



MINUTES

PLANNING POLICY COMMISSION SPECIAL JOINT MEETING 6:30 p.m. - Thursday, January 19, 2023

1. Call to Order

The hybrid meeting was called to order at 6:54 p.m. by CHAIR VOISS.

CHAIR VOISS stated that there would be no video feed due to technical issues; the video feed was restored simultaneously, however. The Public Hearing is the first of three to be held.

Commissioners Present: Chair Voiss, Vice Chair Bader, Commissioners Altimore, Esemuede, Kennedy, Lewis, Milligan, and Patterson

Absence: None

Staff Present: Minnie Dhaliwal, Director, CP&D
Christian Geitz, Planning Manager
Stephen Padua, Long Range Planning Manager
Rachel Turpin, City Attorney

2. Public Comments (General)

Padua stated that there were no requests to make General Comments.

3. Public Hearing (00:04)

- a) Title 18 Final Draft (Parts 1-4: General Provisions, Procedures, Subdivisions, Zoning) and Shoreline Master Program, (D)

Public Hearing Order:

- Opening Public Hearing
- Staff Presentation
- Clarifying Questions from Commission and Department of Ecology
- Public Comment
- Close Public Hearing
- Commission Deliberation

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Presented by:

Minnie Dhaliwal, Director, CP&D

Dhaliwal stated that the Department of Ecology representative would not be able to attend the next Public Hearing regarding the Shoreline Master Program (SMP) but was present at this meeting. Dhaliwal presented the Title 18 Final Draft, Parts 1-4.

CHAIR VOISS asked for Clarifying Questions at this point. (00:22)

COMMISSIONER MILLIGAN asked for clarification regarding Unit Lot Subdivisions. Dhaliwal explained the term. COMMISSIONER MILLIGAN asked for clarification regarding a Parent Lot and Dhaliwal explained the term. COMMISSIONER MILLIGAN asked for clarification regarding subdividing and density and Dhaliwal explained the situation.

CHAIR VOISS asked that Commissioners be introduced prior to speaking for clarity in the recording and Minutes.

COMMISSIONER MILLIGAN asked for clarification regarding the chapter heading, *Zero Lot Line*, with the inclusion of setbacks. Dhaliwal explained why plats were pertinent. COMMISSIONER MILLIGAN asked for clarification regarding how a setback on exterior perimeters of a plat is handled when another property is involved. Dhaliwal replied that all fire code regulations would have to be met.

COMMISSIONER LEWIS asked if there is an overlay to show eligible plats in the city. Dhaliwal replied Highlands, Talus, Central and any property zoned single-family small lot. COMMISSIONER LEWIS asked how the planning tool can be fine-tuned. Dhaliwal displayed a zone map. COMMISSIONER LEWIS asked if there is a more specific tool, and Dhaliwal replied that the administration does feel the plan is the correct tool.

CHAIR VOISS asked what the city does with reports after an applicant backs out of a project. Dhaliwal replied soil reports are of value because geology does not change over a long period of time. Any information that comes to the city as Public Record is held to a retention schedule based on guidance from the State. Turpin replied a belief that reports from projects that have not come to fruition would be a lower retention priority, but with some level of retention, and that retention schedules would be examined. CHAIR VOISS asked how much of the city is going to be affected by non-conforming uses due to the older buildings in the city. Dhaliwal replied that uses have not changed with the code update. The only change is in the Critical Aquifer Recharge Area, the addition of a prohibited uses list. CHAIR VOISS asked for clarification regarding older buildings and new additions, and Dhaliwal replied that none of those thresholds have changed.

COMMISSIONER LEWIS stated that larger structural changes to definitions have not been discussed, and asked when the time will be for the Planning Policy Commission to examine. Dhaliwal replied that definitions have been cleaned up, and regulations are not a part of definitions, important from a legal perspective. Geitz replied that definitions could be

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discussed. COMMISSIONER LEWIS asked if definitions should be discussed at this meeting with Section One, or discussed as encountered in applicable parts of code, in example, Hazard Trees. Dhaliwal replied that staff is prepared to answer any questions regarding definitions at this meeting if the Commission wishes.

