaping is something the City wants to encourage.

- I. The provisions of SMC 20.50.350(B) shall not apply to this site outside of the wetland buffer. An approved habitat restoration plan must be implemented within the wetland buffer prior to Certificate of Occupancy for any of the buildings on the site.** Ms. Lehmberg advised that staff is proposing that the SMC's provisions regarding tree retention not be applied to the site because of the design configuration proposed on the site plan. In exchange for allowing the removal of more trees than normal, a habitat restoration plan would be required for the wetland buffer.
- J. Vermin abatement shall take place prior to and during demolition and decommissioning of current site.**
- K. Stormwater treatment: At a minimum, Level 2 water quality and stormwater detention are required for development, in accordance with the SMC and the King County Surface Water Design Manual, as adopted by the City of Shoreline. Additionally, the developer shall consider working with the City to install an oversized stormwater system to further improve Echo Lake water quality, including the possibility of adding a water feature and open watercourse as the means of discharge into the lake.** Ms. Lehmberg said this condition would require that any surface water on the site be detained and any pollution generating surfaces such as parking lots must have water quality devices installed. Any runoff from impervious surface on the site would be detained and treated before being allowed to run off the site.
- L. Green Buildings: The developers shall consider pursuing a Leadership in Energy and Environmental Design or BuiltGreen certificate for the buildings in the project.** Ms. Lehmberg advised that staff wants to encourage the developer to pursue an environmental design by using low-impact development.
- M. Any SEPA mitigation measure will also be a condition.** Ms. Lehmberg advised that the SEPA threshold determination that was issued by staff was appealed. This determination required screening from the adjacent single-family development on the lake and was based on concerns raised by the public about an increase in the amount of traffic associated with the proposed project.

Ms. Lehmberg reminded the Commission that the purpose of the public hearing is for the Commission to accept public testimony on the rezone application, only. The Hearing Examiner would accept public testimony regarding the SEPA appeal on May 5th. She pointed out that anyone might testify before the Commission regarding the rezone application. However, testimony to the Hearing Examiner regarding the SEPA appeal would be limited to the applicant, appellants, expert witnesses and staff.

Mr. Stewart referred the Commission to the memorandum he forwarded to them dated May 4th. He explained that just this afternoon, Mr. Derdowski, who is a representative of Echo-Par, met with City staff and presented a list of conditions that he stated had been agreed to with the applicant. He emphasized that the conditions would be in addition to those that have been proposed by the staff. Mr. Stewart pointed out that Condition 3 states that the owner intends to apply for a permit to construct a publicly accessible beach and dock, but this would not be allowed under the City's current development code. However, there is a proposal, under the Critical Area Ordinance, to allow for outdoor recreation. He advised that Condition 10 includes a provision that the stormwater plans comply with the

Department of Ecology Stormwater Requirements. He said this would be in addition to the City's stormwater design manual. This condition could result in a complex process to review for compliance with both of the manuals. Mr. Stewart said there are a few other instances in the proposed conditions where language might be considered a bit ambiguous and would probably be difficult to enforce; but on the whole, staff generally concurs with the conditions as outlined by Mr. Derdowski.

Applicant Testimony

Harley O'Neil, 18645 – 17th Avenue Northwest, provided a brief history of the subject property. He said that in the spring of 2002 he learned that the property was for sale, and he was immediately concerned that a developer would purchase the property and close off public access to the waterfront. He contacted several citizens of the community, asking for their help in purchasing and developing the property. Their intent has always been to leave the waterfront open for the public to enjoy. He said the previous property owner had the property for more than 30 years, but he was considered an absentee landlord who completely ignored the property. Mr. O'Neil said they closed on the property in December of 2002, but because of their concern regarding the condition of the property, they received permission from the owner to make some improvements 60 to 90 days before the deal had closed. They replaced roofs, painted all of the building exteriors, etc.

Mr. O'Neil said that after his group purchased the property, he met with representatives from Legacy Partners, a company based out of California, who presented a rendition of the type of development they would like to see on the subject property. Their proposal included condominiums, apartments, two or three retail buildings, a park area and public access to the waterfront. He said this was his first attempt to find someone to purchase the property from the partners. Mr. O'Neil advised that after the partners purchased the property, the County notified them that their taxes would go up \$20,000 more than the previous year. This was not expected, and they immediately realized they would not get a return on their investment.

Mr. O'Neil explained that two strong parties (YMCA and City of Shoreline) expressed an interest in relocating to Echo Lake on the subject property. He noted that there was not enough property along Aurora Avenue that was zoned RB to accommodate either of these two party's needs. They conducted a design charrette to come up with ideas for placing a City Hall structure on the site if approved by the City Council and community, and the rezone proposal was submitted when the City Hall project was still under consideration for the site. The YMCA is still interested in locating on the subject property, but the current zoning does not provide enough RB zoned property to accommodate their needs. In addition, the applicants had hoped that the proposed rezone would allow them to draw people from the Interurban Trail to use the site. He noted that their goal has been to enlarge the community open space by providing parking structures instead of surface parking. The proposed rezone would also allow them to develop retail space to provide amenities for people using the Interurban Trail. The current R-48 zoning designation would not allow these types of uses. Mr. O'Neil said he also has an interest in trying to attract a nice restaurant to the site. Right now, there are good restaurants in Shoreline, but none that are really special. A restaurant near the lake could serve that need.

H. Troy Romero, Romero Montague P.S., 155 – 108th Avenue Northeast, Suite 202, Bellevue, 98004, said the applicants recently retained his services to review the proposed changes to the rezone

conditions identified by City staff. He said it appears that when the original application was submitted, there was a proposal on the table that included a YMCA, City Hall and other mixed-use development. Obviously, this has changed. He said it is important to note that when the community initially reviewed the proposal during the SEPA process, a particular configuration was proposed. The conditions that are now being recommended by the staff are not necessarily consistent with the initial staff report or the project that was discussed with the community. Mr. Romero reminded the Commission that the issue before the Commission is not whether or not the rezone should be granted since the staff is recommending approval and the community has offered their support.

Mr. Romero noted that the property's current zoning designation would allow 244,000 square feet of commercial and 357 residential units, and the proposed rezone would actually decrease the density of the subject property. This would be advantageous to the community. He pointed out that if his clients cannot make the proposed project financially feasible, they could go back to the existing zoning designation. He reviewed each of the conditions proposed in the Staff Report and provided the applicant's thoughts on each as follows:

- A. Mr. Romero said the applicant is recommending that the word "shall" be changed to "may" or "shall use its best efforts." He explained that while the project is well on its way, one of the advantages of the proposed zoning is to allow flexibility for the developer to create a project that is good for the community, economically feasible, etc. Once the word "shall" is attached to the contract rezone, the City would effectively dictate the project. He noted that one of the design architects has come up with a way for creating a view corridor off of Aurora Avenue to Echo Lake. This plan would create more pervious surfaces and open space, as well. If the staff's recommended conditions are approved as written, opportunities such as this might be prevented. He suggested that this would be inconsistent with the proposed zoning.
- B. Mr. Romero said the applicant does not have an issue with this condition that would limit the development to 350 residential units. However, concern has been raised about the language that was added to the condition requiring that 40 percent of the units be affordable to middle and low-income residents. He said this requirement could result in the project no longer being feasible. He explained that the original plan was to provide senior housing on the subject property, but it has since been determined that the property would probably not qualify for this type of housing opportunity. He noted that no language was considered in the SEPA review to require the project to have 40 percent low or moderate-income housing. He strongly suggested that this provision be eliminated from the condition. Another option would be to use the words "may" or "seller shall use its best effort." This would allow flexibility for the project to be financially feasible.
- C. Again, Mr. Romero suggested that the word "shall" be replaced with "may" or "seller shall use its best effort." He explained that because City Hall is no longer part of the proposed project, there would be potential ebb and flow with respect to the project as staff works with the applicant. There may be a desire to have more commercial than residential, etc. Without flexibility, the applicant and staff would be limited in what they could do with the project.
- D. Mr. Romero pointed out that staff's recommendation is based on the original proposal that included City Hall. Perhaps even more difficult, if not financially impossible, is that one could make an argument that all the parking spaces must be constructed before a building permit could be issued. He referred to Attachment J of the staff report, which is a letter from Mr. O'Neil dated March 28th. In

his letter, Mr. O'Neil suggests that rather than binding the City staff and the applicant to a set amount of parking spaces before they know what the final configuration will be, the language in the conditions related to parking should be changed to make the parking requirements consistent with the existing SMC. This would allow the applicant to proceed as would be allowed for any other form of development as long as adequate parking could be provided.

- E. See Mr. Romero's comments for Condition D.
- F. Mr. Romero indicated that the applicant does not have any concerns related to this proposed condition.
- G. Mr. Romero said the concept of this condition is to create ten-foot "step backs" as the development goes up each level. With a five-story building, this condition would effectively create an "Aztec pyramid" design. He suggested that not only would this create an aesthetic issue, but this type of design is not used anywhere else in the City. In addition, this proposed condition was not included as part of the SEPA review process. He suggested that the word "shall" should be replaced with "may" or "applicant shall consider." This would indicate the City's desire, but would not limit the applicant to this design. Again, he reminded the Commission that flexibility is important both to the City and to the applicant.
- H. Mr. Romero said the staff correctly pointed out that, normally, the City counts all existing square footage in a project to determine the amount of impervious surface allowed. However, staff is recommending that the contract rezone go against the City's normal practice and exclude the 115-foot buffer area when calculating the amount of impervious surface allowed for the development. He questioned the rational basis for this condition, and he noted that this was not included as part of the original SEPA review process. He noted that even if the City were to count the wetland buffer, the proposed site design would still have about 85 percent impervious surface. Again, he recommended that the word "shall" be changed as previously recommended.
- I. Mr. Romero said the applicant does not have any concerns related to this condition.

Mr. Romero thanked the Commission for allowing him to address the conditions that have been proposed by the staff. He said that sometimes wordsmithing can be considered an unimportant exercise, but having spent five years on the City Council of another jurisdiction, he is aware of the challenges that words can sometimes be. In this case, he suggested that if the Commission recommends adoption of the staff's recommended conditions exactly as proposed with the mandatory "shalls," they will run into problems in the future.

Commissioner McClelland asked if Mr. Romero reviewed the 13 new conditions that have been proposed by the staff. Mr. Romero said he did not receive the new document until he arrived at the meeting, so he has not reviewed the final version and cannot provide comments. Commissioner McClelland noted that all of the new proposed conditions start with the words "the owner will," which means the same things as "shall." Mr. Romero pointed out that the word "shall" by itself is not necessarily a bad thing. Terms such as "shall consider" and "shall work together" are appropriate, but if the City dictates that a condition is an absolute requirement, there would be no flexibility allowed.

Vice Chair Piro said he appreciates the applicant's sensitivity to providing some flexibility, particularly since changes have been made to the project over time. However, he said that in his view, the applicant's recommendations would change the staff's recommendations from conditions to mere

guidance and would no longer have the status of what is intended by the City when they place conditions on a rezone application. Mr. Romero explained that the concept behind the proposed RB-CZ zoning recommendation is that the City and the developer could work together to make the project mutually beneficial for everyone. In this case, there is an application for a rezone that has gone through the SEPA process and public hearings. Now new conditions are being attached to the rezone application that would be obligatory. He argued that since these conditions were not subject to public opinion during the SEPA review process, perhaps the Commission should go back to the time of the original application. The conditions that use the word "shall" were never mandatory conditions as part of the SEPA review. The concept of the proposed rezone is to allow flexibility. Once the project design has been approved, then they could work out an agreement on the exact number of stalls, impervious surface, etc. He agreed that the applicant's proposed changes would significantly lessen the mandates found in the conditions, but he pointed out that the staff report already includes recommendations that the applicant consider certain concepts. There is at least some precedence in existing negotiations for the idea of the applicant and the City working together. While his client does not necessarily disagree with the conditions, if they are mandatory there would be no opportunity for flexibility.

Vice Chair Piro inquired if there would be an opportunity for staff to revisit the conditions and come up with something that would allow a range of options and keep to the spirit of what the conditions are intended to do without weakening them to the point of being wholesale and discarded. Mr. Stewart answered that the applicant has provided two responses to date. One was provided on March 28th (Attachment J) in which he suggested alternate language for the conditions proposed by staff. Now the applicant has presented a new proposal to further amend the conditions. He said staff's recommendation of approval was based upon their recommended conditions. If the Commission wants to further amend or adjust the conditions, this would be within their discretion to do during deliberations. However, there would come a point where the project would change so dramatically that it would require a new notice and perhaps a new SEPA review. The other factor the Commission should keep in mind is that the contract rezone is an agreement between the City and the applicant. If the applicant chooses not to agree with the conditions, then the contract rezone would no longer be valid. If that is the case, the applicant might as well withdraw the application at some point and come back in with a new proposal. Mr. Stewart pointed out that the applicant proposed most of the conditions recommended by the staff. The two or three that were added were in response to concerns that were raised by the community in the comment letters or they were intended to make sure that the actual development is close to what is being proposed. He concluded by stating that there comes a point where the balance gets tipped, and they are no longer reviewing the project that has been appropriately noticed.

Chair Harris said that given the new proposals that are being presented to the Commission, he suggested that they move forward with the public hearing. Since the public hearing would be continued to May 5th, perhaps staff could do some investigation of ways to address some of the new proposed conditions that have just been presented to the applicant.

Commissioner Hall noted that Mr. Romero has encouraged the Commission to stick to the standard code requirements in some cases. He asked if this recommendation would also apply to the tree retention ordinance, where staff has proposed that the normal requirements for tree retention be waived. Mr. Romero answered that the code requirements would work fine with regard to tree retention. However,

his understanding is that the community and staff have indicated that there are certain significant trees within the 115-foot buffer. The concept is to allow the applicant to remove certain trees that are located within the buffer.

If the Commission were to change the "shalls" to "should" and the applicant ends up facing financial difficulties or site constraints that were not anticipated, Commissioner Hall asked what assurance the public would have that the conditions would be legally enforceable. Mr. Romero said there is a contractual provision that requires the applicant and the City to work together on the whole design/build process. The applicant would still have to obtain the necessary building permits, etc. so quality control would lie with the staff as they go through the building permit process.

Commissioner Kuboi asked if the YMCA would eventually own their portion of the property. If so, would the terms of the contract rezone be carried forward to subsequent owners of the property? Mr. O'Neil answered that the YMCA would purchase a portion of the property for their building, and an association would be formed of those people that have ownership of parcels. The association would maintain the common areas. Commissioner Kuboi noted that the applicant has offered to guarantee lake access to the public in perpetuity, but he is unclear how the applicant's proposed conditions would accomplish this. Mr. O'Neil said the property identified as public open space would create an access for the public to the waterfront. Development would not be allowed in the open space area. Consequently, the open space would remain open, and their site plans identify an area at least 40 feet wide between the property line and the structure. Their hope is that Stone Avenue could be used to provide handicap access or other access to the subject property and the open space, as well.

Mr. O'Neil emphasized that there is no intent to remove any of the trees from the buffer. Naturally, if there are trees in the location of the proposed YMCA building, they would like to be able to remove them.

