

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

June 9, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Sheffels, Commissioners Ferris, Hamlin, Himebaugh, Mathews, Turner

COMMISSIONERS ABSENT: Commissioner Lai

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development, Michael Paine, Heidi Bedwell, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Mathews, who arrived at 6:37 p.m., Commissioner Hamlin, who arrived at 6:45 p.m., and Commissioner Lai, who was excused.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda was revised to include an additional public comment period to during the study session; the revised agenda was approved by consensus.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None

6. STAFF REPORTS

7. STUDY SESSION

A. Shoreline Master Program Update

Environmental Planning Manager Michael Paine provided the Commissioners with copies of a document titled “Shoreline Master Program Update Planning Commission Map Book.” He noted that it contained a fairly comprehensive set of maps and GIS analysis data used by staff in making recommendations about setbacks, as well as information about how the ordinary high water mark is determined.

Associate Planner Heidi Bedwell stressed that the working draft is a preliminary document intended to provide the Commission and the public an indication of the breadth of the work that will be undertaken, and a sense of some potential policy language. The principles of review set forth at the May 12 Commission meeting are consistent with the city's past approach to environmental regulation. The principles call for regulations to recognize that Bellevue is heavily urbanized and as such the regulations should ensure no net loss of existing environmental functions rather than seek a return to pre-development conditions. The regulations should recognize that Bellevue's neighborhoods reflect natural areas juxtaposed with the built environment, and thus focus on preserving or creating places in neighborhoods that people can enjoy. It should be recognized that policy goals may not be achievable through regulation alone, and that regulatory changes should be consistent with all relevant constitutional and other legal limitations. Regulations should be predictable and flexible and designed to be user-friendly. Regulations should also be inclusive by involving a wide range of stakeholders in the process.

Ms. Bedwell stressed the need to keep in mind the goals established in the Shoreline Management Act which pertain to the management of the shorelines. The state directs local jurisdictions to give preference to uses in the following order: recognize and protect statewide interests over local interests; preserve the natural character of the shoreline; favor long-term over short-term benefits; protect the resources and ecology; increase public access to public lands; and increase recreational opportunities. Additionally, the state rules in the WAC give guidance about the development of standards for residential development. The guidelines give direction relative to environmental designations and specific uses for residential development. They acknowledge the need to develop standards for residential development, and acknowledge that the single family use is a priority use when developed to control pollution and prevent environmental damage. According to the guidelines, standards should ensure no net loss of ecological function.

Continuing, Ms. Bedwell said the policies in the working draft generally reflect an approach that new regulations should establish higher standards for new development; minimize impacts while providing flexibility; account for existing developed conditions and consider uses; create development standards generally; and encourage sensitive shoreline development with a balanced program of regulations and incentives.

Mr. Paine said the approach being taken by staff relative to the Shoreline Master Program update involves being sensitive to everything that has been brought to light by the public and the Commission while maintaining specific ecological functions along the shorelines. He stressed that the target area is the interface between the water and the shorelines, which is the area in which the greatest benefit can be achieved by protecting the littoral zone and the adjoining uplands. The Shoreline Master Program regulates the entire 200-foot area landward of the ordinary high water mark, and theoretically each increment of development that occurs in the area is potentially mitigatable, which is a guiding principle. While the entire shoreline area is subject to regulation under the SMP, and each increment of development should be mitigated under the Guidelines' policy of no net loss, the impact on property owners can be greatly reduced, and the benefit to aquatic habitat potentially increased, if regulations and incentives are targeted to protecting a smaller area on either side of the ordinary high water mark. Regulations aimed at moderating development impacts to this interface between land and water may result in the most positive effects on a range of critical water quality and habitat functions, including those components most important to juvenile Chinook survival in Lake Washington and Lake Sammamish.

Another approach would be to focus on entire lots. In that instance even minor losses in the

upland areas could be made up by providing mitigation near the shoreline or elsewhere on the site. Staff believes that approach would not be very profitable. The better approach would be to focus on the area 30 feet water ward and 30 to 50 feet landward of the ordinary high water mark.

Mr. Paine said any discussion of why anything should be done under the Shoreline Master Program requires some understanding of what is meant by the notion of no net loss of ecological function. He allowed that the concept is difficult to understand, and would be difficult on a day-to-day basis to regulate given that it is hard to measure. At its core, however, is the basic idea that any loss of ecological function must be offset by a gain. The loss of ecological function is defined as the removal or disruption of ecological processes that produce certain physical conditions. The no net loss standard is intended to halt the introduction of new impacts resulting from new development. Existing development has ongoing impacts that are cumulative in nature and very difficult to assess. The impacts resulting from new development are far easier to assess.