CHAIR VOISS asked how much Public Comment has been related to definitions. Dhaliwal replied that there may not be time at this meeting to address definitions in depth, and that another option would be email. CHAIR VOISS stated that there will be three Public Hearings with policy driven discussion, and that the definitions in question can be addressed during discussion of a particular subject, but a blanket discussion of definitions should be emailed to staff. If there are still problematic definitions after the third Public Hearing, a discussion can be held at that time. CHAIR VOISS thanked staff for providing three Public Hearing meetings.

COMMISSIONER LEWIS stated that the definitions of Trees and Open Space need to be further addressed, and asked if deviations can be limited to a certain number of choices. Dhaliwal replied that deviations are being limited, but the number of deviations should not be more important than a legitimate reason for a deviation. COMMISSIONER LEWIS stated having concerns regarding number nine, Forested Hillside Preservation, and favoring striking number nine. COMMISSIONER LEWIS asked for clarification regarding page 83 of code, section 18.202.080 Deviations from Standards. COMMISSIONER MILLIGAN also asked for clarification regarding why certain deviations are being allowed. Dhaliwal replied that there is a balancing act of flexibility and predictability when a better outcome for all can be achieved. Forested Hillside Preservation deviations were explained. COMMISSIONER LEWIS asked about the roll for the public in deviations, now entirely up to the Director. Dhaliwal replied that the Level Two deviations require Public Notice, but not a Public Hearing as not a Variance. COMMISSIONER LEWIS asked if a tracking mechanism could be helpful for public awareness to understand when deviations occur, and Dhaliwal replied yes, a report for transparency can be created from the permitting system. COMMISSIONER LEWIS stated that there are deviations listed that have been rejected in prior discussions.

COMMISSIONER PATTERSON asked, regarding Approval Criteria Two, Site-Specific Rezones, for clarification regarding how *public benefit, health, safety, and welfare* are evaluated. Turpin replied that the criteria is broad and vague, difficult in practicality. COMMISSIONER PATTERSON stated that many criteria are either met or not met, but that the mentioned criteria is broad from a legal lens. Criteria should be more clearly defined from a legal perspective. Turpin replied that policy direction on the definition of the term would be helpful, in benefit or detriment.

COMMISSIONER MILLIGAN asked if there is an assumption of the operating hours of a Hearing Examiner for Public Hearings. Dhaliwal replied that a contract with a Hearing Examiner can stipulate that general Land Use applications and decisions be conducted at evening meetings.

CHAIR VOISS asked for the relevance of page 124 of 946, 18.216.030, Section C, Site-Specific Rezones. Dhaliwal replied that the Section has been flagged for discussion.

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CHAIR VOISS opened Public Comments. (00:57)

- Kyler Danielson, Lakeside Industries, stated that a letter was submitted today. In summary, there are extensive process changes that need to be addressed in the public sphere. Definitions have not been discussed. Lakeside would like to be able to improve and change with environmental improvements and advancements in technology, and becoming a non-conforming use can make this very difficult or impossible.
- Hussein Khorram, Eastside Developer, stated being in support of vesting Building Permit submittals for projects started prior to recent code changes. A decision to investing in Issaquah again in the future will consider predictability in the process to lessen risk.
- Brook Lang stated that many cities hold a maximum standard of 1,200 square feet for an Accessory Dwelling Unit (ADU), while Issaquah is currently at 1,000 square feet. The goal of raising the maximum is to allow people stay on their property as they age. Lang explained various ratios and lot sizes by square feet.
- Connie Marsh, Squak Mountain, stated that Technical Review is Level One with no public notice, community meeting, or review of environmental impacts. Not all reviews will need a community meeting, but a discussion regarding what reviews should be needed. Percentages need clarification. Forested Hillside impacts need step criteria. A conversation is needed regarding Non-Conforming Use thresholds.

CHAIR VOISS closed the Public Hearing.

Dhaliwal stated questions regarding the SMP could be directed to the Department of Ecology representative present.

CHAIR VOISS reopened the Public Hearing. (01:18)

Dhaliwal described changes to the SMP.