Mr. Stewart explained that the subject property is one single parcel and has not been divided. If the applicant were to divide the property, it would either go through site plan process or condominium type regime. Access to the lake is not a condition of staff recommended approval of the rezone application, neither is it proposed as part of the alternate conditions presented by the applicant's representative. If that is the intent, perhaps that should be a new condition added to the contract rezone. Mr. O'Neil said he would be pleased to exchange this condition for the condition that would require him to put in 1,020 parking stalls under a building. He said he looked around Shoreline to determine the number of projects where someone even attempted to put parking under the building. The City believes it would cost \$15,000 to \$18,000 per stall to construct underground parking. Therefore, the staff's condition would require them to spend \$15 to \$18 million on parking before they could start building any of the project. If this were a requirement of the rezone, they would sell the property and leave it. Mr. O'Neil said staff has asked him at least three times if he wants to withdraw his application, and this really bothers him. They are trying to do a project for the benefit of the community, and he wished they could get everyone on board to accomplish the task.

Commissioner Kuboi inquired if there is a type of appeal process for the public to follow if they feel that the terms of a contract rezone have been violated. Mr. Stewart said this would be considered a zoning

violation, and there is a legal process for enforcement of the zoning code. Commissioner Kuboi asked if the developer would be required to stop work until the issue has been resolved. Mr. Stewart answered that this would depend on the nature of the zoning violation. If it were a violation of a permit, the permit could be withdrawn. Another option would be for the City to issue a stop work order with penalties assessed.

Commissioner McClelland reminded the Commission that the 50-foot strip of land that is and would continue to be designated and zoned as public open space is privately owned and there is no public access to the property unless the City figures out a way to buy it and grant public access.

Commissioner Kuboi requested a definition for "low to moderate income." Mr. Stewart said this term is defined in the City's development code and has to do with the proportion of income that is spent on housing in relation to housing costs. He pointed out that the proposal for affordable housing was part of the applicant's original submittal and was not proposed by staff.

Vice Chair Piro inquired if there is other instances where the City has calculated the break down of low and moderate-income housing as part of a project review. Mr. Stewart said that since the development code was adopted in 2000, he is not aware of any developments that have utilized this provision, but there have been discussions by other developers about using the affordable provision in the future.

Public Testimony or Comment

Robert Scott, 1132 North 195th Street, said he and his wife own three properties on Echo Lake, two bordering the lake and one set behind the other two. He pointed out that Mr. O'Neil purchased the property knowing what the current zoning was, and he should adhere to the current zoning. If the applicant gets into financial difficulty, the property could be sold. If it is rezoned to regional business, the new property owner would be able to develop anything they want including night clubs, casinos, etc. There is business zoning along Highway 99 and approval of the proposed rezone would be a disservice to the surrounding property owners because, with the exception of a few small offices, all development on the lake is either single-family or multi-family residential. He said that while they are glad to see that the trailer park would be eliminated, they would like the property to remain for residential uses.

Pat Scott, 1132 North 195th Street, said she and her husband have lived on Echo Lake for 60 years, and her grandparents bought the property in 1912. She loves the lake and feels that it is a wonderful, natural resource. She said she does not want development around the lake to cause further deterioration of the lake. The more building that goes on, the more damage is done to the quality of the water. She said she is concerned about the proposed high-rise structure that would be built on the site. While it is good that the buffer area would remain, it saddens her to see what has taken place in the last ten years as a result of stormwater runoff. She pointed out that Echo Lake is a "dumping ground" for everything off the roads and parking lots. They have a little island on the southwest corner of the lake as a result of the debris that filters in this location. Whatever is developed on the site, all projects should be considerate, since everyone should be a steward of the City's natural resources.

Virginia Paulsen, 16238 – 12th Northeast, said she just learned about the agreement that Brian Derdowski and Harley O'Neil negotiated when she arrived at the meeting. She said there is too much in the document for her to comment on all of her issues. She said Mr. O'Neil indicated that he purchased the property in the spring of 2002 because he was afraid that developers would build in such a way that the site would be destroyed. She pointed out that Mr. O'Neil is a developer, and there have been a great deal of comments, both positive and negative, about his development proposals. She suggested that the Commissioners ask themselves why Echo Lake is being called Echo Lake. It is because it sits in an amphitheatre. Therefore, the area on the north boundary (192nd Street) looks down on the subject property. This means there would be a lot of noise created by the proposed project. She said the proposal for development would create the equivalent of a small city on the site, and in her opinion, this would result in major problems.

Ms. Paulsen referred to the proposed staff conditions and asked the Commission to note the number of items that are starred to indicate that the applicant has proposed alternatives. Nearly all of the staff's proposed conditions are subject to the applicant's proposed alternatives. The applicant is now proposing that the "shall statements" be watered down. She referred to the negotiated contract between Brian Derdowski, Janet Way and Harley O'Neil, and said that given the propensity to eliminate these incentives by the proposed alternatives, there would be no guarantee that the items in the agreement would be recognized. She said that while Mr. Derdowski has represented himself quite well, he does not represent her views and she does not want to drop her SEPA appeal. She concluded by stating her belief that too much information was presented just prior to the hearing for her to digest and provide comments on at the last minute.

Commissioner Broilli arrived at the meeting at 8:10 p.m.

Barbara Lacy, 19275 Stone Avenue North, said she first visited Echo Lake in 1958 and purchased a house on the lake in 1960. She said she has learned to live with the public using the lake in front of her house. Now suddenly, instead of the quiet, passive park, there is a possibility of having a beach again and perhaps fishing at the south end. This causes her to reconsider based on the comments provided previously by Mr. O'Neil. She said it is thrilling to her when people go past her backyard in their kayaks, and she is glad that people are able to enjoy the lake. However, she said she now has to adjust from her sense of a quiet lake to a lake that is used again. She said she recently learned that a "primary contact recreation use" would include activities such as swimming, water skiing, skin diving, etc. A "secondary primary contact recreation use" would include activities such as wading and fishing, but not swimming. However, the staff report talks about the extraordinary primary contact recreation that takes place on the lake now. She suggested that there is confusion about what uses should and could be allowed on the lake and how the lake could be protected as a critical area. She said that when she read through the staff report, she did not realize they were considering the creation of a beach again. She suggested that many things must now be reconsidered.

Ms. Lacy referred to Mr. O'Neil's suggestion that Stone Avenue could perhaps be used for handicap access. She said she lives on Stone Avenue, and this is supposed to be a private road that is owned by Seattle City Light. Any access would have to be negotiated because the homeowners along this street

have no garages. Access to the lake is a big concern, and a lot more issues must be considered before a decision could be made in that regard.

Michael Trower, 2077 East Howe Street, Seattle, 98112, said he is a development consultant and an architect by background. He said his company made a conscious decision, at that time, to provide some development assistance to Echo Lake Associates primarily because of the civic goals they were trying to accomplish with the project. He referred to the previous discussion about the condition that would require setbacks on a building that is yet to be designed. He said this type of condition could become very project specific and the request for a rezone is not project specific. In his view, this condition was established to limit the amount of development so that the City's interest would be protected in the process. The intent was not to provide a specific project.

Mr. Trower said his company is quite used to designing and developing projects according to published urban design guidelines, and the City of Shoreline has these guidelines in their municipal code. He said his assumption is that the guidelines were arrived at by public hearings and statements of policy and are intended to guide the design of any project. He referred to the condition that would require a 10-foot step back for each floor and suggested that this would be very project specific and out of context with the urban design guidelines that were duly considered. The condition would also be out of context with development that might occur on the site.

Next, Mr. Trower referred to the condition that would require a certain percentage of the housing units to be low or moderate income. He said he participated in writing the SEPA submittal, which stated that they expected a portion of the housing to be affordable to low and moderate-income households. That statement was true, and that is what they expected to occur. One of the civic goals of the development was mixed income living on the site. However, what they expected might happen with senior housing no longer appears to be feasible. He said his firm does affordable housing on a regular basis, and it takes a lot of subsidies to accomplish this goal. The applicant considered the feasibility of getting subsidies for the subject property, and it appears that this would not be a very real possibility because all of the funding entities require local, municipal participation. While the applicant's intent was to provide low to moderate-income housing, making it a requirement would be extremely difficult and probably impossible for the applicant to meet under the existing circumstances.

Ken Lyons, 17533 – 47th Avenue Northeast, Lake Forest Park, 98155, said he is a business owner in the City of Shoreline. He said he assisted Echo Lake Associates with preparing the initial documents that were submitted for the rezone. He said he has always had a lot of enthusiasm about the idea of being able to take a split-zoned property and create a project that is unified in its design and more than what was possible under the current zoning configuration without increasing the overall density. That is why he got involved in the project. He said he was quite surprised to find out the conditions of approval that were recommended by the staff. He disagreed with the staff's statement that the conditions of approval that are in the Staff Report are items the applicant suggested. He clarified that the condition the applicant proposed as part of the original application was that instead of 240,000 square feet of commercial development, they would be limited to 182,000 square feet. In addition, instead of 357 housing units, the applicant proposed to limit the number to 350. He said all of the other conditions are project specific, and the application is not intended to be project specific. He pointed out that further on

in the process there would be other opportunities to address concerns raised by the public and the staff. For example, another SEPA process would be required for the building permit, and issues such as sunlight in the buffer area would have to be considered. He concluded that the conditions the Commission should focus on at this time are the overall development limits and not conditions that could end up hindering a project and have an unintended impact on whether or not the proposal comes together.

Pat Crawford, 2326 North 155th Street, emphasized that Brian Derdowski is not representing her interests. She is being represented by Michele McFadden, and they do not agree with dropping the SEPA appeal. She suggested that the public should have an opportunity to review and comment on the agreement proposed by the applicant and the group known as Echo-Par, as well as the changes the applicant is recommending for the staff's proposed conditions. She said she is part of the Echo-Par group, yet she just received a copy of their agreement with the applicant today. She said she thought the purpose of the public hearing was to address the rezone application. She said she does not believe the City should be doing any site plan approvals at this time. She said the zoning analysis that was done appears to be complete, and the conditions related to the number of units allowed and parking spaces required should be approved. But placement and design of the development is still so up in the air that the Commission should avoid approval of conditions related to that issue.

Ms. Crawford suggested that proper classification and mapping needs to be done of the environmental features. There are watercourses and their buffers that need to be clearly identified. She said the homework should have been done on the site before they purchased the property, and at least before they went on to the second and third design phases. She stated that the site and not the desires of the developer should dictate the design when sensitive areas are involved. She said she supports the 100-foot buffer requirement and the additional 15-foot setback that has been proposed. But she suggested that this area be naturally reclaimed. Boardwalks could be installed so there would be no further compaction and erosion from traffic. This would allow many people to access the lake without causing further damage. She pointed out that the Gaston property has been left open for five years and there are 20-foot cottonwoods already growing. She said she does not believe in fancy habitat restoration, and a better option would be to rope off the 100 feet and let nature reclaim itself.

Ms. Crawford expressed her belief that the tree evaluation that took place as part of the proposal was insufficient. She said they must identify all of the trees that could be saved. She said she believes the agreement that was submitted by Mr. Derdowski and Ms. Way could end up weakening the code in a lot of places. She urged the Commission to stick behind the code. Adding the other conditions just muddies the whole issue. She said it is not the appellant's job to help with the design of a project. But they should, instead, let the applicants know what the code requirements are and where they could look for guidance.

Tim Crawford, 2326 North 155th Street, said he, his wife and his brother-in-law are also members of the group known as Echo-Par. However, they were totally shut out of the process that Mr. Derdowski and Ms. Way garnered with the applicant. He said he appreciates Mr. O'Neil's comment that everyone needs to get together on the issue, but he finds it kind of disingenuous. The applicant has had plenty of time to work with them and their lawyer regarding this issue, but he has not done so. He said neither he,

nor his wife or brother-in-law, Dave Conlow, would have signed off on the agreement. He referred to the last few words of the first paragraph of the agreement ("enables the achievement of the owners' financial objectives"). Mr. Crawford expressed his opinion that it is not the appellant's job to enable the achievement of the owners' financial objectives. The appellant's goal should be to require the applicant to adhere to the City's code requirements and to protect the environmentally sensitive areas. They have been shut out of the process because Mr. Derdowski has informed them that they cannot be dealt with. He said he takes large offense to Mr. Derdowski ignoring his constitutional right to take part in an unincorporated group. He said Mr. Derdowski and Ms. Way would soon find out that it is actionable that they have spoken for the whole group when there are no by-laws or rules for the group. It takes all seven members to concur with the conditions of the proposed agreement. Although he is a member of the group, he was just handed the agreement prior to the meeting. Therefore, he cannot comment further on the document. He said he knows of no other member that signed onto the agreement that contributed \$200 to fund the group as he and his wife did. He and his wife were the major contributors to the financial effort of filing the appeal, so he takes large offense to being shut out the group's dealings.

Jim Abbott, 16218 – 6th Avenue Northwest, said he also owns business property at the north end of Echo Lake. He voiced his support for having the YMCA locate on the subject property. This would provide numerous benefits to the community. He said he believes the best way for the City to proceed with the proposal would be to require a binding site plan that deals with the issues and concerns that have been raised. He said he has done a number of projects over the years involving multiple ownerships with binding site plans and agreements to deal with the common areas, wetlands, etc.

Mr. Abbott referred to the staff's recommended conditions and suggested that the City should allow flexibility at this level. He suggested that it could be a mistake to require all of the conditions as proposed. For example, requiring that 40 percent of the residential units be affordable to low and medium-income residences could effectively prevent the project from going forward. He said he is just starting a multi-family project in Redmond, and they were only required to make 10 percent of the units affordable. He concluded that he believes the 40 percent requirement is too high. In addition, Mr. Abbott expressed his concern about the condition that would require more than 1,000 parking spaces. Since the intent of this condition is to require structured parking, Mr. Abbott suggested that rather requiring a certain number of parking spaces, they could simply require structured parking. Lastly, Mr. Abbott reminded the Commission that the City has a lot of opportunity down the road to control the development that occurs on the site. They can condition the building permit to address issues such as step backs, etc. He urged the Commission to allow for flexibility at this point.

Mike Marinella, 637 North 185th Court, said he has been a resident of Shoreline for the past four years. He said this is an exciting time for the City, and he is very excited to see that this particular property has an opportunity to be transformed from its former use into a very productive new use. He said that prior to living in Shoreline he lived in Edmonds on a street that was proposed as a possible exit point for a new development in Woodway, in which two developers proposed a 106-lot development on property that had been formerly owned by Chevron Oil. These developers met with extreme public resistance to the project and the hearings went on for two years. Eventually, the developers had to abandon a very creative, thoughtful and sensitive proposal because they could no longer afford to continue. They sold the property to the largest homebuilder in the State of Washington and the most

awful development has occurred on the property when it could have been the most gorgeous replication of what Woodway is. Now the people in Woodway are very sorry that they were so adamant in their opposition to what would have been a much-preferred project. He said he sees the same thing happening in Shoreline because it is difficult to balance the developer's needs, the City's needs and the public's needs. However, he suggested that projects such as this that involve a contract rezone are inevitably far better than the type of development that would occur if the process fails and the property is sold and developed according to its existing zone. This would prevent the Planning Commission from having any constructive input on what is eventually built. Mr. Marinella voiced his support for the proposed project because he thinks it would be far better than what they might end up with otherwise.

Brian Derdowski, 70 East Sunset Way, Issaquah, 98027, said a number of people in the community who have an environmental and neighborhood orientation have come to the conclusion that they want to have a positive outcome for this property. He said he speaks on behalf of four of the seven appellants in Echo-Par (Mamie Bollender, Richard Purn, Peter Henry and Janet Way). He emphasized that he would not speak on behalf of Tim and Patty Crawford or Dave Conlow.