The Shoreline Master Program achieves no net loss in two specific ways. The first is cumulatively across the entire city through planning efforts, and the second is cumulative on a site-by-site basis. Ostensibly, for each individual development action there is some mitigation that can offset the loss. Cumulatively, however, many of the impacts are too small to measure or otherwise cannot be mitigated for, and thus they should be dealt with by restoration planning efforts across the entire jurisdiction. The planning process itself is intended to be part of the no net loss equation by instituting mitigation for individual developments as they come online.

The minimization of impacts is typically achieved through mitigation sequencing, which first seeks to avoid impacts, then seeks to minimize impacts, then if necessary directs mitigation to occur. That process does not, however, adequately address the cumulative impacts for a variety of reasons. For example, if a wetland is disturbed by filling it, to go back and restore the area will encounter a number of temporal effects. Cutting down a big tree will result in the loss of certain ecological benefits that cannot be replaced by the planting of a six-foot tree; it will take a very long time for the ecology of the area to return to its former state. The approach often taken is a requirement to double, triple or quadruple the area to be mitigated to offset those temporal impacts; instead of replacing the large tree with a single six-foot tree, up to four six-foot trees are replanted instead.

With regard to the issue of why setbacks are needed, Mr. Paine explained that land use setbacks have been in common use for a very long time. Land use setbacks are used to separate uses, to separate one single family home from another, to provide protections against the spread of fires, and for a number of other reasons. Setbacks in the shoreline have many of the same functions. Primarily they are intended to insulate critical shoreline interactions from damage by development. They also serve as protections against damage from flooding and erosion. Setbacks also help to reduce the discharge of pollutants, preserve and enhance views of the water, and maintain the character of a community. Bellevue has imposed setbacks for some time in line with its longstanding commitment to environmental stewardship. The 25-foot structure setback on shorelines was put in place in 1974, and the critical areas ordinance, including buffers up to 50 feet in width for streams, went into effect in 1987.

Mr. Paine stressed that shoreline setbacks only go into effect in association with development. None of the regulations are relevant to existing properties with lawns running to the water's edge or to a bulkhead, so long as the intensity of development on the site is not altered in any way.

The current code is very prescriptive but includes an enormous amount of flexibility. It was developed under the Growth Management Act which permits departing from the standards provided a high-quality scientific study is commissioned and appropriate mitigation is

undertaken.

Mr. Paine brought to the table two options. Option A, Maximum Flexibility with Incentive Options, is based on components of the existing code and adds a menu option which takes away the need for a detailed scientific study. Option B, Maximum Predictability, establishes a bright line which cannot be crossed without a shoreline variance.

Ms. Bedwell referred to the map and GIS information document. She explained that the maps cover four geographic areas: Lake Sammamish, Lake Washington excluding the Newport Shores area that abuts the canals, the Newport Shores area that does abut the canal area, and Phantom Lake. The mapping includes a focus on structures that are both greater and less than 800 square feet. She stressed that the mapping is based on approximate ordinary high water mark elevation lines given that the lines must be determined on a site-by-site basis. The city has generated an approximate elevation line for the shoreline of Lake Sammamish, which is 31.8 NAVD 88, from which structure setbacks can be measured; the line was determined by a scientific study in response to concerns from citizens about uncertainties regarding the starting point from which to measure setbacks, though property owners still have the option of conducting a study to determine the specific ordinary high water mark for their sites. The city reports all of its vertical elevations datum in NAVD 88 format; the Army Corps of Engineers uses a different vertical datum. Lake Washington has a managed pool elevation, and the approximate high pool elevation is 18.8, but for purposes of the analysis 20 feet was used. A specific study has not been undertaken for Phantom Lake, but based on some general telemetry information, the analysis uses an elevation of 262.

Ms. Bedwell stressed that the data used is intended to discuss the relative effects of policies and regulations. It is not intended to be site-specific or used as project-level decision-making information.

With regard to Lake Washington, Ms. Bedwell said 66 structures, or 16.38 percent of the total number of structures, are located within 20 feet of the ordinary high water mark; 21.59 percent of the structures are located within 25 feet of the ordinary high water mark, and 33 percent are within 35 feet of the ordinary high water mark.

