

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
MEETING MINUTES

October 9, 2013  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Tebelius, Commissioners Ferris, Hamlin, Hilhorst, Laing

COMMISSIONERS ABSENT: Commissioner Carlson

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland, Mike Bergstrom, Department of Development Services

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:40 p.m. by Chair Tebelius who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Carlson who was excused.

3. PUBLIC COMMENT

Mr. Charlie Klinge, 10900 NE 8th Street, spoke representing the Washington Sensible Shorelines Association (WSSA). He noted that the Council in July expressed a number of concerns about how long it has taken to produce the Shoreline Master Program; WSSA shares that concern and hopes the Commission will do everything it can to move it forward. The Council voted to take a number of actions, including sending the conformance amendments piece to the Commission, asking The Watershed Company to complete the cumulative impact analysis, and directing staff to open discussions with the Department of Ecology about their concerns. With regard to the flood hazard rules, he said the issue lies with Lake Sammamish. A map of the shoreline was shown to the Commission with the 200-foot shoreline jurisdiction and floodplain areas color coded. It was noted that the floodplain line passes through a number of homes. The floodplain line is based on a 1954 high water mark that occurred prior to the construction of the Sammamish Slough, but nevertheless it continues to be what is used by the Corps of Engineers. Staff interprets the current critical areas rules as prohibiting any construction within the floodplain. The floodplain rules preempt the 25-foot and 50-foot rules the Commission put into the Shoreline Master Program and will prove to be very confusing for many. Prohibiting construction in the floodplain is inconsistent with what other cities are doing and with what FEMA allows, so the rule needs to be changed. Additionally, the proper flood elevation is 36.1, not 36.5 as previously interpreted. FEMA and other jurisdictions allow normal flood mitigation that requires the floor elevation of homes to be one foot above the flood line. Additionally,

compensatory flood storage must be created, which means if a structure takes up an area the flood would normally take, an adjacent area must be dug out to compensate. The locks provide lake level control on Lake Washington so the issue does not come into play. The review done by the Department of Ecology on Bellevue's Shoreline Master Program was premature; normally they conduct their review after a document has been formally submitted. Bellevue staff are, however, working with the Department of Ecology on some minor corrections. The Department of Ecology will conduct its substantial review after the cumulative impacts analysis is completed and that will result in both required and recommended changes. WSSA wants to make sure The Watershed Company has all of the background information relied on by the Commission when it undertakes the task of producing the cumulative impacts analysis. The Department of Ecology will ultimately improve Bellevue's Shoreline Master Program just as it did for Mercer Island and other jurisdictions. WSSA believes Bellevue's Shoreline Master Program is a solid plan that will be approved by the Department of Ecology with only a few tweaks.

Commissioner Ferris observed that early in the Shoreline Master Program process the Commission took testimony from Dallas Evans regarding the floodplain issue. Mr. Evans was wanting to do some work on his property. He was able to go to the proper jurisdiction and have them go out and take elevations, and after completing their work they moved the floodplain line much closer to the shoreline, allowing Mr. Evans to do what he wanted to do. The same approach could be undertaken by individual property owners or groups of property owners. That vehicle should be made a part of Bellevue's Shoreline Master Program. Mr. Klinge said the problem is properties are flagged by FEMA as being in the floodplain somewhere. A survey is required to get the exact line marked, then a map amendment is required to show the line does not impact a house. The solution works only for some properties, however. Even with changes made to the line, a tiny lot may not have enough land on which to construct a building. FEMA allows for mitigation, but city rules do not. Commissioner Ferris commented that all taxpayers in Bellevue should not be on the hook to pay for a survey that will only benefit waterfront property owners; that responsibility should rest with the waterfront property owners. Mr. Klinge said the issue is about what regulations apply in the floodplain; it is not about surveying and getting the line changed.

Commissioner Laing said it was his understanding that FEMA has recently been updating its flood maps. He asked how the agency's current map for Lake Sammamish continues to be based on a 1954 line. Mr. Klinge said that question was put to FEMA with Bellevue city staff present. FEMA stated that they were undertaking remapping efforts in Redmond but had no intention of remapping Lake Sammamish due to the costs and would therefore be leaving the line where it is. Since the line is not going to be changed, the issue is what regulations apply below the line.

Commissioner Laing commented that the city of Bothell recently used taxpayer dollars to initiate a letter of map revision for huge swaths of property the city knew were not within the flood elevation based on current conditions. Bellevue could probably work with the shoreline property owners to effect a similar result. Mr. Klinge stressed that a letter of map revision will not result in a change to the established flood elevation of 36.1; it will only revise where the line lands on individual properties.