Mr. Derdowski reviewed that some time ago the Echo-Park group filed a SEPA appeal to what they saw as a City Hall project, a purchase and sale agreement, a legislative land use amendment, a site-specific rezone and a contract rezone. They had some profound procedural problems with the proposal at that time. They had concerns about City Hall and conflicts of interest, and they also had substantive objections. Since the appeal was filed, two of the three primary objections have been addressed relative to the conflict of interest and other procedural objections. Therefore, they decided to focus on the substantive objections and did something that a lot of environmental groups do not do, they sat down with the applicant and established a trusting relationship with common goals. The first common goal is that they both want to have a true and balanced mixed use development. This is something that community groups around the country seek to achieve. Secondly, they did not want to have the kind of development that provides surface parking along Aurora Avenue. Instead, they wanted to have structured parking on the site. Third, they wanted to have a lot of public access; and fourth, they wanted state-of-the-art environmental protections for the magnificent lake, which is known as the headwaters of McAleer Creek. Finally, they wanted to demonstrate that a local developer and local investors could work with local people to come up with a good solution.

Mr. Derdowski said the contract they had to work with was the contract rezone, which was not easy to deal with. The original contract rezone was proposed when City Hall was being contemplated on the site, and that is what the applicants were thinking about when they put together the site plan and SEPA checklist. Over time, the project has changed into a proposal that is still a bit of a moving target. However, four of the seven appellants and the applicant have come up with a series of conditions, all of which exceed the City's existing code requirements and speak to the public interest. He distributed a copy of the agreement, which has been changed from the document that was delivered to the staff earlier in the afternoon. Commissioner McClelland inquired if Mr. Derdowski had copies of the document for members of the audience to review. Mr. Derdowski explained that he did not have copies for the audience. However, he asked that the Commission leave the public hearing open for a few weeks to allow the public to comment on their proposed new conditions.

Mr. Derdowski said that, with respect to the wetland, the applicant has agreed to use best available science to comply with the Department of Ecology's Manual, and the latest version has only been out for a few days.

Because Mr. Derdowski had reached the end of his five-minute comment period, the Commission discussed whether or not he should be allowed to continue. Commissioner McClelland pointed out that it would take Mr. Derdowski significantly longer than five minutes to review the entire agreement, and the Commission had not even had a chance to review the document yet. Commissioner Broili said he appreciates Mr. Derdowski's concern and his desire to address the issues. However, if the Commission were to allow him to proceed, they would open the door for everyone else wanting to do the same. He suggested that the Commission stick to the rules and timelines that have been established for the hearing. Commissioner Hall noted that after the Commission has accepted all public testimony, they have the opportunity to ask clarifying questions of all those who have testified. He suggested that once the public testimony has been completed, the Commission could recess for a few minutes to read Mr. Derdowski's document and then they could ask questions for further clarification. The remainder of the Commission agreed.

Mr. Derdowski pointed out that in a rezone application review, the Commission has a duty to construct the record in a quasi-judicial manner, and they have a higher burden than normal to make sure that the record is full and balanced. If they permit an applicant to have unlimited time and they don't allow a similar consideration for the public, they could create the potential for an Appearance of Fairness problem. Chair Harris advised that the Commission would reserve the right to call Mr. Derdowski back for further questioning at the end of the public hearing.

Marlin Gabbert, 17743 – 25th Avenue Northeast, suggested that it is important that everyone work together to resolve the issues. They have an opportunity to create a good project, and the developer has indicated that he is sensitive to the needs of Shoreline. Those who have voiced opposition to the project have also indicated their willingness to work together. He said he believes that some of the conditions that have been recommended by the staff appear to be onerous. For example, requiring that at least 40 percent of the units be middle and low-income housing is unreasonable because they don't even know if this type of housing would be feasible for the area. He said it seems like the applicant is being required to place all of the parking underground or in structured parking. He suggested that there should be some surface parking for quick in and out customers of the retail space. While surface parking would not be precluded, the amount of parking that would be required for the site could preclude it.

Mr. Gabbert said he also is opposed to the condition that would require a ten-foot "step back" for each level of development. He suggested that this seems a little over zealous, particularly since it would apply to each floor and does not seem like good design sense. Also, Mr. Gabbert suggested that the Commission review the proposed condition related to tree retention. He said that in order to develop the site appropriately, they might not be possible to save any of the trees. The code allows trees to be removed and replaced with new trees so that projects can be designed as an urban setting. He encouraged the Commission's support of the project, with the recommendations that were submitted by the proponent's attorney.

Steve Dunn, 18251 – 13th Avenue Northwest, said he is the Board Chair of the Shoreline-South County YMCA. He asked the Planning Commission to work together with the applicants and the appellants to resolve the issues of concern. He said he has been involved in the process for about two years, as have a number of other people from the YMCA who are interested in building a new facility in the north end to serve up to 9,000 children as well as adults. He said he believes the intrinsic value of locating a YMCA on the subject property would be beneficial to the City of Shoreline, and there are a lot of people trying to work together to make the development happen. The YMCA Board totally understands and supports the environmental concerns that have been raised, but there has to be some way to make the project happen. He encouraged the Commission to work quickly to move the project forward. He reported that the YMCA would be kicking off a \$70 million campaign starting later in the year, and if they don't hear that the project can move forward by June 10th, they would no longer be a part of the project. He expressed that the YMCA is ready to move forward, and a feasibility study has already been completed. He said four new facilities would be built in the area in the next three or four years, and Shoreline came up as the number one area in which residents are ready to give to build a new YMCA. There are a lot of people who want the project to move forward, and he encouraged the Commission to work with the cooler heads and do their best to make the community a little bit better place.

Matthew Fairfax said he is a resident and business owner in Shoreline. In addition, he said he sits on the Board for the YMCA. He echoed a lot of the sentiments that have already been shared with the Commission. He said he supports the proposed rezone and project for a lot of reasons, but the economic impact on the community, alone, is very important. He pointed out that, from being a spectator and just getting involved with the City in the last year, it is good to know that Janet Way, Brian Derdowski and Harley O'Neil have sat down and talked about their concerns in a positive and productive manner. He referred to questions that were raised earlier about some of the changes the applicant put forward regarding the word "shall." He said that, from his perspective, the difference is that the "shalls and wills" in the agreement that was presented by Mr. Derdowski were agreed upon jointly by the appellant and the applicant. The "shalls and wills" in the City's conditions were imposed. He asked that everyone work together to come to a conclusion that is beneficial for the developer, the City and the Community.

Michele McFadden, P.O. Box 714, Wauna, Washington, 98395, said she is the attorney for Tim and Patty Crawford. She said the issues the Crawfords have are actually the same as those expressed by the staff and Commission. The proposal has been changed and the conditions have not been adequately modified to reflect the changes. The question before the Commission is how they can procedurally do something with the rezone application when the site plan is not even the same as what they started with. They also need to recognize those conditions that should move forward and those that should not. She suggested that the burden is on both the staff and the applicant to identify the scope of the current proposal and what issues could be dealt with later.

Ms. McFadden specifically referred to the conditions that Mr. Derdowski negotiated with the applicant. She said that because the Commission and the citizens did not receive the document until they arrived at the meeting, as a matter of public process, the Commission should allow time for people to react. There are two different versions of the document and people have expressed two different opinions. Some feel it is less restrictive than the City's code, and some think it is more restrictive. She suggested that it would be worthwhile for the staff to evaluate the conditions identified in the agreement and identify the

difference between what is being proposed and what the code would require. There are a lot of design issues included in the agreement that are probably not sufficiently resolved at this point. The Commission must determine whether or not these issues need to be resolved before they can make a decision or if there is another process in which the public could be involved in the final design of the proposal. She said no one is saying that mixed use is not a better approach than piece-by-piece development. She said she would like to provide future comments on behalf of the Crawfords regarding the conditions that have been proposed by Mr. Derdowski and the applicant, and she asked how the Commission plans to procedurally deal with the public's response to the document. She suggested that they at least allow a window of opportunity for written comments on the changes.

Because no one else in the audience expressed a desire to address the Commission, the public comment portion of the hearing was adjourned for the evening.

Commission Discussion Regarding the Rules and Procedures for the Quasi-Judicial Hearing

Commissioner McClelland suggested that it would be appropriate for the Commission to deal with the procedural issues first so that everyone present would have a clear understanding of the process. She agreed with Ms. McFadden that the Commission should come up with a plan that would allow the public to respond to the document that was presented by Mr. Derdowski. She suggested that the Commissioners could read through the document before the hearing continues on May 5th and be prepared to talk about them. Mr. Derdowski could say more about the document tomorrow night, as well. But this would not provide an opportunity for the general public to comment on the document.

Chair Harris clarified that those who already had an opportunity to address the Commission on this subject would not be allowed to speak on the issue again at the May 5th hearing. Mr. Stewart added that the SEPA appeal hearing would be limited to those who have standing in the SEPA appeal. Vice Chair Piro said it appears that members of the public who just received the documents provided by Mr. Derdowski might want to offer some written comments. He agreed with Commissioner McClelland that the Commission should address the appropriateness of this and the time period for receiving them.

Commissioner Hall said his understanding is that following public testimony, the Commission has the ability to recommend approval of the contract rezone proposal with the conditions recommended by staff, recommend denial of the contract rezone proposal, or modify the conditions thereof. However, neither the applicant nor the public has the ability to impose additional conditions. Any changes in the conditions would be the result of the Commission's deliberations based on input from the public. Mr. Stewart said Commissioner Hall was correct. Commissioner Hall said it is important for the Commission to understand that there is no requirement for public notice or hearing related to the conditions that have been presented by both the applicant and Mr. Derdowski. Mr. Stewart agreed. He said the purpose of the public hearing is to allow members of the public to voice their opposition or support of the contract rezone and/or suggest substitutions for language in the conditions of the contract rezone. Once the Commission receives the comments, they can begin their deliberations and make a recommendation to the City Council who will be the final decision maker. Mr. Stewart emphasized that the Commission should not deal with the conditions that were submitted by the public until they begin their deliberations. He reminded the Commission that one mechanism they have used in the past is to

close the verbal hearing but leave the written comment period open for a time. The Commission could consider the written comments when they begin their deliberations, which are currently not scheduled to occur until May 19th.

Commissioner Phisuthikul clarified that the agreement between the two parties that was presented by Mr. Derdowski was not be included with the staff recommendation at this point. However, a Commissioner could choose to add these conditions during the deliberation period. Mr. Stewart agreed that during deliberations the Commission could add or delete whatever conditions they deem appropriate for their recommendation to the City Council. The City Council would then have the opportunity to add or delete conditions. Then if the applicant chooses to agree with the rezone conditions set forth by the City Council, he could sign the agreement and the contract rezone would go into effect. If the applicant chooses not to sign the rezone agreement then the action would be void.

Commissioner Broili referred to the agreement between parties that was submitted by Mr. Derdowski and asked how these conditions would align with the staff's recommendation. He questioned if staff would provide a new recommendation to the Commission based on the new information. Mr. Stewart said the staff has not reviewed the document that was submitted by Mr. Derdowski during the public hearing. However, they did review the previous draft of the document that was provided to them during the afternoon. He advised that staff provided a memorandum that raises a couple of issues with the proposed conditions, but staff reached the conclusion that they are generally supportive of the conditions that have been outlined by the appellants and the applicant. While they are concerned that some of them might be vague and difficult to enforce, generally, they are consistent with the staff's recommendation.

Vice Chair Piro reminded the Commission that not only must they consider the recommendation that was submitted by Mr. Derdowski, but they also have to consider the new conditions that were presented by the applicant's attorney. The staff has not had a chance to review these proposed changes, either. Mr. Stewart agreed that two sets of conditions were presented to the Commission: a new set by Mr. Derdowski and a new set by the applicant. Staff has not reviewed either document.

Vice Chair Piro asked if staff could analyze the proposed conditions and present a revised set of conditions to the Commission. Mr. Stewart said that if the changes to the development proposal or the conditions of the proposal would exceed those that were advertised or noticed, the City would have to readvertise, notice and reopen SEPA. If the conditions are within the project that was noticed and advertised, the Commission could move forward without a procedural defect.

Commissioner McClelland asked if it would be possible for the Commission to set a deadline for the public to provide written comments regarding the new documents that were submitted. Staff could also provide written clarification regarding the proposals. All of the written comments could be provided to the Commissioners for review prior to the May 19th hearing. Mr. Stewart said staff tries to get the packets out to the Commissioners and the public a week in advance of a Commission meeting.

Commissioner Hall recalled that the Commission has been questioned twice by members of the audience regarding their procedures. He asked staff to offer an opinion about whether quasi-judicial rules and procedures would allow the Planning Commissioners to speak with the staff about the proposal. He also

asked if limiting the time for public testimony would be consistent with the rules and procedures for a quasi-judicial proceeding. Mr. Stewart said he would ask the City Attorney to respond to both of these questions. He noted that Flannery Collins, the Assistant City Attorney, would attend the May 5th public hearing.

Chair Harris explained that the public hearing would be held open until May 5th. Once the public hearing is closed on May 5th, the Commission would make a decision about whether or not they would hold the public comment period open for an additional period of time. Commissioner Hall suggested that extending the public hearing could impact the SEPA hearing. Mr. Stewart said staff also discussed with Mr. Derdowski the possibility that Echo-Par would terminate the SEPA appeal between now and the May 5th SEPA appeal hearing. If this occurs, the Hearing Examiner hearing would be cancelled and the Planning Commission would only hold a continued hearing on the change of zone. He suggested that the Commission continue the hearing on May 5th and accept testimony from anyone who has not already testified. Written public testimony could be submitted prior to the May 5th hearing. Another option would be for the Commission to extend the written comment period now so that the public would know that they have additional time.

COMMISSIONER PHISUTHIKUL MOVED THAT THE PUBLIC HEARING BE EXTENDED FOR WRITTEN COMMENTS ONLY UNTIL MAY 10, 2005 AT 5:00 P.M. VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall clarified that the motion does not imply any extension of the public hearing for verbal testimony beyond May 5th, although the Commission might make that decision after the hearing on May 5th. Commissioner Kuboi asked if someone who has already been allowed to offer verbal testimony would also be allowed to provide written testimony. Chair Harris answered affirmatively.

THE MOTION CARRIED UNANIMOUSLY.

Commissioner McClelland asked if the staff and applicant would provide their presentation again at the public hearing on May 5th. Mr. Stewart pointed out that the hearing was advertised for both nights. Therefore, staff feels it would be fair to allow anyone to come on either night and give testimony, but they had not planned on making a presentation on May 5th. Commissioner Hall suggested that copies of the staff report and PowerPoint presentation should be made available to the public prior to the May 5th meeting.

Commission Questions of the Applicant and Public

Commissioner Kuboi recalled that Mr. Derdowski made reference to a number of goals that he and the project proponent had agreed were important. One was related to public access. However, he said that in his review of the document Mr. Derdowski submitted, there was nothing that would secure this benefit in any legally enforceable way. In response, Mr. Derdowski referred to Condition 5, which states that the owners would construct a boardwalk with public access through the buffer area. In addition, Condition 7 would require the owners to provide handicap assessable public access from the Interurban Trail to the project site. Lastly, he said Condition 3 indicates that the owners intend to apply for a permit

to construct a publicly accessible beach and dock. Mr. Derdowski summarized that the owner has committed to allow public access on the boardwalk through the buffer, allow public access to a beach and dock if it is permitted, and provide public access from the Interurban Trail to the project site.