The Newport Shores subset of Lake Washington has somewhat different development conditions given the dredged canal areas. The development pattern there reflects structures that lie generally between 25 and 35 feet from the bulkheads or the ordinary high water mark.

There are fewer parcels generally along the shores of Phantom Lake, and the structures are for the most part located farther away from the assumed elevation of 262 feet. Only 9.4 percent of the structures are within 35 feet of the ordinary high water mark; only 17 percent of the structures are within 50 feet of the ordinary high water mark.

Ms. Bedwell noted that flood plains are a factor along Phantom Lake as well. She said the analysis included a comparison of the parcels that might have a flood plain beyond a setback of 35 feet. The determination was that 52 properties have a flood plain that exceed a setback of 35 feet; with a setback of 50 feet there would still be some properties impacted. In some cases, the governing provision will be the 100-year flood plain elevation, which will limit development in the area.

Mr. Paine pointed out that the Phantom Lake area is complicated even further because of its extensive associated wetland systems. There are setbacks associated with the flood plain and the wetlands in addition to the shoreline setbacks; the latter is probably the least impactful on future

development, however.

Ms. Bedwell said on Lake Sammamish only about 10.9 percent of the structures greater than 800 square feet are within 25 feet of the ordinary high water mark. At 35 feet the percentage increases to 24. About 38 percent of the structures are within 50 feet.

The current code has a prescriptive standard with flexible options. The flexibility was built in by choice to better allow for addressing site-specific issues. For developed sites there is a 25-foot buffer and a 25-foot structure setback. For vacant properties, the buffer is 50 feet. There are limitations on the activities that can happen within the buffer, specifically limits on vegetation removal and the construction of hardscape elements. Access to the shoreline is permitted through the buffer area. The code is written to recognize existing development by allowing for exceptions to the setback and the buffer, the most notable of which is the footprint exception which essentially draws the buffer or setback line to be drawn around existing structures and keeps them from being labeled nonconforming. The string test exception allows for connecting the two closest points on the two adjacent properties and allows the center property setback to be an average of those two. The prescriptive option allows for some expansion of an existing structure, up to 500 square feet, without requiring additional study and without triggering the full standards.

Mr. Paine said the high level of flexibility built into the existing code is unusual, but it comes at a cost of hiring specialists to do the work of developing and presenting an argument to the city. The public has been very clear about not wanting to pay those costs, and that is a key issue that is being addressed in the update.

Ms. Bedwell said Option A establishes the existing 50-foot setback and acknowledges some of the existing development patterns. It includes a menu of options that allow for encroaching beyond the 50-foot limit, though the appropriate calibrations for each of the menu options have yet to be worked out. An example might be that planting native landscaping near the water's edge would allow for a five-foot reduction in the setback, or removal of a bulkhead could yield a reduction in the setback. The option thus allows for flexibility but does not allow for going beyond the menu. The approach recognizes the tension the current code has created by establishing a no-touch buffer, which does not really acknowledge how people use their shorelines. The idea is to allow a percentage of the nearshore area to be used for recreational purposes while at the same time establishing a landscaping standard. For existing structures that might lie outside the 50-foot buffer area, Option A allows for expansion with the menu options.

Answering a question asked by Commissioner Himebaugh, Ms. Bedwell explained that the prescriptive landscaping area and the list of menu options are two different things. The landscaped area is tied to the prescriptive standard that would be triggered generally by new development. The menu options can reduce the setback but may also reduce the total amount of recreation area. Mr. Paine added that properties with no plans to develop or redevelop will be allowed the full use of their properties without triggering anything. Ultimately the expectation is that staff will recommend a hierarchy of menu options.

Commissioner Hamlin asked if the critical areas permit option will also be included in the mix as a potential option. Ms. Bedwell said there is room for discussion on that item. It is possible that under some parameters a scientific study would be warranted. Mr. Paine said the city would need to make sure the Department of Ecology would be comfortable with that approach. In any case, there would need to be a demonstration of no net loss.