Commissioner Laing asked if The Watershed Company will be provided with all of the materials utilized by the Commission in drafting the Shoreline Master Program. Land Use Director Carol Helland said staff are in the process of providing The Watershed Company with all of that information, including all of the maps.

Chair Tebelius asked if staff could provide the Commission with a complete list of all information provided to The Watershed Company. Ms. Helland said she would do that.

Chair Tebelius asked Mr. Klinge what specific changes he would like to see made to the Shoreline Master Program. He responded by saying the staff are well aware of the fact that the problem lies in the use chart. The use chart does not say constructing new homes or expanding existing homes is allowed in the flood hazard area so the staff have interpreted the chart to mean neither is allowed. The critical area rules include flood hazard rules, but they also apply to the shoreline so there needs to be some consistency with the intentions for the Shoreline Master Program. The issue can be addressed as part of the conformance amendments.

Ms. Joanna Buehler, address not given, spoke representing Save Lake Sammamish, an organization that was founded in 1989 to protect the water quality and environmental values of Lake Sammamish. She said she has been following the Shoreline Master Program review from a distance. The organization does not believe the draft Shoreline Master Program forwarded to the Council will protect the water quality of the lake to the degree required by the Shoreline Management Act. The organization also believes it is premature to go ahead with the conformance amendments before the draft Shoreline Master Program is adopted by the Council.

Chair Tebelius clarified that the Commission had been directed by the Council to begin work on the conformance amendments. Ms. Buehler said she was aware of that fact but believed it was the wrong way around.

Chair Tebelius asked what specifically should have been included in the Shoreline Master Program to better protect water quality. Ms. Buehler said she was particularly concerned about the lack of buffers and vegetative requirements and lack of protections for fish habitat. By allowing bulkheads along the shoreline the result is erosion close to the shoreline, which in turn kicks more phosphorous into the water. She said Save Lake Sammamish has other concerns as well.

Commissioner Laing asked if Save Lake Sammamish offered comments regarding the Redmond, Sammamish and Issaquah shoreline management plans. Ms. Buehler said the organization actively participated in both the Sammamish and the Issaquah programs and made comments, but not in Redmond. The Sammamish program is also lacking in buffers and vegetation requirements, and has no minimum impervious surface requirement for small lots. Where 80 percent lot coverage is allowed close to the lake, a lot of pollution will wash directly into the lake. The issue of compensatory storage, while on the books, has not been well enforced; for every house built without compensatory storage within the floodplain pushes runoff onto neighboring properties. Save Lake Sammamish supports the notion of allowing if not requiring compensatory storage. Beyond that, the amount of construction on very small lots should be limited.

#### 4. APPROVAL OF AGENDA

A motion to approve the agenda was made by Commissioner Ferris. The motion was seconded by Commissioner Hamlin and it carried unanimously.

While waiting for Deputy Mayor Robertson, there was agreement to delay agenda item 5 and move ahead with agenda item 7.

## 6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reminded the Commissioners about the annual retreat scheduled for October 30.

## 7. STUDY SESSION

### A. Shoreline Master Program Conformance Amendments

Ms. Helland allowed that much has been accomplished in 2013 on the Shoreline Master Program update. In January the Commission finalized its recommendation after investing in making some changes relative to the greenscape provisions. Between February and April quite a lot of work was done on the substantial transmittal memo prepared for the Council's consideration, particularly with regard to the analysis it contained about the approach the Commission had taken to update the Shoreline Master Program and meet the objectives. The document was transmitted to the Council in early May but it was July before the Council began its review. In the interim the Department of Ecology surprised the city with an unsolicited review of the Commission's recommended Shoreline Master Program. The Council was updated in July with regard to scheduling issues. City staff met with Department of Ecology staff in August and again in September. Following the September meeting staff met with Commissioners Laing and Hamlin; Chair Tebelius joined the meeting by telephone. The schedule going forward includes the Commission working on the conformance amendments through the end of the year.

Continuing, Ms. Helland said the Council in July outlined its desire to share information broadly, to move forward expeditiously, and to limit the amount of rework and work duplication. They also directed staff to engage with Department of Ecology staff in an attempt to educate and reform them but not to negotiate with them. The Council also directed the Commission to move forward with completing the balance of the code amendments. The support of a consultant will be tapped where necessary to evaluate risk from the perspective of whether or not the Department of Ecology will approve the city's plan, and from a property rights perspective and the city's risk associated with imposing new regulations on private property owners. The cumulative impacts will be analyzed as required. All effort will be put into having the strongest submittal package possible to ensure passage. The Council holds for itself facilitating the policy level decision making, including adoption of the Shoreline Master Program and the conformance amendments; steps will need to be taken to ensure that the Council is provided with all the information needed to make informed policy decisions.