Commissioner Kuboi asked if the Echo-Par group and the applicant have come up with a dispute resolution process should they come to a disagreement on how any of the conditions are executed. Mr. Derdowski said he recently spoke with the City Attorney about how an agreement between the applicant and the appellant should be constructed. The City Attorney advised that the best way to do this would be to put it in the form of conditions that would be added to the contract rezone. This would be an alternative to the applicant and appellant signing some sort of real estate contract, which could get very cumbersome. He referred to the third paragraph of the agreement, which states that certain conditions would be added subject to approval of the City of Shoreline. The appellants who signed the agreement and the owners agreed to petition and work together to get the conditions approved. Once the conditions become part of the contract rezone, the applicant would have a complete contract and could decide whether to sign it or not. If he signs the contract, all of the contract conditions would be enforceable and applied to subsequent building permits, etc. If the contract rezone were approved, the owners would have to apply for a building permit, which would require a SEPA review. Citizens would be able to comment about whether or not the conditions were being applied correctly.

Commissioner Broili commented that he does not see how Conditions 3, 5 and 7, as pointed out by Mr. Derdowski, would assure linkage between Aurora Avenue North and the Interurban Trail. Mr. Derdowski agreed that the proposed agreement would not address this linkage. The linkage would probably be along the road that connects Aurora Avenue to the Interurban Trail, and presumably the access would be provided in this location. In addition, as they worked with the applicant, they contacted various experts in the field to provide ideas. One idea was the incredible concept of a view corridor from Aurora Avenue to the lake. One of the advantages of this feature would be that a person could cross the street from the park and ride, walk along Aurora Avenue northbound for a short distance on a sidewalk, walk by a café with some outdoor seating, and then start walking on a sidewalk with a view corridor right down to the lake on public right-of-way. At that point, they could get on the boardwalk and walk to the Interurban Trail on a handicap assessable trail. Another connection could be provided on a public right-of-way (North 192nd). He concluded by stating that a lot of open-minded people are looking for options. But tonight the Commission is considering the contract rezone, and the Commission's challenge is to come up with a package of conditions that are tight enough to protect the public interest and broad enough to include enough flexibility so the applicant can construct a viable project.

Again, Commissioner Broili asked if there would be a connection between the Interurban Trail and Aurora Avenue North. Mr. Derdowski said his understanding of Commissioner Broili's question was whether or not there would be a connection between the Interurban Trail and Aurora Avenue North via Echo Lake. He said the latest drawings the applicant is considering would have a sidewalk going along the retail space. People would be able to walk down to the sidewalk to the public square and then along the boardwalk, through the buffer area, to the Interurban Trail access.

Commissioner Hall said asked if it would be within the City's purview to impose conditions in a contract rezone that may appear to be project specific conditions such as bulk regulations, upper floor "step backs", etc. Mr. Stewart answered affirmatively.

Commissioner McClelland questioned if the conditions proposed by the staff would be independent of the City being a participant in the project. Mr. Stewart answered that the project that was submitted to the City for review contained a proposal to use the building on the northwest corner as either a City Hall or other commercial use, including office. That is exactly how the application has been processed from the beginning. While the City Hall project has been withdrawn, the project that was proposed remains, and that is what the staff has reviewed and presented to the Commission for consideration. If the project has changed significantly because one of the perspective partners or buyers has withdrawn, making the project impossible, it would be appropriate to reconsider whether this is the project the Commission should be reviewing. But the staff cannot unilaterally change the project proposal without giving adequate notice, re-scoping and looking at the potential impacts of the changes.

Commissioner Hall clarified that if it is the staff's position that the conditions they received in the staff report are not out of date because of changes, it might be moot to ask them to work with the applicant team to come up with a broader and more flexible set of conditions. Mr. Stewart explained that the staff initiated the set of conditions originally. The applicant responded to those conditions with a complete set of comments that were included in the Staff Report as Attachment J. Staff agrees that many of the applicant's recommendations have a great deal of merit and the Commission should carefully consider the amendments proposed in Attachment J. They cover issues that were raised during the public hearing about parking requirements, affordable housing, etc. Now there is a third proposal to significantly change some of the conditions that the applicant had previously agreed to. In addition, a set of proposed conditions were set forth in the agreement with Echo-Par. He summarized that there are currently four sets of conditions: the staff's original conditions, the original comments from the applicant, the applicant's second set of comments, and then the agreement between the applicant and Echo-Par. He suggested that it would be appropriate for the staff to attempt to put these recommended conditions into some semblance of order. Commissioner Hall said he would welcome this effort by the staff because he feels the language proposed by the applicant's attorney would result in non-conditioned conditions. He said he feels there is some room to develop some conditions that may be more appropriate for a project that is in flux, and the staff's efforts in this regard would make the Commission's job much easier.

Commissioner Kuboi referred to the staff's opinion of the geotechnical report and said it appears from the staff write up that there wasn't really any objection taken to this report. Mr. Stewart pointed out that at the project level, a much more detailed soil analysis would be required as part of the structural review. Ms. Lehmberg agreed that at the project level the geotechnical reports would be analyzed by the City's development review team and a soils analysis and structural review would be done at that time. Mr. Stewart said a preliminary geotechnical review was completed for the site, and no insurmountable obstacles were identified for development of the site as proposed. Commissioner Kuboi said he is specifically interested in the extent to which the existing ground water flow would be interrupted by any sort of excavated structured parking as proposed. Commissioner Hall said this issue is addressed in Attachment E of the packet.

Commissioner McClelland asked for further information about Ms. Crawford's comments about letting the buffer area restore itself naturally. She asked if Ms. Crawford is suggesting that this should happen on the entire 115 feet of buffer area or just a portion of the buffer area. If the Commission were to recommend that the buffer area restore itself naturally, she questioned if the species of birds that are found on the site would stay around. Ms. Crawford suggested that a natural restoration process would probably encourage the habitat to stay around more. If the grass is not mowed, it would grow up tall enough that the mother mallards could use the vegetation for screening. Commissioner McClelland asked Ms. Crawford if a public boardwalk would be in conflict with a natural restoration program. Ms. Crawford answered that it would not. She said a boardwalk would be the best way to provide access through the buffer area. There would be no compaction or erosion of the soil, yet the public would be able to access a deck right up to the lake.

Commissioner Hall recalled that the applicant and others expressed concern about some of the conditions as they currently appear in the Staff Report. He asked the applicant if he would support approval of the contract rezone as currently conditioned in the staff recommendations. Mr. O'Neil answered that he would not. He said the project would no longer be feasible, especially considering the significant cost associated with providing parking structures. He questioned how a condominium developer could provide affordable housing when he has to provide underground parking or parking structures. Also, he questioned how he would be able to attract senior citizens to the project if 40 percent of the clients have to qualify for low to medium-income housing.

Mr. O'Neil said the property owners had hoped to be done with the contract rezone process by the end of April, and they received a June 1st deadline to complete the purchase and sale agreement with the YMCA. If they are not able to meet this deadline, the YMCA would not be coming to Shoreline for at least another four years. They have four other communities that are ready to go, and plans have been developed. He said they have significant concerns about the conditions proposed by the staff, which they did not receive until the day after the appeal period had expired for response. He said he wrote a letter of response (Attachment J) stating that the conditions proposed by staff would be deal breakers.

Commissioner Hall asked if the YMCA facility would be a permitted use in the R-48 zone. Mr. Stewart said a YMCA facility would be classified as a sports and social club and would be allowed as a conditional use in all residential zones of the City, including R-48. It would be allowed as a permitted use in a regional business zone. If the YMCA were to locate on a site that had both regional business and R-48 zoning, the entire use could be permitted through a conditional use permit. Commissioner Hall summarized that it would be possible to locate the YMCA on the subject property with the current zoning designation, but it would require an additional permit. Mr. Stewart said the conditional use permit would require public notice, a comment period and an administrative decision that would be appealable to the Hearing Examiner.

Commissioner Hall said two types of suggestions about the various sets of conditions have been presented to the Commission. One suggestion the applicant's attorney brought forward was to modify the language to be more permissive rather than mandatory. Other comments have been offered that while the step back concept is acceptable, requiring it to occur on every story would be excessive. Or perhaps structured parking is okay, but requiring it for all 1,000 spaces might be excessive. It was

suggested that perhaps it would be appropriate to require some low to moderate-income housing, but 40 percent would be unattainable. Commissioner Hall asked if there are ways to put in mandatory conditions that might have smaller numbers that would provide some certainty to the public that has testified, while at the same time preserve the applicant's ability to complete a master planned mixed-use development. Mr. O'Neil said he understands that the contract rezone option is a new concept for the City. But they chose to do a contract rezone at the recommendation of their architects, and it was also a goal of the purchase and sale agreement. He said he does not know of any other rezones in the City that have mandatory requirements placed upon them. He said it seems like the City is trying to design the building, tell them where to place their parking and how much parking to put in. While he can see some positive aspects related to the concept of a contract rezone, it appears the proposed conditions were orchestrated to actually kill the project.

If they were to end up with some sort of condition for the parking requirement that was mutually agreed upon by the City and the attorney as appropriate for the project to go forward, Vice Chair Piro asked if that would be acceptable to the applicant. Mr. O'Neil said that he expected the staff to come to him with the concerns that have been brought up by citizens and then they could work together to address the issues. But this type of communication and cooperation did not occur.

Vice Chair Piro asked if the applicant would be willing to work with the City to agree upon some percentage for affordable housing that would be feasible for both the City and the applicant. Mr. O'Neil said it would be a detriment to any developer if the City were to require that a specific amount of the housing be affordable to low and medium-income individuals. Developers would turn away from the project and go elsewhere where there are no restrictions. Vice Chair Piro said there are jurisdictions in the region that have formulaic percentages for the amount of affordable housing that must be set aside with each project. He asked if the applicant would accept a condition of this type. Mr. O'Neil said he would have to speak with some of the members of their development team regarding whether or not this type of requirement would make the development unfeasible.

Vice Chair Piro asked if the applicant would be amenable to working with the City to come up with some type of condition that would allow light access to the buffer area and the lake. Mr. O'Neil said their goal is to provide as much open space as possible. They are not trying to build something that would cluster buildings around the waterfront. Their intent is to open a view corridor and get light into the buffer space. But he doesn't understand the City staff's recommendation to add further conditions related to the building design.

Based on his discussions with the applicant, Commissioner Kuboi asked if the party Mr. Derdowski is representing is in agreement with the geotechnical report as it relates to impact on ground water. Mr. Derdowski said they have not addressed this issue. Commissioner Kuboi asked if Mr. Derdowski's group had any discussions about traffic impacts. Mr. Derdowski said they did not discuss this issue, either.

Commissioner Hall said he was unable to find the tree evaluation report that was referenced earlier in the hearing. Ms. Lehmberg said this report is in the application file, but it was not included as part of the

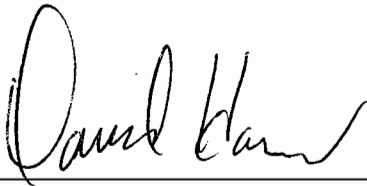
Staff Report. Commissioner Hall asked that staff provide the Commission with copies of the report before the May 5th public hearing.

Commissioner Kuboi asked that staff provide feedback from the City Attorney regarding the difference between the terms "shall" and "will."

COMMISSIONER HALL MOVED THAT THE COMMISSION CONTINUE THE PUBLIC HEARING FOR FILE NUMBER 201372 TO MAY 5, 2005 AT 7:00 P.M. VICE CHAIR PIRO SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

5. ADJOURNMENT

The meeting was adjourned at 9:50 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

CITY OF SHORELINE

SUMMARY MINUTES OF SHORELINE PLANNING COMMISSION/HEARING EXAMINER JOINT MEETING

May 5, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Ian Sievers, City Attorney
Flannery Collins, Assistant City Attorney
Andrea Spencer, Senior Planner, Planning & Development Services
Kim Lehmberg, Planner II, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Commissioner Sands
Commissioner MacCully

1. CALL TO ORDER

Chair Harris called the meeting to order at 7:03 p.m.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners Kuboi, Hall, Broili, McClelland and Phisuthikul. Commissioner MacCully and Sands were excused.

3. CONTINUED TYPE C QUASI-JUDICIAL PUBLIC HEARING ON THE ECHO LAKE CONTRACT REZONE APPLICATION (FILE NUMBER 201372)

Chair Harris reviewed the rules and procedures for the continued public hearing. He explained that this is a joint hearing with the Planning Commission and the Hearing Examiner. The purpose of the hearing is to accept testimony on the Planning Commission's review of the rezone on property located at the

south end of Echo Lake and the Hearing Examiner's review of the SEPA appeal by the Echo-Par Group. He emphasized that during the first portion of the meeting the public may comment to the Planning Commission regarding the rezone application, but only if they did not provide comments at the May 4th hearing. Once the testimony regarding the rezone application is complete, the Hearing Examiner would conduct the remaining part of the hearing for the SEPA appeal. He noted that testimony regarding the SEPA appeal would be limited to the appellants.

Chair Harris reminded the Commissioners of the Appearance of Fairness Law, which requires Commissioners to disclose any communications they may have received about the subject of the hearing outside the hearing.

Chair Harris opened the public hearing and asked the Commissioners to disclose any ex-parte communications they may have received concerning the subject of the hearing. Commissioner Hall disclosed that three or four weeks ago, prior to the Commission's deliberation on the site-specific Comprehensive Plan amendment for the subject property, he had dinner at Spiro's. He ended up being seated by the owner, Evan Volts, and he asked him about the upcoming remodel of Fred Meyer and the Aurora Corridor Project and the impact it would have to his business. They also discussed the Gateway Project, and at that point Mr. Volts informed him that he was a partner with Harley O'Neil on the Echo Lake proposal. Commissioner Hall said at that point he indicated Echo Lake was the subject of a pending quasi-judicial hearing and he could not discuss the issue any further. No substantive discussion regarding the Echo Lake application took place. No members of the audience raised Appearance of Fairness concerns.

Public Testimony or Comment

Don Riegelhuth, 19271 Stone Avenue North, referred to Condition 7 of the agreement between the applicant and members of the Echo-Par Group (Exhibit 1 from the May 4, 2005 meeting). This condition would require the owners of the subject property to provide handicap accessible public access from the Interurban Trail to the project site. It further states that an existing asphalt road that currently connects the project site to the trail may be modified to satisfy the requirement. He questioned if this would be the road that goes in front of his house (Stone Avenue), or would it be the portion of road that exists now in the trailer court? Chair Harris said this requirement was presented at the previous night's public hearing as a proposal and is not a part of the conditions that have been proposed by the staff. The Commission has not discussed this proposed requirement. Mr. Riegelhuth said they would like the proposal to include access from the Interurban Trail to the property where the existing trailer park is located. If the access from the Interurban Trail were to intersect with their property, it would eliminate the parking space that is available in front of their home. He pointed out that he currently pays Seattle City Light annually for the use of this road. He said his neighbors are also concerned about this same thing.

Dave Conlow, 2326 North 155th Street, said he does not believe the applicant provided proper information regarding the proposal. He emphasized that Echo Lake is not a wetland because it has a stream running through it. In addition, the streams and storm drains that run through the subject property have not been properly mapped. The geotechnical report was inadequate because only ten-foot

test holes were dug. Given the proximity of the lake and the applicant's proposal to provide underground parking, it is important to do more detailed geotechnical studies. He questioned if there was any evaluation done to determine what trees could be saved or would they all be removed and replaced. He said he is part of the Echo-Par Group, but he does not concur with the agreement they reached with the applicant. He said he felt uncomfortable when he heard that Janet Way had a \$1,000 check from the landowner. He said he is not involved in the project appeal for the money. He just wants to protect the lake.