Commissioner Ferris asked what the incremental difference in ecological function is between a

25-foot setback and a 50-foot setback. Mr. Paine said for most ecological functions, there is a diminishing return the further away from what is to be protected. Around the country, the buffers set for lakes and marine estuaries are fairly expansive; most are set based on individual functions. For example, many low-density residential developments around Chesapeake Bay have septic systems, so they need a large buffer area to address that concern alone. The advantage of going to a 50-foot buffer is the opportunity to better insulate against additional intensive development along the shoreline. A 50-foot buffer certainly offers more room for flexibility. A wider buffer means less impervious surface areas and more area to filtrate pollutants, keeping them out of lake waters. However, it cannot be definitively determined that a 35-foot buffer or 50-foot buffer is any specific percentage better than a 25-foot buffer because much depends on the specific functions that need to be preserved.

Commissioner Ferris said the proposed regulations appear to be somewhat arbitrary, with numbers picked based on what other jurisdictions are doing. It does not appear that the chosen numbers will in fact improve or preserve ecological functions. He said he was supportive of the policies identified but did not get the causal connection between the regulations and the ecological improvement. Mr. Paine said the documentation from other jurisdictions shows that the buffers being set for similar water bodies are far larger than 50 feet. In fact the 50-foot buffer width came about as a compromise made by the Commission based on the developed nature of the shoreline. There is ample argument for a buffer of more than 50 feet based on a host of functional assessments, but the developed nature of the shoreline would make actually achieving a buffer that large problematic at best. There simply are no order of magnitude percentages that can be placed on buffers of different widths; everything is relative to the desired functions. Primarily, shoreline buffers are needed to promote hydrology, filter pollutants, allow for vegetative areas, and to promote habitat and habitat contributions to the littoral zones. Within limits, the more insulation that can be provided, the better.

Ms. Bedwell said Option B establishes a prescriptive standard. For Lake Sammamish and Lake Washington the proposal is for a buffer width of 35 feet, with a reduced 25-foot buffer for the canal areas. For Phantom Lake, the proposed buffer width is 50 feet because of the ecology there and the flood plains. Option B allows minor building elements such as decks or patios to encroach on the 35-foot buffer. Existing structures would be allowed some leeway for lateral expansion, though not within 25 feet of the ordinary high water mark; water ward expansions would only be allowed through a variance process.

Mr. Paine allowed that under Option B reinvestments in development would be more difficult because the prescriptive approach would serve to hem in developments. The option would be far easier to understand and administer, but would greatly reduce flexibility.

Ms. Bedwell pointed out that Kirkland has had a Department of Ecology hearing on its proposed Shoreline Master Program master plan. The city of Sammamish has submitted its plan to the Department of Ecology but has not yet had a hearing on it, and the city of Redmond has had its plan approved by the Department of Ecology. Other jurisdictions around Lake Washington and Lake Sammamish are in the process of updating their Shoreline Master Programs. In Kirkland, the setbacks for residential range from 25 to 60 feet. The shoreline setback in Sammamish is 45 feet with an additional building setback of five feet, and Redmond has a setback of 35 feet. None of those jurisdictions have a buffer proposed as part of their plans. The minimum setbacks can be modified through certain provisions, though in Kirkland the minimum is 25 feet, while in Sammamish and Redmond it is 20 feet. Both Kirkland and Sammamish employ a menu of options, whereas Redmond allows for reducing the setback in exchange for planting native vegetation within the first 20 feet. There are general vegetation standards outlined in the regulations for all three jurisdictions; for both Kirkland and Sammamish, the standard is 75

percent of the area landward of the ordinary high water mark to a width of either 10 or 15 feet, whereas in Redmond it is a width of 20 feet.

Answering a question asked by Commissioner Himebaugh, Ms. Bedwell explained that under Option A, an existing structure could be expanded beyond the 50-foot setback without having it considered to be nonconforming. Structures located beyond the 25-foot setback would be labeled nonconforming. Under Option B, any structure beyond 35 feet would be considered nonconforming. Because of the footprint exception, there are no nonconforming structures under the current code.

Chair Sheffels opened the floor for comments from the public.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, spoke on behalf of the Washington Sensible Shorelines Association. He noted that he testified with regard to shoreline ecological function at the May 12 Commission meeting but has not yet had a response to his comments. He urged the Commission not to require vegetated areas except as elected property owners or as required under existing drainage codes, and to not require the inclusion of any requirements for trees along the shoreline. He referenced the published works of Dr. Don Flores dealing with Puget Sound area vegetative function. The Commission was encouraged to include low-cost, tested and easily established vegetation options should be offered for those who choose them. The Commission was urged to recommend that requirements to enhance ecological function should be voluntary only, and that incentives be utilized over prescriptive regulations. The Commission was asked to direct staff to provide a list of incentives. The city is a shoreline property owner, yet it is planning for intense development right down to the water's edge in conjunction with the Meydenbauer Bay park plan. At the same time, regular shoreline property owners are being asked to back off from using the shoreline areas. The issues raised during the March forum have yet to be addressed, nor has any process been proposed for a sound, scientifically based, outcomes-measurable program; that is unacceptable.