CHAIR VOISS opened Clarifying Questions to the Commissioners. CHAIR VOISS stated that the SMP was not on the agenda for the meeting for preparation. Any questions or comments regarding the SMP can be submitted to staff during the next three weeks while the Public Hearing will remain open. The Department of Ecology representative was only available for this meeting.

COMMISSIONER LEWIS stated that the Ordinary High-Water Mark is not as fixed as in the past due to changes in precipitation and glacial melt and asked for clarification regarding current defaults. Rebkah Padgett with the State Department of Ecology, Shoreline Planner, replied that the Ordinary High-Water Mark is not a static line but determined on a case by case basis.

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Geitz replied that the Mark shifts in Summer and Winter to accommodate rains. Streams and wetlands use a Scour Mark and lakes use stains on rocks or pier pilings as water drops end of summer. Lake Washington is 21.8' and Lake Sammamish is 31.4'. The known points are set by the Army Corp of Engineers. COMMISSIONER LEWIS asked if there is an annual review, and Geitz described various factors to maintain fish passages are clear. COMMISSIONER LEWIS asked what entity is monitoring the increase in volume and flow, and Geitz replied the Army Corp of Engineers. COMMISSIONER LEWIS stated that if the 100-year flood mark is being used, there have been several 100-year level floods in the last 20 years and asked if the 500-year flood mark could be used as another measure. Geitz replied that flood plain levels can fluctuate, a larger conversation for the King County Flood District. Dhaliwal replied that lake High-Water Marks are set, but if there is a development proposal on a stream, a surveyor will determine the Mark in the field.

COMMISSIONER ESEMUUDE asked if there have been discussions regarding remapping flood plains. Dhaliwal replied that flood plains are handled by a wing of the Department of Ecology and FEMA maps. Property owners receive rebates for Flood Insurance.

CHAIR VOISS opened Public Comments regarding the SMP. (01:30)

- Connie Marsh, Squak Mountain, stated there is a clear connection to Critical Area Code within the SMP. The code below should be clearly linked to avoid confusion. The Army Corp and Department of Ecology Mitigation Banks hinder the ability of Issaquah to improve this specific area through mitigation. There may be a better way such as the creation of an Issaquah Mitigation Bank to keep improvements here.

CHAIR VOISS stated that the public will continue to be able to comment on the SMP during the Public Hearings on Title 18. There will not be a second presentation, however. The Public Hearing was closed.

CHAIR VOISS opened Commissioner Deliberation on Policy Questions beginning with Number One. (01:35)

COMMISSIONER LEWIS asked for clarification regarding RCW 36.70.B120, Consolidation and Permits. Dhaliwal replied that a pre-application community meeting is informational and not a Public Hearing, and also before any design phase. Once an application is in, further actions can occur. Consolidation is moving all to the highest level for Hearing purposes, but in the case of a Quasi-Judicial rezone, there is a Public Hearing and then a decision is made. Staff recommendation is that a Hearing Examiner collects all testimony and makes a decision based on criteria, preparing the record for Council to make a decision. Turpin replied that the statute is confusing but does say that only one Hearing can be held.

COMMISSIONER ALTIMORE stated that a previous experience with a Hearing Examiner had been beneficial and impartial, set on criteria with the public included. COMMISSIONER ALTIMORE stated being in favor of the recommendation.

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COMMISSIONER MILLIGAN stated agreement with COMMISSIONER ALTIMORE with the caveat that collection of Public Comment is very technical. A list of Public Hearings should be assembled. COMMISSIONER MILLIGAN stated being in favor of the recommendation with the caveat mentioned.

COMMISSIONER LEWIS stated being in support of having the Public Hearing with the Hearing Examiner and using the Boards and Commissions to the purposes that they exist, but also the idea of the Planning Policy Commission being able to submit advice to Council as well for Site-Specific Rezones. Turpin replied that for site-specific rezones, the objective should be that people do or do not meet the criteria and not for advice. Criteria should be created that policy makers are comfortable with, with a trained professional who can apply the criteria in a bias-free manner. Comment can still be given, but Quasi-Judicial matters are not policy decisions and rather specifically legal issues.