Peter Henry, 15224 – 5th Avenue Northeast, said he is also one of the appellants. He said he reluctantly supports Mr. Derdowski and Ms. Way in their efforts to reach an agreement with the applicant so that the appeal could be dropped. He feels the agreement is the best they can do. He said his chief concern at this time is to protect the water quality of Echo Lake and the environmental features that surround it. He said his understanding is that whether there is a contract rezone or not, the developer and the City would still be bound by SEPA, the Growth Management Act, the Critical Areas Ordinance and other City, State and Federal requirements.

Carol Murrin, Echo Cove Condominiums, 19414 Aurora Avenue North, voiced her concern about the number of condominiums that are being proposed for the subject property. She asked how many units are currently located on the trailer court property. Mr. Stewart answered that there are 110 units on this site now. Ms. Murrin said she would like to see fewer units placed on the subject property. Right now the applicant is proposing to develop 55 units per acre, and this would have a significant impact to the lake if people are allowed access. She asked that the Commission consider the impact to the lake if it is used for a recreational facility for those living in the new units.

Commission Questions of the Applicant and Public

Commissioner Hall asked Mr. Riegelhuth if he is opposed to the access road that is being proposed by the applicant or the entire proposal. Mr. Riegelhuth clarified that he does not have a problem with the proposal, but he does not want the handicap accessible public access from the Interurban Trail to go onto his road. He said it would work just as well to move this access another block down into the area where the trailer court is currently located.

Mr. Stewart said staff recommends the Commission close verbal testimony now, but leave the written comment period open until May 19th when the Commission reconvenes for consideration of the matter. Sometime over the next two or three days, staff could put together a revised and consolidated list of conditions as requested by the Commission. It is staff's intent to make the proposed list not only available to the Commission, but also to the community via the City's website. Anyone who has issues or comments on the proposed list could submit them in writing to the Commission before they begin their deliberations.

Commissioner Phisuthikul recalled that at the May 4th meeting, the Commission voted to leave the written testimony period open through May 10th. Mr. Stewart agreed, but he said staff is suggesting that the Commission add an additional nine days to the written comment period.

Commissioner Hall recalled that the reason the Commission agreed to cut the written comment period off on May 10th was to allow staff an opportunity to compile the comments and get them out to the Commission in their next meeting packet. If staff is comfortable with the idea of allowing written comments until the Commission's next meeting, he would support their recommendation to extend the written comment period to May 19th.

Commissioner Kuboi said he would support the staff's recommendation to extend the written comment period to May 19th. However, he would like time to be set aside on the May 19th agenda to allow the Commission to review the new written comments they receive. Mr. Stewart agreed. He said staff intends to include in the Commission's packet any comments they receive until the packet goes out. Then they would collect and assemble the additional comments they receive after the packets have been sent out and present them to the Commission at the May 19th hearing.

Commissioner McClelland suggested that perhaps it would be possible to cut off the written comment period a bit earlier so that Commissioners would have an opportunity to review the comments before they arrive at the May 19th meeting. Mr. Stewart pointed out that the staff would not release the revised list of conditions to the Commission and the public until the packets are sent out on May 12th, and the public should have an opportunity to offer written comments regarding the new list of conditions prior to the Commission deliberations. Time could be set aside on the May 19th agenda to allow the Commission to review new evidence and information. He felt this would be the fairest process.

Commissioner Broili said he would be in favor of ending the written comment period on May 12th. He said he does not want to wait until the last minute to digest all of the additional comments that come in after the Commissioners receive their packets for the May 19th meeting. Mr. Stewart reminded the Commission of their request that staff review the four alternative condition lists. If staff were to propose some new language that was not in any of the previous lists, it would be beneficial to the Commission to allow public response regarding the new language before they begin their deliberations. These comments would then be part of the record and available to the City Council when they deliberate on the Commission's recommendation.

Commissioner Kuboi asked if written comments would be posted on the City's website as they come in. Ms. Simulcik said she could do this. Commissioner Kuboi expressed his concern that if written comments are posted for the public to review, then the Commission could potentially get into a situation where they will have comments, rebuttal, comments, rebuttal, etc. It concerns him that new comments and materials could be submitted until the very end. Even if they have a substantial time period on the meeting agenda to review the new material, it still might not be sufficient. Mr. Stewart said that as soon as the comments are submitted they become part of the public record and are available to anyone. Typically, they do not post information on the website until the Commission has received it first.

Commissioner Hall pointed out that there are already four sets of conditions before the Commission for consideration and he appreciates staff taking the time to sort through them and figure out a set of conditions they believe would balance the interests. But ultimately, the conditions are something the Commission will either recommend to the City Council or not. If people have the opportunity to comment on all of the conditions that have been proposed to date, wordsmithing changes should not

damage the public process. He agreed with Commissioners Broili and Kuboi that receiving information at the very last minute has been very problematic for the Commissioners in the past. The applicant has a land use action pending, and he has a right to a decision. If the Commission receives new information on May 19th, this would threaten their ability to render a decision that evening. He suggested that the written comment period be cut off sooner. The public could be asked to look at the full range of conditions that have been placed before the Commission and provide their comments between now and May 10th.

Mr. Stewart advised that Ms. Spencer has suggested that if the Commission were to establish a cut off date for written comments of May 18th at noon, staff could compile, assemble and hand deliver the comments to each Commissioner on the afternoon of May 18th.

Commissioner McClelland pointed out that there have already been two instances in the last several meeting where materials have been presented to the Commission at the very end, and people who have financial and vested interest in what's going on do not have an opportunity to review and comment on the new materials. This creates an uncomfortable situation. If the Commission could receive the written comments by May 18th, the public must also be allowed to pick up a copy of the comments on May 18th. Mr. Stewart agreed. Rather than posting public comments on the website as they are received, Commissioner McClelland suggested that staff wait until May 18th to post all of the public comments at the same time.

COMMISSIONER MCCLELLAND MOVED THAT THE WRITTEN COMMENT PERIOD BE EXTENDED TO NOON ON MAY 18, 2005. VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall encouraged members of the public to submit their written comments as soon as possible so the Commission would have ample time to consider them.

THE MOTION CARRIED UNANIMOUSLY.

4. PUBLIC HEARING ON SEPA APPEAL FOR FILE NUMBER 201372 REGARDING THE ECHO LAKE REZONE

The Planning Commission portion of the joint hearing with the Hearing Examiner ended at 7:30 p.m. and the Echo Lake SEPA MDNS Appeal Hearing went from 7:30 p.m. to 8:50 p.m. Please see Hearing Examiner Decision dated May 16, 2005 for SEPA Hearing details.

The Public Hearing for File No. 201372 was closed at 8:50 p.m. The Planning Commission took a recess and then reconvened at 9:05 p.m.

COMMISSIONER HALL MOVED TO RECONSIDER THE PLANNING COMMISSION'S RECOMMENDATION TO CHANGE THE COMPREHENSIVE PLAN LAND USE DESIGNATION OF THE SOUTHERN PORTION OF THE SUBJECT PARCEL FROM HIGH DENSITY RESIDENTIAL TO MIXED USE. COMMISSIONER MCCLELLAND SECONDED THE MOTION FOR DISCUSSION PURPOSES.

Commissioner Hall explained that when the Commission acted on the Comprehensive Plan site-specific land use designation change proposal, he didn't clearly separate in his mind what that would mean from what the rezone might mean. He said he has given further thought about the housing policies, the density, and all of the site plans they were shown throughout the process. While they were told that the Comprehensive Plan is separate from the rezone application and SEPA appeal, the Commission always had the notion that there would be up to 180,000 square feet of commercial space and up to 350 housing units. Upon further reflection, he said it occurred to him that absent a contract rezone, which is by no means a requirement or a condition on the Comprehensive Plan land use change, the change in the land use designation from High Density Residential to Mixed Use would require that any future decisions such as rezones, etc. would have to be reviewed by the Commission or the City Council to make sure they are consistent with the Comprehensive Plan. If the Comprehensive Plan land use designation were Mixed Use, there would be no guarantee that the property owner would develop any residential units on the subject property at all. There would be 101 low to moderate-income residential units displaced by the proposal, and the Growth Management Act goals require the City to provide housing opportunities to meet their established growth targets. He said the prospect of losing 6.71 acres of High Density Residential land and allowing it to possibly be developed as 100 percent commercial or industrial in the future could make it very difficult for the City to achieve the population densities and growth they are trying to accomplish through their Comprehensive Plan. He reminded the Commission how difficult it is to up zone property from Low Density Residential to High Density Residential.

Chair Harris reminded the Commission that another goal of the Growth Management Act is to create jobs for the community. Commissioner Hall agreed. Commissioner Kuboi explained that the use of the property would be governed by the zoning regulations. If the contract rezone were not approved, the existing High Density Residential zoning designation would remain intact irrespective of whether the land use designation was Mixed Use or not. Commissioner Kuboi said his understanding is that the City would still have a zoning designation that would be protective of housing as the use for the eastern portion of the site should the contract rezone not go through. Mr. Stewart agreed. Commissioner Kuboi said he does not share Commissioner Hall's concern with regards to the land use designation change from High Density Residential to Mixed Use.

Vice Chair Piro said that after the last hearing on May 4th, he considered options for some type of agreement on the percentage of low-income units that should be considered for the site. Mr. Stewart cautioned the Commission not to deliberate the contract rezone at this time. The scope of the debate should be narrowly focused on the Comprehensive Plan amendment and the proposal to change the High Density land use designation to Mixed Use.

Vice Chair Piro asked if there are provisions in the Growth Management Act or under State law that would require that like housing be constructed if low-income housing is removed. Mr. Stewart said staff would research this information.

Commissioner Phisuthikul said that he, too, was concerned at the beginning of the Commission's deliberations to change the Comprehensive Plan designation for the subject property from High Density to Mixed Use because it would be a very broad land use designation. He said he found it difficult to

support the land use change because a Mixed Use land use designation could potentially allow uses such as industrial to occur on the site. However, because any zoning change would require Planning Commission review and City Council approval, it is unlikely that the zoning on the subject property would ever be changed to allow industrial development. Because of the City's process that allows for checks and balances, he felt comfortable supporting the Comprehensive Plan land use change as proposed.

Commissioner McClelland clarified that if the Comprehensive Plan amendment is approved as proposed but the contract rezone and the proposed development does not occur, the existing zoning on the property and the new Comprehensive Plan land use designation would be inconsistent. Mr. Stewart answered that the current R-48 zoning designation would be consistent with the Mixed Use land use designation. Commissioner McClelland pointed out that once the Comprehensive Plan land use designation is changed to Mixed Use, there would be no guarantee that a different kind of rezone would not be requested in the future. Mr. Stewart referred to the list of zones that are compatible with the Mixed Use designation, which was handed out at the time the Commission was considering the land use proposal. This list of uses included R-48 as well as regional business, and these are the two zones that are currently on the site now. If the Mixed Use Comprehensive Plan amendment were adopted, the current zoning would be consistent with the Comprehensive Plan. If the land use designation were changed to Mixed Use, a rezone application could be submitted for any number of zoning districts. However, the Planning Commission's responsibility would be to review the proposal in light of the policies in the Comprehensive Plan and the criteria that has been established for adopting a zoning change. Following a public hearing, the Commission would be asked to deliberate and make a recommendation as to whether a proposed zoning change would be appropriate.

Commissioner McClelland recalled that when the Commission voted to recommend approval of the Comprehensive Plan amendment, she was reluctant to offer her support. She said that what they started out with was a complete application (a Comprehensive Plan amendment, a contract rezone, and a project). The proposed project originally included the possibility of the City owning some of the property. This property would be within the public's domain, and the City would have the ability to govern what goes on in the lake or the wetland. She said she favored moving the whole proposal through as a package. Once the SEPA determination was appealed and the process was chopped up into parts, they ended up with a situation where they don't know who will own the property in the end. She said she is so uneasy about the whole situation that she might be tempted to vote for the motion on the table if there were a way to reconstruct the package.

Chair Harris noted that the City doesn't own the land, and there are no plans for the City to purchase the land.

Vice Chair Piro suggested that, rather than reconsidering the Comprehensive Plan land use change, perhaps the housing issues that have been raised by Commissioner Hall could be addressed as the Commission goes through the process of revising the contract rezone conditions.

COMMISSIONER HALL WITHDREW HIS MOTION TO RECONSIDER THE COMMISSION'S RECOMMENDATION ON THE COMPREHENSIVE PLAN LAND USE

AMENDMENT, WITH THE UNDERSTANDING THAT THE ISSUES IN THE COMPREHENSIVE PLAN COULD BE ADEQUATELY CONSIDERED AT THE TIME OF REZONE. THE FACT THAT THE LAND WOULD BE REDESIGNATED AS MIXED USE WOULD NOT MEAN THE COMMISSION COULD NOT THINK ABOUT ALL OF THE POLICIES IN THE COMPREHENSIVE PLAN WHEN A REZONE APPLICATION IS SUBMITTED.

Commissioner Broili stated that he believes the Commission made a decision that, assuming the proposed plan goes forward, would give the City a good final product that they can be proud of. It would meet the residential requirements they are looking for in a mixed-use area. He said he would be very reluctant to change direction midstream because it would only "muddy the water" and the perspective developers could just walk away from the project altogether. He said this type of situation would be a major concern to him.

COMMISSIONER MCCLELLAND WITHDREW HER SECOND OF THE MOTION.

Commissioner Kuboi suggested that it is probably a reasonable statement to say that people of very low incomes occupy the trailer park. He asked if this would be tantamount to saying that it is low-income housing. By losing those units, he asked if the City would be deficit in with respect to low-income housing. Mr. Stewart said there are some policy implications regarding affordable housing and SEPA implications, and there are very clear definitions in the development code for moderate income, low income, very low-income and extremely low-income housing based upon the percentage of median household income that is spent for rent. However, the City staff does not have access to information that would allow them to specifically identify the income level of any housing unit in Shoreline unless it were attached to some public, federal, state or other subsidy program.

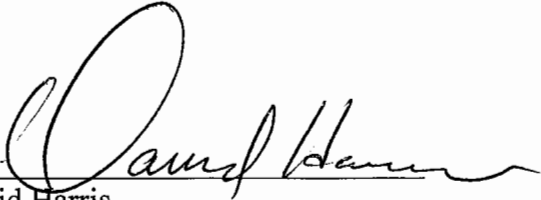
Commissioner Broili clarified that the City staff doesn't really know what the mean income of the people living in housing developments within Shoreline is. He said his personal experience in visiting the property is that the people who live in the trailer park had a nice situation and were able to live close to the lake. While they lived in trailers, there were a lot of expensive cars and boats, as well. He questioned if the residents of the trailer park could really be considered low-income. He said he is not convinced that the proposed project would really displace low-income residents.

Mr. Stewart advised that staff would attempt to provide a response to the Commission regarding the current laws for low-income housing.

5. ADJOURNMENT

COMMISSIONER HALL MOVED THAT THE COMMISSION MEETING BE ADJOURNED. VICE CHAIR PIRO SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

The meeting was adjourned at 9:25 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

the Comprehensive Plan amendment proposal was accompanied by a rezone application to change the zoning on the property from R-6 to R-24. She advised that staff recommends the Commission approve the rezone application. She pointed out that the findings for this application start on Page 57 of the Staff Report.

COMMISSIONER HALL MOVED TO APPROVE REZONE APPLICATION 201277 FROM R-6 TO R-24 UNITS PER ACRE BASED ON PREVIOUS FINDINGS OF APPROVAL MADE BY THE PLANNING COMMISSION REGARDING A REQUEST TO CHANGE THE COMPREHENSIVE PLAN LAND USE DESIGNATION OF THIS PARCEL FROM BALLINGER SPECIAL STUDY AREA TO HIGH-DENSITY RESIDENTIAL BASED ON THE FINDINGS PRESENTED IN THE STAFF REPORT. COMMISSIONER KUBOI SECONDED THE MOTION.