Ms. Helland said the talks with the Department of Ecology staff have resulted in moving some items out of the noncompliant category. That can be interpreted to mean Ecology staff are flexible and inquisitive about the content of the code and open to being convinced that the code actually does comply with the guidelines. They are open to being supplied with additional analysis and information aimed at supporting an analysis finding before the cumulative impact analysis is even undertaken; that will help to narrow the focus of the noncompliance issues that are based on misinformation or incomplete information and will help to make the cumulative impact analysis task less daunting.

Concurrently engaging with the Council, the Commission, the Department of Ecology and the consultant will in the long run shorten the time remaining in the shorelines update process.

With the arrival of Deputy Mayor Robertson, the Commission returned to agenda item 5.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCIL, BOARDS AND COMMISSIONS

Deputy Mayor Robertson said the Commission has been charged with finishing the work on the conformance amendments and conduct a public hearing on it prior to the end of the year and deliver it to the Council. The Shoreline Master Program was officially delivered to the Council and it is awaiting all of the other pieces before putting them all together and forwarding the package to the Department of Ecology. The package of conformance amendments will represent the Commission's last official involvement in the Shoreline Master Program process.

Deputy Mayor Robertson said the vacant Commission seat will be filled as soon as possible. There are some 15 applicants and interviews may be held in time to have someone appointed prior to the Commission's retreat, but if not certainly in November.

With regard to the marijuana collective gardens issue, Deputy Mayor Robertson said the Council received the Commission's recommendation on October 7. She said she asked for one change in the proposed ordinance relative to the provision not being able to see or smell the marijuana from a public way to include the phrase "or from an adjoining property." Councilmember Chelminiak also asked for more information about security systems and his inquiry may result in a requirement in the code for stronger security systems. The Council is scheduled to approve the interim ordinance on October 21.

Deputy Mayor Robertson said where there is uncertainty regarding which zones marijuana uses can locate in, her preference is to leave those zones out of the interim ordinance. If uses are allowed to locate in a zone that later will be deemed inappropriate for the use, the uses will end up being legally nonconforming. Whatever gets adopted into the interim ordinance should serve as the minimum requirements. Comments and suggestions for expanding the allowed zones beyond what the interim permits will be welcomed by the Council.

Answering a question asked by Chair Tebelius, Deputy Mayor Robertson said there were questions raised by the Council regarding allowing collective gardens in the Medical Institution district. The Council did not, however, recommend including the district. Councilmember Wallace pointed out that under the state draft regulations there is a 1000-foot limit between collective gardens and uses such as childcare centers and public parks, but there is no specific reference to buffers for residential areas. His question, particularly in regard to the Bel-Red corridor but also across the city, was if any of the locations in which producers, processors or retailers will under the interim ordinance be allowed are next to or very near residentially developed property. The staff had not made those calculations but are currently engaged in seeking an answer to the question. Additionally, staff are looking to answer what the map of where the uses would be allowed would look like if Bellevue were to impose a 1000-foot buffer between residential properties.

Deputy Mayor Robertson said the city intends to advocate at the state level to have the legislature fix the medical marijuana/recreational marijuana tension. With recreational marijuana there are taxes imposed at every level, but medical marijuana does not have the same taxes or indeed the same level of oversight and regulation. Someone wanting to purchase marijuana certainly will want to do so where the product is cheaper and less regulated. The topic is likely to have a great deal of focus in the next legislative session.

Answering a question asked by Commissioner Hamlin, Deputy Mayor Robertson said the rules that apply to moratoriums apply to interim zoning regulations in that there must be a public hearing held within 60 days and they cannot be in place for more than six months; extensions can be made only after the six months and then only for an additional six months, and the extension is subject to another public hearing within 60 days. The current interim zoning ordinance regarding medical marijuana has been in place for a year and is set to expire in November. The Council is desirous of having permanent regulations in place.

Commissioner Ferris said the Commission was told during its deliberations that each marijuana plant needs a space of about ten feet by ten feet. Collective gardens operated by a maximum of ten people can have a total of 45 plants, thus 4500 square feet is needed. He said the likelihood is that the costs of renting a space that large will drive the operators to having more than the allowed number of plants and enforcement will be an issue. Deputy Mayor Robertson said the whole marijuana issue is a moving target. Ultimately the state and federal courts will likely weigh in.