Ms. Elfi Rahr, 16509 SE 18th Street, said Phantom Lake does not have an elevation of 262 feet as purported by the staff. In 1985 the state granted \$2 million to the city to conduct an extensive and comprehensive lake study. The process took some five years and resulted, among other things, in the determination that Phantom Lake has an elevation of 256.52. The lake level increases some two feet throughout the season, which is 258. The master plan written in 1980 stated that with the development of the I-90 Business Park, the lake level would rise only two inches. The mistakes made by not correctly calculating storm runoff have been significant, and the Phantom Lake property owners are the victims. Flooding of 156th Avenue SE triggered the need for a quick and cheap fix, but that was yet another mistake that the property owners are having to pay for. If the lake level were at 262 feet as stated by staff, most of the wetlands would be four feet under water and part of Lake Hills would be flooded. It would be better if high water in the lake could escape into the wetland again. There is very little native vegetation that can survive under water resulting from the lake level rising annually.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, suggested the draft is sporadically organized; there are items in chapters three through six that should be in with each specific environmental designation. It is easy to misinterpret, which results in confusion. The matter will not be ready for a public hearing by October or November. The public is not being provided with information in a timely manner. She suggested that the intent of vegetation conservation is to protect the ecological functions along the shoreline. Vegetation conservation may also protect property and may increase the stability of shoreline areas susceptible to erosion. In addition, vegetation may provide habitat for terrestrial animals such as squirrels and birds. She said she would remove from the staff draft version words and phrases such as "restore," "eco-wide system," "human

safety,” “reduce the need for structural shoreline stabilization,” “improve the visual and aesthetic qualities of the shoreline,” “to protect plant and animal species,” “to enhance shoreline uses,” “in critical areas and critical area buffers with shoreline jurisdiction to support shoreline functions and processes such as food webs, sediment transport, terrestrial and aquatic habitat, water quality and hydrology,” “when balanced with the objective of vegetation conservation,” “require mitigation for hazardous trees that are removed within the shoreline setback in critical areas and critical area buffers,” “reduce the need for hard structure,” “provide incentives to private property owners to achieve specific habitat improvement goals, including retention and enhancement of native vegetation,” and “consider and encourage a set of values when reviewing the development of shoreline and encourage vegetation conservation policies that improve the visual and aesthetic qualities of the shoreline.” She said she grew up on a west-facing Lake Washington shore and in the 42 years she lived on the property at least six feet of the property was lost. Vegetation alone cannot prevent erosion.

Mr. Tim Trohimovich, co-director of planning and law for FutureWise, suggested that most people would agree with the need to protect the threatened salmon, steelhead and orcas. The National Marine Fisheries Service has taken a comprehensive look at the existing endangered stocks, the impacts of development, and what is needed by way of solutions. Their recommendations for lakes include a setback of 150 feet with native vegetation. He recognized that Bellevue’s shorelines are mostly built out and that there are very few places that have 150 feet of native vegetation, but voiced concern about the options that will reduce the protections. The Shoreline Management Act in RCW 90.58.0904 requires that Shoreline Master Programs must be at least as protective as adopted critical areas regulations. The city should do all it can to put in place more protections; it should not compromise and put in place fewer protections.

Mr. Dwight Martin, 5101 East Lake Sammamish Parkway NE, said FEMA has made some sweeping proposals that are extremely restrictive on shoreline development. So much so that even the state Department of Ecology has protested and has suggested the department is overlaying the good work that has already been done by the state. FEMA is currently reviewing comments and has created a work group that includes staff from various cities. There has been quite a pushback on FEMA’s first proposal. When people buy waterfront properties, they have a reasonable expectation of use, which is not to say what is commonly called a reasonable use exemption, which is more of a minimum use allowed by a jurisdiction to avoid being sued for taking property. Reasonable expectation of use should include being allowed to landscape the property and to improve an existing structure. It should not include the right to drill wells offshore, nor does it include the right to pollute. The Shoreline Management Act specifically lists residential as a preferred use of the shoreline environment. It does not say residential is a preferred use only if property owners do not wantonly pollute during construction or afterward. Too often concepts get linked together resulting in a negative bias against those who own shoreline properties and simply want to use them. Those who write or enforce regulations often say people should not worry about the regulations because they only come into effect if one wishes to develop, as if that is something unusual. Development is not in fact unusual, and people always expect to improve their position in life, including developing and using their properties. The whole point of the regulations being developed is to regulate how people can use their properties.