Commissioner Hall recalled the statement he previously made when the Planning Commission deliberated the Comprehensive Plan Amendment proposal. The subject parcel is completely surrounded by high-density residential, and the aerial photographs seemed compelling. There was no neighborhood opposition. Only one person testified at the hearing, and they seemed to advocate a complete no growth approach. The Planning Commission has been challenged by the Comprehensive Plan goals, which call for growth and an increase in density. It is the Commission's task to try and site the growth in appropriate places. Allowing a higher density for property that is surrounded by a higher density provides an opportunity for the City to achieve their growth targets. He said he strongly supports the proposed rezone request.

THE MOTION CARRIED 7-0, WITH CHAIR HARRIS ABSTAINING.

a.3 Echo Lake Rezone (File Number 201372)

Mr. Stewart advised that, as requested by the Commission, staff attempted to create an amended set of conditions (Pages 63 through 66 of the Staff Report) for the Commission's consideration. He noted that in Condition 7 on Page 64, the reference to "3-I" should be changed to "4-H." Mr. Stewart noted that the genesis of where the condition came from is identified in parentheses at the end of each item. The conditions were published a week ago, and staff received three comment letters that were included in the Commission's packet. Mr. Stewart said that in the conditions, staff attempted to find middle ground and acceptable language based on the comments and testimony that were received at the public hearing. He referred the Commission to the yellow "Meeting Action Summary," which offers three options for the Commission to proceed.

Mr. Stewart pointed out that Commissioners Sands and MacCully did not attend the public hearing on the application. Unless they listened carefully to the tapes, they probably would be best advised not to participate in the development of the recommendation for Council. Commissioner Broili pointed out that he missed the first hour of the May 4th public hearing, but he did listen to the tapes from the meeting.

Commissioner Hall suggested that the Commission place a motion of approval on the floor and then work to amend the conditions as appropriate.

COMMISSIONER HALL MOVED TO RECOMMEND APPROVAL OF THE REZONE APPLICATION FOR FILE NUMBER 201372 FROM R-48 AND REGIONAL BUSINESS TO REGIONAL BUSINESS WITH CONTRACT ZONE BASED ON THE FINDINGS IN ATTACHMENT E OF THE STAFF REPORT WITH THE PROPOSED CONDITIONS OF REZONE PRESENTED IN ATTACHMENT A ON PAGE 63 OF THE STAFF REPORT. COMMISSIONER BROILI SECONDED THE MOTION.

Chair Harris suggested that the Commission review the conditions one-by-one. The remainder of the Commission agreed. Commissioner Kuboi pointed out that anything that is not included in the conditions would not be enforceable. Therefore, it is important for the Commissioners to state their preferences so they can be included in the contract conditions. Mr. Stewart clarified that the contract rezone would be integrated with the Regional Business zone, and this has been clearly articulated in the first part of Condition 4. Therefore, the contract is not the entire body of regulations that would apply to the subject property, that if the contract does not specify a regulation the Development Code Standards for the Regional Business zoning district would apply. The contract conditions would identify deviations from the normal requirements of the Regional Business zone.

The Commission reviewed each of the proposed conditions and made the following comments:

- **Condition 1:** Mr. Stewart said it is important to recognize that the applicant must agree with the final set of conditions. If the applicant does not agree to one or more of the conditions, he/she does not have to sign the contract and the contract rezone would not be valid.

Commissioner Phisuthikul suggested that language be added that the agreement would run with the land. Mr. Stewart said there would not be any need to add this to the condition because it is a fact that the contract would run with the land. However, it would not be appropriate for the City to limit ownership through the contract conditions. The applicant would be free to exchange, trade, barter or sell the property in the future with the associated conditions.

Commissioner Kuboi asked if the term "all parties" refers to the applicant and the City, only. If so, perhaps they could just say "applicant and the City." This would make it clear that Echo Par is not a party. Mr. Stewart explained that the parties and ownership might be different than the applicant who signs the application. Therefore, he would prefer to use the term "all parties."

- **Condition 2:** Commissioner McClelland inquired if the 100 units that are proposed to be set aside are consistent with the issued SEPA MDNS decision. Mr. Stewart said the only MDNS requirement that would apply to Condition 2 is related to screening. The checklist provides some information about the number of units that would be allowed on the subject property, and extensive comments were previously provided by the applicant suggesting that perhaps the language should be modified. He referred to Condition 4b, which represents staff's attempt to craft language regarding affordable

units. He said he does not believe that Condition 2 and Condition 4.b would be inconsistent with the MDNS.

- **Condition 3:** Commissioner McClelland said she understands that the City's technical definition of Echo Lake is "Wetland" because they don't have a definition for a lake. But throughout the document, they call it both a wetland and a lake. Even though it has a classification as a wetland, she suggested that it should be called "the lake." Mr. Stewart said that would not be possible in Condition 3 since they want the buffer to run along the wetland, which is the edge of the lake. He said the City staff has consistently interpreted the Critical Areas Ordinance for a lake or water body to be a wetland, except where the court overruled them by determining that Peverly Pond was a stream. He emphasized that there is not a similar fact pattern in this case.

Commissioner McClelland inquired if the reference to "wetland" in Condition 3 would only apply to the water's edge and not the whole lake. Mr. Stewart said they are referring to the edge of the water that meets the standards and criteria for a wetland. This might also impose further onto the land than what normally would be considered the edge of the water. Commissioner McClelland suggested that Condition 3 be changed to "the wetland portion of Echo Lake." Mr. Stewart explained that the wetland line would be delineated and then a 115-foot line would be drawn to establish the buffer limit where no development would be allowed.

Commissioner Hall agreed that there could be a gap in the code that is confusing to some, but the code has been consistently applied. He explained that classifying it as a wetland is the only regulatory tool the City can use to protect Echo Lake. Without designating the lake as a wetland, the gap in the regulations could be interpreted to mean that no regulatory protection would be required at all. In his opinion, he said it is to the advantage of everyone who has testified about the importance of protecting the lake to continue to refer to it as a wetland.

Mr. Stewart pointed out that this condition merely establishes the buffer for building. It does not require restoration, nor does it prohibit certain uses from occurring within the buffer. He said this fact would be important when the Commission reviews some of the other conditions.

- **Condition 4:** Commissioner Kuboi questioned why traffic was not included in the list of provisions. Mr. Stewart answered that the SEPA Checklist and the limitations on use (182,000 square feet of commercial and 350 residential units) are below the impacts that would have otherwise been generated by the current zoning. Limiting the intensity of development keeps the impacts below what would have otherwise been permitted under the current zoning. He noted that the current zoning had been studied during the adoption of the original Comprehensive Plan and Zoning Ordinance. There was no finding under SEPA that traffic mitigation should be required, and this determination has been upheld.
- **Condition 4.a:** Commissioner Kuboi requested clarification about how staff would interpret the phrase "generally comply with the site plan submitted with the application." Mr. Stewart said there is a gray area as to what level of specificity would be required for the development. The condition would require the development to comply with the general layout of the site, with the units and

configuration as shown on the site plan. If the property owner decides to build one large structure on the west side as opposed to two or three, Commissioner Kuboi asked if a developer would be allowed to build one large structure on the west side as opposed to two or three as indicated on the site plan. Mr. Stewart said this determination would have to be made when a formal proposal is submitted; but generally, this condition would provide some level of flexibility.

Commissioner Kuboi pointed out that the proposed site plan might not be anything close to what is actually built other than 350 housing units and up to 182,000 square feet of commercial space. Mr. Stewart said the site plan would be part of the record and incorporated into the ordinance, and the staff would have some discretion in deciding whether or not a development proposal generally complies with the site plan. He clarified that the site plan has always designated space for a City Hall/Office structure.

Mr. Stewart advised that the applicant has stressed the importance of allowing flexibility in order for them to accommodate the market. The staff believes that some flexibility would be reasonable, with all of the other conditions added to address future development. Commissioner McClelland pointed out that this condition would allow up to 10,000 square feet of retail space on the east side of the property. Does this mean a developer could construct up to 10,000 square feet of retail space in place of some of the housing units. Mr. Stewart said the overall development limitation is 182,000 square feet of commercial space, and up to 10,000 of this could be developed on the east side. This would leave 172,000 square feet on the west side. Also, up to 350 residential units would be allowed on the east side. Condition 4.c would also allow for the replacement of commercial space with residential uses on a square-foot-by-square-foot basis. Commissioner McClelland suggested that perhaps they should make it clear that the 10,000 square feet of commercial space allowed on the east side of the property would be calculated as part of the 182,000 square feet of commercial space allowed for the entire site. Mr. Stewart said he believes the conditions, as proposed, would limit the maximum amount of commercial space to 182,000 square feet total. However, the Commission could further clarify this constraint.

Commissioner Phisuthikul suggested that the key element of the proposed development is that it would be a true mixture of commercial and residential development. He asked if the Commission could impose a condition that any development proposal must include both commercial and residential development. This would prohibit totally commercial or totally residential developments. Mr. Stewart answered that this could be possible. However, he anticipates that the site would be developed in phases. Some of the phases might be heavily residential and others might be heavily commercial. By requiring a mixture of uses, they might further constrain the developer's ability to build something that is feasible. Commissioner Phisuthikul agreed that some phases might be more commercial and others more residential, but at least the master plan should clearly identify a mix of commercial and residential development for the site. Commissioner Hall suggested that there are ways to create a condition that might be acceptable to staff once they start deliberating on alternatives.

Commissioner Kuboi asked if the conditions, as proposed, would limit a developer's ability to construct a single "big box" commercial building that provides 182,000 square feet of space. Mr.

Stewart said some of the other conditions that have been proposed would prohibit this type of development.

- **Condition 4.b:** Commissioner Hall asked if the City could impose an additional condition aimed at achieving a minimum housing density. For example, he suggested that an additional condition could be added that would say, “No development shall occur on the site that would preclude a yield of a minimum of 250 housing units on the site in the general configuration of the site plan.” Mr. Stewart said this type of condition would be acceptable to the staff. Commissioner Hall said it would be consistent with the developer’s testimony, but it would offer some assurance that the development would not be all commercial or all residential.

Commissioner Kuboi asked if the last words of this condition would place a burden on the project proponent to seek out and apply for subsidies, or would this be the City’s responsibility. Mr. Stewart explained that the new language in this condition represents a compromise based on the comments from the public hearing. The intent of this condition is to require the developer to assert effort to find subsidies. He explained that when a specific development proposal is submitted, staff would ask what attempts the developer made to find subsidies. The staff would expect the developer to provide a rational and factual based answer. He concluded that if the developer makes a substantial effort to comply, this effort would satisfy Condition 4.b. They would not deny the development permit unless there was no evidence in the record to show that effort had been made.

- **Condition 4.c:** Mr. Stewart pointed out that the second sentence in this condition represents compromise language that is intended to provide for flexibility in design. The staff agreed with the applicant that this would be on a square-foot-per-square-foot basis and would actually reduce the traffic impact associated with the development because trading commercial square footage for residential square footage would generate fewer trips. This condition would also help promote the City’s housing goals. He emphasized that the condition would not allow a developer to trade residential units for more commercial space.
- **Condition 4.d:** Commissioner Hall asked if this condition would permit 563 surface parking spaces on the site. Mr. Stewart said it would allow for 500 spaces to be open to the sky, but this might be proportionately on the surface and on the top floor of a garage that is not covered.
- **Condition 4.e:** The Commission did not have any comments to make regarding this proposed condition.
- **Condition 4.f:** Mr. Stewart explained that Commissioner Phisuthikul proposed the language in this condition. When the developer did the actual calculations, it was very onerous. The condition has been modified to protect the first 50 feet of the wetland buffer as opposed to the entire 115 feet. Ms. Lehmberg said that in order to meet the condition to allow solar access for the entire buffer, the applicant indicated that they would have to set the building back an additional 65 feet, which did not seem reasonable. Mr. Stewart expressed his belief that the proposed modification to this condition

represents a technically objective standard for design, and it would allow the architect opportunities to be flexible.

Commissioner Phisuthikul explained that it would not make sense to draw a hard line for where the developer should protect the solar access for the buffer area. Only a portion of the building might cast a shadow within the 50 feet, and the rest could be open for the sunshine. He suggested that drawing a hard line would be too limiting. As proposed, this condition would only apply to about half of the setback area, and the applicant would be required to make their best effort to protect the solar access. It is intended to be a design guideline.

Commissioner McClelland inquired if a building could be built right up to the edge of the 115-foot buffer line. Mr. Stewart answered affirmatively. Commissioner Phisuthikul added, however, the developer must demonstrate that he has done the best he can to comply with Condition 4.f. If part of the building is right next to the buffer but the rest is set back and does not cast a shadow into the buffer, the development would be in compliance with the condition.

- **Condition 4.g:** Commissioner McClelland asked if the 90 percent identified in this condition would be variable, depending on how many units they end up with. Mr. Stewart said these standards are part of the current development code for maximum impervious surface. Commissioner McClelland pointed out that 15 feet of the buffer area would be treated as a setback. Mr. Stewart clarified that all 115-feet would be the buffer, but 15 feet of it could be used when calculating the amount of impervious surface allowed.
- **Condition 4.h:** Mr. Stewart explained that when the staff reviewed the original site plan and tree inventory, it appeared that they would be incompatible with the preservation of trees outside of the wetland buffer. There was significant staff debate, and not all staff members support this condition. He noted that the relief proposed in the condition would not apply to either the wetland or the buffer area. Trees on site would be exchanged for the development of an approved habitat restoration plan in the wetland buffer.

Commissioner Kuboi asked why staff did not recommend tree replacement as a condition instead of requiring a habitat restoration plan for the buffer. Mr. Stewart said the City's landscape standards require tree replacement, but the tree ordinance requires it at a higher standard. The Commission could require tree replacement in accordance with the tree ordinance standard, but staff felt that the landscape tree replacement standard would be adequate and that a habitat restoration plan would be an adequate trade-off. Commissioner Kuboi recalled that this issue was raised during the applicant's negotiations with the Echo Par Group. Mr. Stewart said this was originally a staff recommendation that the developer concurred with in his March 28th comment letter. It was also a subject of the agreement with members of the Echo Par Group. The original agreement was that the "owner shall identify significant trees and preserve as many as can be preserved consistent with their design parameters." He felt the original condition was quite ambiguous.

- **Condition 5:** The Commission did not provide any specific comments regarding this condition.
- **Condition 6:** Commissioner Broili referred to Line 4 of this condition, which would require the developer to work with the City. He asked what this phrase would imply. Mr. Stewart said the site and Echo Lake is the collection point of a fairly large drainage basin that runs all the way up through Sky Nursery and the Gateway site. He said one of the benefits that was discussed early on was the opportunity for the City to work with the developer to build an oversized water treatment and collection facility to handle some of the runoff from roads in the larger basin. This would have to be a voluntary agreement by both the City and the applicant, but they wanted to include it as a condition so that people would know that the opportunity exists. If the site required a treatment facility of a certain size and the City wanted to make this larger, they would have to subsidize construction of the oversized facility.