COMMISSIONER KENNEDY stated support for the Hearing Examiner recommendation. Community experience is highly valued. A person is not empaneled on a jury if the litigants or counsel are known and the person will not be impartial. Some decisions do require that an objective decision be made.

CHAIR VOISS stated having recused from a previous discussion due to having a personal interest. The Planning Policy Commission is to create a policy and pass to a disinterested third party. CHAIR VOISS stated agreement that the Hearing Examiner is the most appropriate way to move forward.

VICE-CHAIR BADER stated support of the Hearing Examiner recommendation.

Dhaliwal asked for a non-binding vote. The vote was unanimous for the Hearing Examiner recommendation.

Dhaliwal continued to Policy Question Two. (01:50)

COMMISSIONER ALTIMORE asked if other criteria cover enough if there were a detrimental impact rather than benefit. Dhaliwal explained other criteria that could be added such as traffic. COMMISSIONER ALTIMORE asked if there is still a missing piece regarding Health & Safety.

COMMISSIONER ESEMUEDE stated that the portion regarding public safety and public health could be re-written to provide more measurability.

COMMISSIONER MILLIGAN stated that Public Health & Safety is not problematic other than not being measurable. The other eight criteria create the burden. COMMISSIONER MILLIGAN stated agreement with COMMISSIONER ALTIMORE regarding mentioning detrimental effects. COMMISSIONER MILLIGAN thanked staff and the public for valuable work and comments. Regarding 2B, language still is confusing regarding targets, and that an edit could be applied such as that housing growth targets must be on track at the time of application. Inn

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number four, the word *reasonable* is not specific or measurable, and number six, the term *immediate vicinity* is vague. Number nine could amplify an earlier public comment regarding upholding standards and mitigation.

COMMISSIONER LEWIS stated that question two needs to be worked on but that the correct intent is there. Another wording option would be appreciated.

CHAIR VOISS stated agreement with COMMISSIONERS MILLIGAN AND LEWIS. CHAIR VOISS stated that the word *detrimental* was not defined. Traffic should be a part of number six, part of the criteria for a Site-Specific Rezone. Targets need a tracking system.

Dhaliwal stated that in summary, number one needs to either be reversed or concerns addressed; number two, targets should be on track if not met. For number six, a definition of *detrimental* and *immediate vicinity* is needed, number nine should be reworded, and lastly a criteria to address traffic is needed. COMMISSIONER MILLIGAN asked again that in number four, a definition for the word *reasonable* be addressed.

COMMISSIONER ALTIMORE asked if there is an example where an environmental impact would be allowed, number nine, whether or not the impact could be mitigated. Dhaliwal replied generally not. COMMISSIONER ALTIMORE asked if the issue should be struck and Dhaliwal replied that the mitigation portion could be left out, and that there cannot be an adverse environmental impact because of a rezone. A rezone usually is not the proposal of a project but regarding use. Allowed uses, density, and form and intensity come into play. COMMISSIONER MILLIGAN asked if number nine needs to be included at all. Dhaliwal replied that any development must comply with environmental regulations. CHAIR VOISS stated a desire to keep number nine as the word *environment* is broad and site rezones should not be made impossible. COMMISSIONER ESEMUEDE stated that an adverse environmental impact must be mitigated, the essence of number nine. VICE-CHAIR BADER stated agreement with CHAIR VOISS and COMMISSIONER ESEMUEDE to keep number nine specifying mitigation.

COMMISSIONER PATTERSON suggested a test run of how a Hearing Examiner would analyze an application with the criteria, more of a legal lens on a real world application, assuming the Hearing Examiner process is adopted.

COMMISSIONER ESEMUEDE asked who would ascertain that the Hearing Examiner has successfully examined what the public has brought forward. Dhaliwal replied that city staff would make a recommendation to the Hearing Examiner and prepare a staff report. The Hearing Examiner would collect public testimony and prepare findings and produce a report that is appealable for city Council. The result is written findings in how the proposal meets criteria. COMMISSIONER ESEMUEDE asked for clarification that the report of the Hearing Examiner would go directly to Council or if staff would review first. Dhaliwal replied that the report would not be changed by staff.