Mr. Tom Schafer, 1822 West Lake Sammamish Parkway SE, voiced support for Option A as a concept. The various options are intensive and hard to understand, especially when diving into the details around things like prescriptive landscape area and vegetation management. It helps to understand what native vegetation is, which includes very large trees and shrubs. As the policies and regulations are written, they must be very clear and understandable.

Mr. Charley Klinge, an attorney with Groen Stephens and Klinge, said he represents the Washington Sensible Shorelines Association. He suggested that progress is being made. Staff understands now that there are concerns with the existing code; that is why they are coming forward with some options. There is no one right way to do it. No one will be able to say for sure what the Department of Ecology's position will be until a plan is submitted for review, until then, all options on the table are just proposals and not final answers. The shoreline guidelines are in fact guidelines, not prescriptions. They are written to give local governments plenty of discretion in addressing their particular circumstances. While it is true that the regulations will only kick in where there is new development proposed, it should be kept in mind that new development is a broad term. One property owner who tore out an existing patio and planted grass was cited for a violation of the critical area code; he had to hire a consultant and argue with staff about appropriate mitigation for doing what appeared on the surface to be a good thing. The fact is what he had done was classified as new development. Under the current code, any kind of a change or modification is automatically disallowed without critical area reports and mitigation. That should not be glossed over. It should be stressed, however, that the no net loss of ecological functions concept applies to existing ecological functions. Once they are identified, they must absolutely be mitigated for. Science applicable to streams cannot be directly applied to lakes. The Commission should focus on and address the most likely things to happen relative to new development on shoreline properties, which is additions to single family homes, patio and landscape improvements, repairing and replacing bulkheads, and repairing and remodeling docks.

Mr. Brian Parks, 16011 SE 16th Street, spoke as both the Phantom Lake homeowners Shoreline Master Program representative and a board member of the Washington Sensible Shorelines Association. He said the staff Shoreline Master Program outline regarding setbacks and vegetative buffers is especially not applicable to Phantom Lake for a number of reasons. The results of the buffer zones will be a proliferation of unintended volunteer trees, including the four varieties of willow that are common around the lake. Some of them are quite tall, others lean over, and still others are brittle and break off branches that then themselves take root and spread, dropping leaves, branches and limbs into the lake, all of which become hazards. If allowed to grow, the trees will ruin residential and trail views, thus decreasing public enjoyment, which is contrary to the goals of the Shoreline Master Program, and reducing property values. There is a solid wall of willow trees growing on the west end of Phantom Lake where the property all belongs to the city. The staff recommendation is for a mandated 25-foot buffer plus a 25-foot setback on Phantom Lake, yet in reality the lake's circumstances necessitate a tailored approach to reduce plant matter. Phantom Lake has elevated nitrogen and phosphorous levels that are due in large part to decaying plant matter, which leads to associated anaerobic conditions of the water below a depth of eight feet which in turn leads to toxic blooms of cyanobacteria. Reducing the lily pad population on Phantom Lake would probably do more good than the minimal nutrients they contribute. Proposals such as adding woody debris, shoreline trees and increased native plantings would further aggravate the problematic conditions, do not offer any scientifically proven benefits, are unnecessary, and are both costly and undesirable to the majority of homeowners. The United States Geological Service study 024130 was intended to show the potential reduction of unwanted nitrogen and phosphorous by using more environmentally friendly fertilizers on lawns, but in fact the study surprisingly revealed that wooded lots contribute even more of the unwanted nutrients than lawns do. Swales, which are intended to use natural vegetation to treat runoff, often become overgrown and contribute more the nutrients into the system. Contrary to the USGS study, the Bellevue shorelines analysis report states that cleared landscapes and modified shorelines likely lead to lower functions than other reaches around the lake. The Shoreline Management Act mandates all Shoreline Master Programs to be based on the best available science rather than ideology. The USGS study represents the best available science. Phantom Lake has the highest Shoreline Analysis Report scores and is a

model of shoreline care, yet the staff outline carries over the 25-foot buffer plus the 25-foot setback only on Phantom Lake, in effect punishing Phantom Lake residents for their good stewardship. Phantom Lake residents already have increased vegetation buffers resulting from the gradual increase in average lake elevation and the associated increase of wetland plants. The damming of the traditional western outlet of the lake with an earthen berm and plywood skirt by the city should have included regular maintenance to keep the sediment from building up in Phantom Creek, the eastern outlet. The Commission should visit the lake and observe the conditions firsthand.