## 7. STUDY SESSION

### A. Shoreline Master Program Conformance Amendments (continued)

Senior Planner Mike Bergstrom said part 20.25E of the Land Use Code establishes the shoreline overlay district, but there are other parts of the code that interact in various ways. The conformance amendments are needed to assure that gaps and conflicts will be resolved. The conformance amendments will not in any way change the Shoreline Master Program the Commission submitted to the Council.

Chair Tebelius asked why the Commission would need to conduct a public hearing on the conformance amendments separate from the cumulative impact analysis. Ms. Helland explained that the city is required under state law to hold a public hearing on all code amendments, and the practice utilized in Bellevue is for the Commission to do it. She clarified that the critical areas conformance amendments and the general code amendments are not being bifurcated, rather they will simply be brought forward in slices for general consideration. All of the conformance amendments will be brought together for purposes of a single public hearing.

Commissioner Laing observed that the conformance amendments up for discussion are those that are the least controversial and primarily involve updates to references and the like. The more substantive amendments are those having to do with the critical areas, though even those are not necessarily controversial.

Chair Tebelius said during her review of the proposed amendments she did not find anything objectionable. She did question why marinas but not yacht clubs had been deleted from Note 10 under 20.10.440. Commissioner Laing explained that a yacht club can be located anywhere, including on the top floor of a highrise building, whereas a marina is always located in the shoreline environment. Mr. Bergstrom agreed and said for that reason marinas do not need to be addressed at all in the general Land Use Code.

Answering a question asked by Commissioner Ferris, Ms. Helland reminded him that all processes have been consolidated in the Shoreline Master Program in 20.25E. Accordingly, all such information needs to be stripped from the general Land Use Code, including the Shoreline

## Substantial Development Permit references.

Commissioner Ferris observed that the document utilizes the terms flood way and floodplain. He said it was his understanding that there can be no impedances in the flood way but said he had not previously understood that there must be compensatory storage in the floodplain. Ms. Helland answered that flood hazards are addressed in the critical areas code. The critical area code provisions will continue to apply even in shoreline jurisdictions, and those conformance amendments will be brought back with the intention of reconciling to assure there will be no unintended outcomes. The compensatory storage requirement will continue to apply for new development in both the floodplain and the flood way.

Continuing, Ms. Helland said the interaction between the general code use charts, the shoreline code use charts, and the critical areas code use charts is important. Several scenarios will be tested to determine how the code would apply in various situations. She noted that during the course of drafting the Shoreline Master Program the Commission had several discussions about Phantom Lake and its associated wetlands. Wetlands associated with that shoreline are also in the shoreline jurisdiction. In the first iteration of the code there was talk of tinkering with the dock provisions and having the critical areas code apply. Ultimately the direction given was to have the shoreline provisions apply. The result is a very clear interface between the wetlands in the shoreline jurisdiction and new uses allowed by way of docks. Care must be taken to keep someone from inadvertently being able to reach their dock by not being allowed to traverse a wetland, so some performance measures will need to be added.

Commissioner Ferris commented that during the Commission's deliberations staff pointed out that the floodplain boundary is what would determine what could be built on specific lots rather than the 25- and 50-foot setbacks. Ms. Helland said wetlands will be the biggest determining factor. Commissioner Ferris said right out of college he worked for the Corps of Engineers plotting hundred year floodplain elevations. He noted that just because no one has seen water at a specific high elevation for several decades does not mean that it cannot get there someday. The line is determined by looking at the perfect storm where a combination of events could occur at the same time.

Chair Tebelius suggested the issue is not redrawing the line but in making accommodation in the code so homeowners will not consistently have a problem, ~~doing the kinds of things they need to do on their properties.~~

With regard to the comment made by Mr. Klinge regarding staff interpreting the table as not allowing for the construction or expansion of a residence within the floodplain, Commissioner Laing asked if the code is written to say unless expressly listed as permitted an action is prohibited. Ms. Helland allowed that uses not expressly permitted are prohibited. The regulations are different for new and existing development; new development has a different set of performance criteria with respect to compensatory storage and the like. In a case where a site having an existing development is entirely scraped, the development that then occurs is under the code deemed to be new development, even if done on the same footprint. In such cases, compensatory storage must follow the prescriptive rules. Ms. Helland reiterated that staff would bring to the Commission examples and show how the code provisions play out.