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CHAIR VOISS stated that the Commissioners were unanimously comfortable with edits for number one through eight. Regarding number nine, Commissioners were generally comfortable with as-is and possibly defining mitigation more.

Dhaliwal continued to Policy Question Three. (02:07)

COMMISSIONER MILLIGAN stated needing to do more research regarding limits in Issaquah Municipal Code (IMC) chapters referenced for potential deviations. Letter D language does not express a measurable or convincing reason to deviate from standards.

COMMISSIONER LEWIS stated wanting to limit the number of deviations, allowing two choices in example.

VICE-CHAIR BADER asked if, in section A, part two and D2, *environmental impacts* should be included in both sections. Dhaliwal replied that edits can be investigated.

COMMISSIONER MILLIGAN stated agreement with VICE-CHAIR BADER.

CHAIR VOISS stated that deviations are necessary to projects particularly due to building costs, and sites are unique. A narrower list is helpful but only be able to choose two may not be necessary.

VICE-CHAIR BADER stated that deviations are small changes and supporting the list as-is.

CHAIR VOISS asked Commissioners to comment on remaining issues. (02:14)

COMMISSIONER ESEMUEDE asked for clarification regarding why a percentage and not acreage was used for a threshold change for a Public Hearing. Dhaliwal replied that a percentage is relative to what was already approved. Master Site Plans (MSP) are usually larger projects.

COMMISSIONERS KENNEDY, PATTERSON AND ALTIMORE had no further questions at this time.

COMMISSIONER MILLIGAN stated that regarding Policy Question Four (02:16), Public Utility Exemption, Public Notice is important. To address Public Comments, vesting is a legal minefield and another entity may need to make decisions. Regarding ADUs, a larger size when there is a larger than minimum lot size is creative and interesting. An Accessory Unit may not warrant going over 1,000 feet, however.

COMMISSIONER LEWIS asked Dhaliwal to show possible Public Utility policies. Dhaliwal replied that the change is carryover from existing code with criteria added. CHAIR VOISS asked for clarification that previous code has been tightened and Dhaliwal replied yes. CHAIR VOISS asked Commissioners if the code as written is acceptable with a discussion regarding levels to follow. COMMISSIONER LEWIS stated advocating for more Public Notice and more

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transparency. Through public intervention, utilities have been directed to redesign and achieve outcomes differently to the value of the community, and COMMISSIONER LEWIS state support for Level Two. Public Utilities are necessary but require as much Public Notice as other projects. COMMISSIONER ESEMUDE stated that even if there is no alternative for a public agency, Level Two would be warranted due to effects to Issaquah residents. VICE-CHAIR BADER asked if there is another place where Public Notice would currently happen for an emergency fix. Dhaliwal replied that the policy is not for emergency repairs but for new projects. CHAIR VOISS asked if public utilities are eminent domain and Turpin replied that most utilities do have the power of eminent domain. A property can be condemned if necessary but the Utility still must abide by Critical Areas Code. CHAIR VOISS stated that in a Level Two review, SEPA would still be an obligation. Turpin replied that Level Two would change the level of Notice but not what actions would be required on the part of the Public Utility. There would still be notice of other aspects of the project, in example, other permits applied for requiring higher review. If a utility exemption is only Level One, in practicality people would still receive Notice through the Capital Improvements Projects list. Geitz replied with further explanation. Turpin replied that if people are to receive a specific notice of an exemption, Level Two should be chosen. CHAIR VOISS asked what additional burden will be put onto staff. Dhaliwal replied that staff resources are always necessary and Public Notice takes time for printing and mailing, in example, but would not be used that often, only when necessary. COMMISSIONER LEWIS stated that message boards, a double notification, would also be triggered by Level Two. CHAIR VOISS asked for a non-binding vote, Level One, or Level Two. The result was unanimous hands raised for Level Two.

Dhaliwal stated that Level One can address simple issues with Public Notice not required, and Level Two can address all other issues.

COMMISSIONER MILLIGAN asked for further clarification. Dhaliwal replied with the process for a hypothetical situation. CHAIR VOISS asked for clarification that technical documents reviewed in Level One will help a builder understand if a project is feasible.