In the event of a conflict between the Department of Ecology Manual and the City's adopted Stormwater Manual, Commissioner Broili asked if it is standard procedure for the City's manual to prevail. Could this condition state that whichever provides the highest standard should prevail? Mr. Stewart said the agreement between the applicant and some of the citizens who participated in the SEPA appeal would require the developer to comply with the Department of Ecology Manual and City requirements. The City requires the use of the King County manual, and parts of the two manuals are inconsistent with each other. In these situations, this condition would require that the City's manual be implemented. The proposed condition is an attempt to accommodate the private agreement but still be consistent with the City's regulations.

Commissioner Broili suggested that there might be occasions where the Department of Ecology Manual would be more stringent in its requirements, and he would prefer to err on the more stringent side. Mr. Stewart said that a higher standard might result on the site because of the private agreement provision, but it would be a private matter. The City would enforce its own regulations. He emphasized that the City was not part of the private agreement.

Commissioner Broili asked if Condition 6 could be reworded so that they end up with the most stringent stormwater approach possible. Mr. Stewart answered that when he discussed this condition with the Public Works staff, they were very concerned about trying to merge the two manuals and about the lack of knowledge the City's technical staff has about the Department of Ecology Manual.

Commissioner Sands said his interpretation of Condition 6 is that there is a separate private agreement that would require the applicant to comply with the Department of Ecology Manual. If the requirements in the Department of Ecology Manual were more stringent than the City's, the City would not be opposed to the applicant meeting the more stringent requirement. However, if the Department of Ecology Manual were less stringent, Condition 6 would require the developer to meet the requirements in the City's Stormwater Manual. He said it appears that, either way, the most stringent standard would be applied. Mr. Stewart agreed.

Commissioner McClelland asked if this condition would require the applicant to consider working with the City. Mr. Stewart said the two parties would enter into a discussion that would probably

involve at least the City's willingness to contribute or propose an oversized system. If the City were willing to propose this, the developer would be obligated to consider whether or not they want to work with the City. Because the facility would be much greater than the applicant would be required to do on his/her own, it would require some form of contribution of public funds for the benefit of collecting and treating stormwater from the larger drainage basin.

Commissioner Hall recommended that the Commission spend the remainder of their time considering the changes they want to make to the conditions. Additional clarification could be requested along the way. He expressed his concern that the applicant has worked hard to go through a difficult process, and he would like the Commission to reach resolution of the matter by 10:00 p.m. so they could adjourn the meeting. If they continue in their current format, they will not likely be able to do this.

Commissioner Broili said he still has a few questions of clarification before he is ready to consider possible changes to the conditions. The Commission agreed to spend another ten or fifteen minutes to focus on the highest priority questions that each Commissioner has, but they should not belabor their discussions right now. They should start talking about changes to the conditions by 9:00 p.m. Commissioner McClelland questioned the need to rush a decision on one of the largest developments that will occur in the City over the next several years. Commissioner Phisuthikul suggested that many of the questions that have been raised are related to semantics. Chair Harris urged the Commission to ask straight questions for fact finding instead of deliberations. Commissioner Broili pointed out that this is a time-sensitive application, and the YMCA has a deadline of June 1 for a decision to be made. Commissioner McClelland cautioned that it is the Commission's responsibility to make sure there is not a single opportunity to misinterpret the intentions of the conditions.

- **Condition 7:** Commissioner Broili commented that he does not believe "BuiltGreen" certificates would be appropriate since they relate to single-family residential development only. However, the developers should consider pursuing LEED for buildings in the project.
- **Condition 8:** Commissioner McClelland asked if the term, "enhancement and restoration plan for the shoreline of Echo Lake" references the wetland. If so, shouldn't they just call it the wetland? Mr. Stewart explained that Conditions 8, 11.a, 11.b, 11.c, 12, 13 and perhaps others are really just refinements of Condition 4.h, which has to do with the creation of a habitat restoration plan. These other conditions refer to fine details that have been negotiated between the private parties and will be incorporated into the habitat restoration permit. He explained that the term referenced by Commissioner McClelland is broader than a wetland in that a wetland is regulated as the area of land at the edge of the water. The restoration plan goes beyond this area and talks about restoration within the lake, itself. Commissioner Phisuthikul suggested that the Commission move on since they have already determined that the Echo Lake is referred to as a wetland.
- **Condition 9:** Commissioner Phisuthikul asked what the term "existing higher quality shoreline areas" refers to. Mr. Stewart said this area would be identified by a biologist who would look at classifications of higher and lower quality functions.

- **Condition 10:** Commissioner Broili said he is unclear about the meaning of the term “contiguous 70 feet of lake shoreline.” He asked if this is related to the 75 feet that is referenced in Condition 11. Chair Harris asked how the staff came up with the 70 feet that is recommended in this condition. Mr. Stewart said this condition is the beach and dock provision that was part of the negotiated private agreement between Echo Par and the property owner. It would provide for a beach and a boardwalk within the 70 feet. The notion is that the remaining area would be fully restored into habitat, as would the area behind the beach with the dimensions described in the condition. He summarized that the 70-foot width would be measured along the shoreline.

Chair Harris asked if the staff agrees with the 70 feet that is identified in this condition. Mr. Stewart said the staff does not object to Condition 10, but the property is currently privately owned. There are some benefits identified in further conditions that would allow public access to the area. He concluded this condition is a value statement of how much of a beach and dock the applicant is willing to grant.

- **Condition 11:** The Commission did not provide any specific comments about this condition.
- **Condition 12:** Commissioner Kuboi said it is important to remember that the conditions would run with the land. He asked if the term “public access” would be something a future owner would not be able to take away. Mr. Stewart answered the condition would require a dedication of public access easement, and the public would have a right to use the easement in perpetuity.
- **Condition 13:** The Commission did not provide any specific comments about this condition.
- **Condition 14:** Commissioner Broili said he has been concerned all along that there should be a link between Aurora Avenue and the Interurban Trail. He said he does not see anything in the proposed conditions to address this connection. Mr. Stewart said there is a guarantee of public access from the trail, and there would also be an access point at 192nd.
- **Condition 15:** The Commission did not provide any specific comments about this condition.
- **Condition 16:** The Commission did not provide any specific comments about this condition.
- **Condition 17:** The Commission did not provide any specific comments about this condition.
- **Condition 18:** Commissioner McClelland noted that the house on the site would be moved. She asked if the City would help find a new location for this structure. Mr. Stewart answered negatively. He said the Condition would encourage the developer to work with historic preservation organizations to seek to preserve the Weiman house either on or off site. The condition also includes a provision that the applicant at least offer the house at no cost for removal. He emphasized that the City would have no obligation to participate in this effort.
- **Condition 19.a:** The Commission did not provide any specific comments about this condition.

- **Condition 19.b:** Chair Harris inquired if this condition would require more than the current code. Mr. Stewart answered that this is consistent with the current code, so the condition would be ambiguous. However, he said staff does not have a problem including it as part of the conditions of approval.
- **Condition 19.c:** The Commission did not provide any specific comments about this condition.
- **Condition 19.d:** The Commission did not provide any specific comments about this condition.

Commissioner Hall said that in all of the testimony received at the public hearing, there was only one person who supported the adoption of the proposal as currently conditioned. Even the applicant, when questioned, said that he would not support approval of the rezone with the conditions that were in place at the time. Of those who expressed concern about the rezone, the primary theme was regarding the protection of Echo Lake. He said that, in his opinion, the staff proposed conditions that were introduced at the beginning of the public hearing process addressed the protection of Echo Lake in a very admirable way. The Commission also received substantial oral and written testimony encouraging the redevelopment of the site. He said he believes most of the ideas put forward in the agreement between the applicant and some of the individuals who filed the SEPA appeal are redundant with the conditions originally proposed by the staff and the applicant. In some cases, they contain language that is more ambiguous and inconsistent with the City's Development Code regulations. He particularly referred to **Conditions 8, 9 and 10**, and said he believes they are largely redundant with **Condition 4**. He noted that the statement in **Condition 10**, which requires 70-feet of lake shoreline to be used for the boardwalk to the beach and dock, is currently in conflict with the City's Critical Areas Ordinance.

In addition, Commissioner Hall suggested that **Conditions 16 and 17** be withdrawn since they are duplicative of **Conditions 6 and 7**. He said he believes that **Condition 17** is less helpful than **Condition 7**. Next, Commissioner Hall said he finds **Condition 11** to be overly restrictive and gets into a level of detail that is unnecessary. If the City already requires them to have a wetland biologist develop a habitat restoration plan, then that should be the end of it. It should be left up to the professional and the staff to determine the plan's adequacy. He said he believes that **Condition 19** contains a set of requirements that is far more appropriate at the building permit stage and should be introduced there, instead. He also suggested that since **Condition 15** would not be legally enforceable, it should be deleted, as well. He noted that all of the conditions he mentioned were added at a later date, and were not initially negotiated between the staff and the applicant.

Commissioner Hall also recommended that a new condition be added to require a public access easement from Aurora Avenue on the northern half of the frontage to the site of the proposed boardwalk.

Commissioner Kuboi said he would support the removal of conditions that actually present a conflict. However, he pointed out that the other conditions represent an agreement between the applicant and some of the members of the Echo Par Group, and it appears that staff does not have a problem including them as conditions. He suggested that they run the risk of making the parties of the private agreement

feel as though they were undermined by the Commission's process. This could result in a backlash that would make it more difficult for the City Council to approve the proposal. Unless there is a conflict or flaw in the proposed conditions, he would be in favor of leaving all of them in.

Chair Harris pointed out that the City does not necessarily have to take a stance on the points that are contained in the private agreement. The private parties could still be in agreement, as long as their views do not conflict with those of the City.

Commissioner Hall said he is sensitive to Commissioner Kuboi's concerns. However, there is testimony on the record from several people who are also members of the Echo Par Group who did not support the negotiated agreement between some members of the group and the private property owner. He noted that Dr. Paulsen, Tim Crawford and Pat Crawford are all on record as being opposed to the private agreement.

Commissioner Broili noted that **Condition 4.g** states that "the maximum impervious surface allowed on the site shall not exceed 90%" and this applies to both the commercial and residential portions. He said it is his belief, and scientific evidence and professionals would agree, that they can do far better than this by using low-impact design approaches such as vegetative roofs, water catchment systems, permeable hard surfaces, geotechnical solution such as bioswales, best soil management practices as stated in the State Stormwater Manual (Section DMPT.6.13), etc. All of these low-impact design approaches would help them get to far better than 90 percent impervious area.

Secondly, Commissioner Broili referred to **Condition 6**, which states that the City shall work with the developer to install on oversized stormwater system. He suggested that the City could reach an agreement with the developers to help them apply low-impact development approaches that would reduce impervious surface dramatically, and this would reduce stormwater run off.

Commissioner McClelland asked who would enforce the conditions in the private agreement. Mr. Stewart said that if the conditions were included in the contract rezone, the City would be required to enforce them. He noted that many of the conditions are not mandatory, but are effort-based. Commissioner McClelland asked if it would be possible to separate the conditions into those that are private and those that the City could and should enforce.

Commissioner Broili suggested that he would be in favor of eliminating some of the conditions, but only if they could achieve the other two goals he identified.

COMMISSIONER HALL MOVED THAT CONDITION 17 BE DELETED SINCE IT IS REDUNDANT WITH CONDITION 7. COMMISSIONER PHISUTHIKUL SECONDED THE MOTION.

Commissioner Hall suggested that if the motion is approved, **Condition 7** could be amended to add the term "low-impact development." Commissioner Broili agreed, but said he would rather remove the words "shall consider" from **Condition 7** and make it more mandatory.

THE MOTION CARRIED 4-2, WITH CHAIR HARRIS AND COMMISSIONER KUBOI VOTING IN OPPOSITION AND COMMISSIONERS MACCULLY AND SANDS ABSTAINING.

COMMISSION HALL MOVED TO AMEND CONDITION 7 TO READ, "GREEN BUILDINGS. THE DEVELOPERS SHALL CONSIDER PURSUING A LEED OR BUILTGREEN CERTIFICATE FOR THE BUILDINGS IN THIS PROJECT AND SHALL CONSIDER LOW-IMPACT DEVELOPMENT TECHNIQUES SUCH AS IMPERVIOUS CONCRETE, ETC. THE MOTION DIED FOR LACK OF A SECOND.

Commissioner Broili suggested that perhaps the reference to low-impact development should be placed in **Condition 4.g**.

COMMISSIONER BROILI MOVED TO AMEND CONDITION 7 TO READ, "THE DEVELOPERS SHALL CONSIDER PERSUING A LEED CERTIFICATE FOR BUILDINGS IN THIS PROJECT." COMMISSIONER PHISUTHIKUL SECONDED THE MOTION. THE MOTION CARRIED, 6-0, WITH COMMISSIONER SANDS AND MACCULLY ABSTAINING.

COMMISSIONER KUBOI MOVED TO AMEND CONDITIONS 12 AND 14 TO ADD THE WORD "EASEMENT" AFTER "PUBLIC ACCESS." COMMISSIONER PHISUTHIKUL SECONDED THE MOTION.

Mr. Stewart noted that the access required in **Conditions 12 and 14** could be perfected through either an easement or a dedication of an actual right-of-way. Commissioner Kuboi said he wants to make sure that these conditions assure that the public access requirement would run with the property. Mr. Stewart said "public access" is a commonly accepted condition or requirement. But how it is done, through either an easement or dedication, is an option for the developer to consider. Commissioner Kuboi recalled that at the public hearing, the applicant indicated that he did not plan to offer a dedication of sorts. Based on the applicant's comments to the Commission, it is not clear he agrees that public access means something in the form of a legal right. Mr. Stewart said staff would interpret **Conditions 12 and 14** as requiring public access from the Interurban Trail, through the buffer area and to the lake. They would not require access to Aurora Avenue or to other places.

Commissioner Kuboi said that none of the conditions speak to any sort of access right to the public access area. The applicant could build structures that facilitate people physically accessing the property, but that does not mean they would have the legal right to be there. He said he would like some assurance that the public would have a legal right to be in the area.

Commissioner Broili suggested that **Conditions 12 and 14** be combined into one succinct statement that connects Aurora Avenue and the Interurban Trail via a boardwalk. Commissioner Hall agreed with the intent of Commissioner Broili's suggestion. However, he proposed that rather than combining them they should keep the two conditions separate. To address Commissioner Kuboi's concerns he proposed an amendment to the motion that would add a sentence to **Conditions 12 and 14** and a new **Condition 20**.

COMMISSIONER HALL MOVED THAT THE MOTION BE AMENDED TO CHANGE CONDITIONS 12 AND 14 BY ADDING A SENTENCE TO EACH THAT READS, "THE PUBLIC ACCESS SHALL BE ENSURED THROUGH PERPETUITY THROUGH THE APPROPRIATE LEGAL DOCUMENT." COMMISSIONER KUBOI SECONDED THE AMENDMENT. THE AMENDED MOTION CARRIED 6-0, WITH COMMISSIONERS MACCULLY AND SANDS ABSTAINING.