~~Chair Tebelius asked Commissioner Laing if he would be willing to sit down with Mr. Bergstrom to go over the language of the conformance amendment and offer an opinion to the Commission at an upcoming meeting. Commissioner Laing said he had no interest in having a~~

~~discussion outside a Commission meeting about any issue that should in fact be discussed by the full Commission. He said notwithstanding the comments made by staff, there are some issues to be addressed, such as the interface between the wetlands at the water's edge in some shoreline environments, the critical areas ordinance and the draft Shoreline Master Program. Bellevue has an obligation to look at the substantive standards handed down by the state and to fashion regulations that meet those standards, but if the end result is that waterfront property owners are in the exact same place they were under the 2006 critical areas ordinance, then something did not go correctly and it will not be well received.~~

## 8. OTHER BUSINESS

### A. Status on the Comprehensive Plan Update

Commissioner Hilhorst informed the Commission that attempts had been made to have a speaker attend the meeting but scheduling proved to be an issue. She shared with the Commissioners the list of speakers that have been or will be asked to participate, and the list of sites away from City Hall where the Commission could meet, starting with the November 13 meeting in the Eastgate area, hopefully at Bellevue College, where potentially there will be speakers addressing the urban renaissance, Bellevue College, the Eastgate annexation area, and the Eastgate plan. Plans are being made to meet in the Bel-Red and Crossroads areas well. The list of possible topics to be addressed by guest speakers includes community health and culture and diversity. A joint meeting with participation from all the city's boards and commissions may be scheduled to review the work of the Planning Commission in a panel setting.

Mr. Inghram stressed that the schedule and list of speakers and topics may change as circumstances dictate.

Commissioner Ferris suggested that from a community outreach standpoint it would make sense to invite the Mormon and Lutheran churches to attend the meeting at Bellevue College. Mr. Inghram agreed. He said the Eastgate plan has been approved, but the actual land use policies have not yet been written. The meeting could serve to bring everyone up to speed, then subsequent meetings will be focused on the needed policy and Land Use Code amendments.

Commissioner Hilhorst said local speakers will be slated to speak at the community meetings. The meetings will be advertised in advance so interested parties can plan to attend.

From the audience, Mr. Klinge suggested the city should advertise the agendas for all of its board and commission meetings well in advance as other area jurisdictions do.

Chair Tebelius said she would like to see education included as a topic to be covered. Mr. Inghram said there will be an opportunity to discuss education as a topic during the discussion of the economic development policies. Additionally, Bellevue schools will be asked to be part of the culture and diversity discussion. Chair Tebelius said it would be very helpful to have the president of the Bellevue School District give a talk on the district's vision of what things will look like in the near future.

Commissioner Hamlin said he would like to see sustainability added to the list of topics to be covered. Mr. Inghram said the topic is tentatively slated to be discussed again by the Commission in January and at the community gathering discussion.

Commissioner Hilhorst said development of the list of topics and speakers will continue to evolve.

Commissioner Ferris commented that the demand for higher density housing around Bellevue College as it becomes a four-year college is inevitable. Community colleges historically have provided education services to those already living in their community, but four-year colleges more often draw people into the community. The need for housing will increase merely because of the principles of supply and demand. He noted that issues have arisen in the Spiritwood neighborhood and he asked if the Commission could try to look at the neighborhood to see if there are opportunities where the demand could be met.

9. PUBLIC COMMENT

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway SE, said he hoped the city would come up with a reasonable solution to the floodplain issue. He said he has neighbors who had to build the foundation for their home in a way that rising water can flow under it without being displaced. A property across the lake in Sammamish is being developed with a very large house. In that case the city of Sammamish and the Department of Ecology required the property owner to dump truckloads of gravel into the lake as a condition of receiving a building permit.

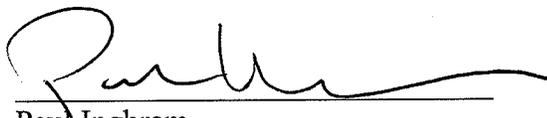
10. NEXT PLANNING COMMISSION MEETING

A. October 23, 2013

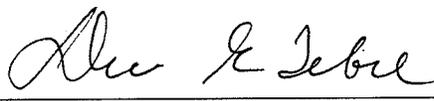
11. ADJOURN

A motion to adjourn was made by Commissioner Laing. The motion was seconded by Commissioner Hilhorst and it carried unanimously.

Chair Tebelius adjourned the meeting at 8:41 p.m.

  
Paul Inghram  
Staff to the Planning Commission

1/22/2014  
Date

  
Diane Tebelius  
Chair of the Planning Commission

1/22/2014  
Date

\* Approved and corrected December 11, 2013