COMMISSIONER MILLIGAN stated that criteria or means to make an accurate determination, in example to be able to evaluate a geotechnical report, is needed. Technical review could be done as Level One.

COMMISSIONER ESEMUDE asked for clarification regarding the technical review process. Dhaliwal replied that public comments are information from the community that will not be utilized, such as area history, with no early Public Notice. SEPA and other tools will trigger Public Notice, however. COMMISSIONER ESEMUDE asked for clarification that once a feasibility study is done, the developer would come to this forum to present the project to move forward, and Commissioners could then ask for and receive more informed information based on the technical review. Dhaliwal replied that staff prepares reports with a 90% design plan. COMMISSIONER ESEMUDE asked for clarification that Level Two would give notice of intent. Dhaliwal replied that the Development Commission is not involved with Level Two, but the community would receive notices and a website posting. Geitz replied that Level One could determine limits for residential building, while a large commercial zone site would

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require Development Commission involvement and warrant Public Notice. COMMISSIONER ESEMUUDE stated agreement. Geitz replied that the levels would provide predictability to all builders. COMMISSIONER ESEMUUDE asked if studies would be done by developers, and Geitz replied that studies would need to be conducted by a qualified professional and peer reviewed, resulting in a clean recommendation. COMMISSIONER ESEMUUDE asked if a developer could bring on a consultant outside of the process and Geitz replied yes.

CHAIR VOISS stated that the levels would provide limits without triggering Public Notices, and stated support for Level One technical reports.

COMMISSIONER MILLIGAN stated support for Level One if strong qualifications are provided for a *stormwater professional* in Definitions.

CHAIR VOISS asked for a vote for Level One review for technical documents. CHAIR VOISS stated that there was one Nay and the remainder Yays, for a majority approval.

Dhaliwal continued to Policy Question Five. (02:40)

COMMISSIONER LEWIS asked if a site could vary what ten percent will be and suggested a threshold depending on square feet rather than a percentage. Dhaliwal replied by reading from amendments to Site Development Permits. COMMISSIONER LEWIS asked for clarification that ten percent figures are not subject to a sliding scale of the site, and Dhaliwal replied no, only on what has been approved.

COMMISSIONER MILLIGAN asked for clarification that the amendment must still follow code, not an exception. Dhaliwal replied yes, only the process to approve.

CHAIR VOISS stated that ten percent is to scale.

COMMISSIONER ESEMUUDE stated that the threshold relates to an MSP and not to later stage design. Dhaliwal stated that language can be added to clarify.

COMMISSIONER LEWIS stated that clarifying language would be helpful. CHAIR VOISS stated agreement.

Dhaliwal continued with Policy Question Seven. (02:47)

There were no comments from the Commissioners.

Dhaliwal finished the presentation with Policy Question Eight. (02:49)

COMMISSIONER LEWIS asked for clarification regarding the County determining assessed values. Dhaliwal replied that the alternative is to hire an Assessor giving market value assessments, but that are situations when an alternate process is needed.

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COMMISSIONER ESEMUDE asked for clarification that interior remodeling is within walls and not structural. Dhaliwal replied that a threshold could be split and gave examples.

COMMISSIONER ALTIMORE asked for clarification that same footprint and only interior is being discussed for site development only. Dhaliwal replied correct, and that small exterior changes may be involved needing clarification. Interior remodels would not require a site development permit, but a threshold can be developed for exterior remodels.

COMMISSIONER LEWIS stated that examples and options will be helpful to the Commissioners from staff.

CHAIR VOISS asked for a non-binding vote for staff regarding not requiring a site development permit for interior remodels that do not affect a building footprint. Commissioners provided unanimous hands raised for not requiring a site development permit for interior remodels that do not affect a building footprint. CHAIR VOISS asked staff for further options regarding exterior remodels.

4. Reports (02:56)
 a) **Council Update**

Dhaliwal stated that there were no updates.

5 Other Business/Announcements (02:56)
 a) **Upcoming Schedule**

There were no announcements.

6. Adjournment

With no further business to conduct, CHAIR VOISS adjourned the meeting at 9:50 p.m.

Respectfully submitted,

Carolyn Garza, LLC
 Recording Secretary