COMMISSIONER HALL MOVED TO ADD A NEW CONDITION 20 THAT SAYS "THE DEVELOPERS WILL PROVIDE PUBLIC ACCESS FROM AURORA AVENUE ON THE NORTHERN HALF OF THE SITE TO THE BOARDWALK ALONG THE LAKE. THIS PUBLIC ACCESS SHALL BE ENSURED THROUGH PERPETUITY THROUGH THE APPROPRIATE LEGAL DOCUMENT." COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall pointed out that the proposed new **Condition 20** would provide a public access easement from Aurora Avenue to Echo Lake and would be separate from the one that would connect to the Interurban Trail. Commissioner Phisuthikul asked that the access described in **Condition 20** be required to continue to the Interurban Trail. Commissioner Hall suggested that would not be necessary. He used a drawing to illustrate that **Condition 12** would require a public access from the boardwalk to the lake, **Condition 14** would require a public access from the Interurban Trail to the boardwalk, and **Condition 20** would require an access from Aurora Avenue to the Interurban Trail. This would result in three separate access conditions.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER HALL MOVED THAT CONDITION 10 BE DELETED FROM THE CONTRACT. COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall said he does not dispute the value of **Condition 10**. However, the restoration and enhancement of the buffer area is dealt with in **Condition 4.h**. He acknowledged the he would rather have a wetland expert define the restoration plan. He said the public access has been provided for in **Condition 12**, and the statement relating to the beach and dock presumes something that is not in evidence as a condition. In addition, he questioned whether this would even be consistent with the City's Critical Areas Ordinance.

Commissioner Broili asked if **Condition 10** is the only place that the dock and beach are mentioned. Mr. Stewart answered affirmatively. Commissioner Broili noted that this is urban property, and a dock would be appropriate. However, he would be opposed to a beach because there is already a beach on the north end of the lake, and an additional beach could create unnecessary habitat disturbance. A dock, if done properly, could be a very nice addition to the opportunities that are present. He said he would vote against the motion as proposed.

Chair Harris agreed that the Critical Areas Ordinance does not have provisions for active recreation in buffer areas at this time. But an amendment has been proposed that the Commission could consider at a later date. He reminded the Commission that the applicant's goal is to allow a YMCA to locate on the subject property, and he believes the community would be incredibly disappointed in the Commission if they end up with a beautiful wetland with a hands-off approach. They have an opportunity to provide for active recreation, life saving classes for the YMCA children, canoeing, sail boating, etc. He pointed out that Green Lake is the most used park in the State. While the habitat is being impacted, they must balance the public's needs versus habitat needs. He said he would support more beach area if possible

THE MOTION WAS WITHDRAWN.

COMMISSIONER HALL MOVED THAT CONDITION 10 BE AMENDED BY REPLACING THE WORDS "BEACH AND DOCK" WITH THE WORD "LAKE."

Commissioner Hall suggested that the last sentence in **Condition 10** is simply a statement of intent. **Condition 10** speaks to a boardwalk without dictating at this time whether there will be a dock or not. Chair Harris noted that some of the City's strongest environmental advocates came up with the proposal.

Commissioner Hall drew an illustration to show that the reference to "70 feet of the lake shoreline" would be interpreted as a linear distance along the shoreline of the lake. The intent of his motion would not require that this be a sandy beach, but it does say that the developer would not have to restore it to its natural wetland conditions. He pointed out that 10 of the 70 feet would be intended for use as a boardwalk. Some form of public access would connect the boardwalk to the Interurban Trail and to Aurora Avenue.

Commissioner McClelland agreed with Chair Harris that there are excellent opportunities to provide for public access and use of the waterfront for recreational purposes. Commissioner Hall pointed out that the conditions, as proposed, would not require public access throughout the entire 70-foot area. According to **Condition 12**, the public access would be on the 10-foot strip that would be used for a boardwalk and not the entire 70 feet. Commissioner McClelland suggested that the residents of the 350 residential units would have expectations for amenities associated with the lake. Would people be able to run down the boardwalk and dive into the lake? Commissioner Hall said he is reasonably confident that the public could swim in any water in the state. But they cannot necessarily walk along any shoreline.

Commissioner Broili suggested that the motion be amended so that **Condition 10** would read as follows: "The developers will restore and enhance 70 feet of the lake shoreline, 10 feet of which will be used for a boardwalk and dock." He said he wants the end result to be a dock, with no beach. Commissioner Hall said he would not support Commissioner Broili's recommendation as a friendly amendment. He said he does not think they can require a dock as a permit condition when it is currently against the law in the City of Shoreline. Mr. Stewart said there might be some ability under the current regulations to construct a dock, but clearly a beach would not be allowed. Mr. Torpey said that residential property owners have been allowed to have docks under Section 20.80.030.K, which is an exemption to the

Critical Areas Ordinance that allows uses in buffers or their critical areas that are determined by the City to be minor.

Commissioner Broili said the intent of his amendment was to provide a boardwalk and dock, but no beach area. Chair Harris said he would like to make provisions for both a dock and a beach area, even though the current Critical Areas Ordinance would not allow it. Mr. Stewart said that if **Condition 10** were changed as proposed, the first sentence that requires the developer to restore and enhance all but a contiguous 70 feet of the lake shoreline would be mandatory. The second sentence is the intent to apply, and it would only be allowed or fulfilled if the Critical Areas Ordinance were amended.

THE MOTION CARRIED 4-2, WITH COMMISSIONERS BROILI AND MCCLELLAND VOTING IN OPPOSITION AND COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

Commissioner Kuboi referred to **Condition 4.a** and asked if the Commissioners are comfortable that there are enough protective measures to prevent a "big box" store (like the Target at Northgate) from being built on the subject property. Mr. Stewart reminded the Commission that the 182,000 square foot limit for commercial development would include both the north and south sites that are shown on the site plan. Commissioner Kuboi pointed out that if the YMCA is not located on the site, something akin to a low-impact "big box" store like Target could be built on the site without violating the conditions of the contract rezone. Mr. Stewart said this would depend upon the form of building that is proposed. Commissioner Kuboi expressed his concern that there could be significant deviation from the site plan, and the applicant would still remain within the terms of the contract rezone.

Commissioner Phisuthikul asked if it would be possible for the Commission to impose a condition that any proposal should include both commercial and residential development. Commissioner Kuboi said this would still not address his concern that they could end up with a large, massive structure along Aurora Avenue, which would be significantly different from the site plan the public used as a basis for picturing what would take place on the site. Commissioner McClelland agreed with Commissioner Kuboi that the site plan drawing is meaningless. If the only limitation is 182,000 square feet of commercial space and 350 housing units, the actual development could be quite different than what is identified on the site plan. She said the Commission must consider the significant impact development of this site could have on the people who live on the east side of the lake and look down on the subject property.

Commissioner Hall said he understands all of the various Commission concerns. He said he recognizes that the proposed contract conditions are not perfect, and he is not convinced they could be made perfect, either. The staff has a role in the discretionary process as part of their building permit review at a later date. He reminded the Commission that the applicant turned in his application in December of 2004, and he has been strung along by a lot of issues. The Commission has improved the conditions, and he is prepared to vote affirmative on the main motion to approve the contract rezone.

Commissioner Kuboi asked if it was discussed with the applicant whether or not the site plan would still be a workable setup for the commercial part of the development. Mr. Stewart said that in his letter of

March 28, 2005, the applicant indicated that he is okay with the way staff crafted the words in **Condition 4.a**, and staff believes that the language provides flexibility for some measure of change. They currently have a visual image of the massing and scale of the project, but they feel the developer should be allowed some flexibility to work with the market. The Commission's goal should be to ensure a high-quality development, and constraining the site too much could be detrimental to the end project.

COMMISSIONER BROILI MOVED TO AMEND CONDITION 4.g TO READ, "USING LOW IMPACT DESIGN PRACTICES SUCH AS VEGETATIVE ROOFS, A WATER CATCHMENT SYSTEM, PERMEABLE SURFACES, ETC., THE DEVELOPER SHALL CONSIDER WORKING WITH THE CITY TO NOT EXCEED 20% IMPERVIOUS SURFACE WITHIN THE COMMERCIAL PORTIONS OF THE SITE AND SHALL NOT EXCEED 20% OF THE RESIDENTIAL PORTION OF THE SITE. COMMISSIONER MCCLELLAND SECONDED THE MOTION FOR DISCUSSION PURPOSES.

Commissioner Broili said he believes this condition would be very achievable using all of the various techniques available. He said it is to the City's best interest to reduce runoff, and by working with the developer, they could achieve this goal. The end result would be a better building, less runoff, and a better project overall. He noted that these techniques have been demonstrated locally on many sites in Seattle. In some cases, it is actually less expensive to develop in this manner.

Commissioner McClelland pointed out that Commissioner Broili's recommendation would reduce the amount of impervious surface allowed on the site from 90 percent to 20 percent. She suggested that this would require the structures to be higher in order get the allowed 182,000 square feet of commercial space. Commissioner Broili disagreed. He said there are some who would say that it is possible to achieve zero percent impervious surface.

Commissioner Hall said he does not believe it is possible to achieve less than 20 percent total impervious surface. He said he would also be very hesitant, at this late date, to introduce a condition that is so different from what has been discussed over the past six months. He strongly agreed that it would be a great benefit to the City of Shoreline to have a significant low-impact development demonstration project, and many jurisdictions have created ordinances that provide incentives in order to achieve these objectives.

Chair Harris said he has a great deal of respect and confidence in Janet Way and her people, and he trusts her on environmental issues and their group did not propose a reduction in the impervious surface requirements. He said he would not support the proposed motion.

Commissioner McClelland asked if the 90 percent identified in **Condition 4.g** is an environmental consideration or a code consideration. Mr. Stewart answered that the current code allows for up to 90 percent impervious surface in both the regional business and the high-density residential areas. However, there are additional conditions that have to do with the cleaning and discharge of water and how it is treated when it comes off the impervious surfaces. He said the City's current Stormwater Manual regulates how the City manages the stormwater for both quantity and quality. It also regulates where the water is discharged.

Commissioner Broili said he chose a number that he is confident could be achieved, but he is also flexible. He said he would like to work for a better percentage than the 90 percent that is currently proposed, since this would be the maximum allowed. He suggested that if the City were to work with the developer, they could lower the amount of impervious surface dramatically. Chair Harris agreed with Commissioner Broili's point that the developer would have to mitigate the surface runoff, and there would be a real cost value to this effort. He suggested that the developer would explore the least costly options for accomplishing this requirement. If the lower impervious surface options were less costly, the developer would likely go that route as a cost saving measure. But he said he does not believe they need to make this a condition of the rezone.

Commissioner Phisuthikul said the low-impact techniques that Commissioner Broili referenced are included in the LEED Program Certification. These are options and avenues the design architects could use. He expressed his concern about reducing the amount of impervious surface allowed for this one specific project only.

Commissioner McClelland suggested that a better approach would be to offer incentives to developers who design projects with less than 90 percent impervious surface. Mr. Stewart pointed out that the City's definition of impervious surface in the development code is "any material that prevents absorption of stormwater into the ground." Under that definition, some of the green techniques that have been discussed would not qualify. Secondly, he pointed out that normally in a traditional development proposal, all of the buffer area would be counted as pervious surface. Under the current proposal, only the 15 feet would be counted. The gross amount of impervious surface would actually be less than 90 percent.

THE MOTION FAILED 1-5, WITH COMMISSIONER BROILI VOTING IN FAVOR, COMMISSIONERS PHISUTHIKUL, KUBOI, HALL, MCCLELLAND AND CHAIR HARRIS VOTING IN OPPOSITION, AND COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER KUBOI MOVED TO AMEND CONDITION 4.d BY REMOVING THE WORD "SURFACE." COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Kuboi pointed out that surface parking and parking open to the sky is not necessarily the same thing. Parking on the surface of the ground could be the first floor of a structured parking lot, and parking open to the sky could be the top floor. He does not see that the surface aspect is relevant.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER MCCLELLAND MOVED TO AMEND CONDITION 4.H TO CHANGE "AN APPROVED HABITAT RESTORATION PLAN" TO "FISH AND WILDLIFE HABITATION RESTORATION PLAN."

Commissioner McClelland said that when the Critical Areas Ordinance has been updated, it will refer to a Fish and Wildlife Habitat Restoration Plan, and this will become a term of art in the ordinance. Mr. Stewart said the Fish and Wildlife Habitat Conservation Area is a designated critical area that has regulations attached. The intent of **Condition 4.h** is to provide for a habitat restoration plan for fish and wildlife, but the Commission cannot speculate about what may or may not be approved in the Critical Areas Ordinance amendments. He said it would help if he could understand why the current language is not sufficient.

THE MOTION DIED FOR LACK OF A SECOND.

Commissioner Hall offered the following comments and requested that they be listed as part of the findings that are forwarded to the City Council:

- Many supporters of the proposal, including neighbors, community groups, environmental groups, and Forward Shoreline based their support, in part, on public access.
- The Comprehensive Plan policies identified in deliberations on the recommended land use designation change call for public access in this location, and these policies were already in place when the current owners purchased the property. That includes the Comprehensive Plan land use designation of the 50-foot strip of Public Open Space.
- The proposed site plan shows that there is room outside the building footprints to accommodate public access improvements that could be developed as discussed from the Interurban Trail and from Aurora Avenue. The public access conditions do not impose any additional burden on the developer.
- Public comments and letters, such as the very recent one from Pearl Noreen dated May 11th, suggest that the City Planners or the Planning Commission is somehow holding up the possible development of a YMCA. He referenced the Planning Director's statement reflected in the minutes of the April 14th meeting, "The YMCA would be permitted under current zoning. It is not dependent upon either a Comprehensive Plan change or a rezone."
- Some from the public indicated that it is difficult to do business in Shoreline. Rezones require public hearings, and it the duty of the City and the Planning Commission to conduct these public hearings. He was pleased at the number of people who participated. All of his comments and amendments are based on testimony he heard and letters he received that are on the public record.
- The State law allows for appeals, and in this case, the SEPA determination was appealed. This caused a delay in the process through no fault of the City or the Planning Commission. The City worked with the Hearing Examiner and all parties to agree to a process and schedule for the joint hearing of the Planning Commission and Hearing Examiner. The withdrawal of the SEPA appeal by some of the appellants and the attempt not to withdraw by others brought into question whether the SEPA appellants had a uniform, legitimate interest in environmental issues or if some of them were actually seeking to strike out against the City's contemplation of a City Hall, etc.
- He agrees with Dr. Paulsen's recent concern in her letter about the last minute changes to the conditions. This did a disservice to the community, the Planning Commission and the City.
- There were members of the public, including some of the SEPA appellants, who made remarks about it being inappropriate for the Commissioners to talk to City staff. Remarks were also made about the Commission's decision to impose time limits during the hearing. They received clarification on

these issues from the City Attorney. Time limits are a well-established and completely legal way of insuring that everyone in the community has an equal opportunity to participate in local land use decision-making processes rather than allowing outside interests to dominate the discussion and have undue effect on local land use decisions.

Mr. Stewart reread the main motion as follows:

COMMISSIONER HALL MOVED TO RECOMMEND APPROVAL OF THE REZONE APPLICATION FOR 201372 FROM R-48 AND REGIONAL BUSINESS TO REGIONAL BUSINESS WITH CONTRACT ZONE BASED ON THE FINDINGS PRESENTED IN ATTACHMENT E OF THE STAFF REPORT AND WITH THE PROPOSED CONDITIONS OF THE REZONE PRESENTED IN ATTACHMENT A AS AMENDED. COMMISSIONER BROILI SECONDED THE MOTION.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

b. Critical Areas Ordinance Deliberations

There was not sufficient time for the Commission to deliberate on the Critical Areas Ordinance.

11. NEW BUSINESS

There was no new business scheduled on the agenda.

12. AGENDA FOR NEXT MEETING

Mr. Stewart noted that there have been some requests to schedule a discussion on the “sidewalk in lieu of program” on an agenda in the near future. While staff is prepared to discuss this issue with the Commission, they feel the code enforcement update and the Critical Areas Ordinance review should be completed first.

Chair Harris noted that Cottage Housing and the Critical Areas Ordinance are scheduled on the June 2nd meeting agenda.