Ms. Susie Vancovski, 3560 West Lake Sammamish Parkway SE, spoke on behalf of Vasa Park Resort. She said the resort has been in existence since 1926. The Vasa homeowners association and the Vasa Park board is opposed to being rezoned to urban conservancy. The board has no desire to further develop the property, but neither does it want its development rights taken away. It is not the shoreline property owners that are causing harm to the waters of the lakes. The water in the pipe that drains the I-90 Business Park is horrible and it flows directly into Lake Sammamish; that has nothing to do with homeowners. For two years in a row the city failed to clean the catch basins and the overflow ran through the park like a river, taking away 17 tons of sand, depositing three inches of oily sludge in the summer kitchen, and wiped out the laundry room. That same sludge flows into the lake every day from the upland area.

Mr. Richard Johnson, 2824 West Lake Sammamish Parkway SE, said the drainage basin for Lake Sammamish covers 63,000 acres. The sum total of the Bellevue waterfront properties on Lake Sammamish is less than 120 acres. Less than one-fifth of one percent of what flows into Lake Sammamish can in any way, shape or form be attributed to the waterfront properties. If all the waterfront properties were used for mitigation purposes alone, the total contribution would amount to nothing. The request for proposals for the Shoreline Master Program update issued in June 2007 included in the scope of services the statement that the inventory and characterization relies heavily on the use of GIS data and analytical techniques. All of that data was preexisting, and the document clearly indicates no new data would be collected. The data included the claim that 71 percent of the Lake Sammamish shoreline was armored. A privately funded photographic survey, however, that utilized publicly available information determined that in fact the armored shoreline was no higher than 36 percent based on the ordinary high water mark. The lake elevation is at its highest during the months of November through March. Additionally, during the salmon season when the water level is lower, the armored shoreline makes up only about seven and a half percent. The numbers relied on by the city are so far wrong as to completely astound anyone who cares to take even a casual tour of the lake.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said the ordinary high water mark study conducted by The Watershed Company uses the 95th percentile in terms of high water marks around the shoreline. It is apparent in reading the study that the company measured a number of shorelines based on the highest water mark they saw hit the shore. He shared with the Commission a short video showing a storm on Lake Sammamish that showed how far the water reaches during storm events. He said because the city has bought into the findings of the report, the ordinary high water mark for Lake Sammamish has been set at 31.8 feet; other cities around the lake have determined the elevation to be lower, though some have accepted Bellevue's findings. The Army Corps of Engineers has determined the ordinary high water mark to be at least a foot lower than what Bellevue is claiming. The winds that flow over Lake Sammamish come from the south. The shorelines that run parallel to the direction of the wind suffer no impacts at all, while the northern shores take the full brunt of the wind. Half to two-thirds of the Bellevue shoreline is impacted by large waves resulting from the winds. That fact needs to be taken into consideration in developing options for the shoreline. Storms that damage docks can trigger a need to conduct a very expensive critical areas study before the docks can be repaired.

Mr. John Strong, 1604 West Lake Sammamish Parkway, said for the most part, structures along the shoreline are located where they are not because the owner wants to hover over the water but because something physical is in the way, including roads and hillsides. Most of the lakefront properties have been developed, and most of the homes are not new. Older homes need maintenance and occasionally need to be remodeled and updated. When deciding what the setbacks and other regulations should be, the city should do it in a way that will allow waterfront property owners to do what needs to be done and get on with their lives. When it is overly burdensome to do every little thing, regular maintenance will be avoided and properties will not be upgraded. Attention must be paid to environmental concerns, but also to the needs of property owners.

Ms. Donna Lempke, 2016 West Lake Sammamish Parkway SE, suggested that Phantom Lake would not have as large a flood plain as it has if the outlet were properly maintained. She said her biggest concern with Lake Sammamish is phosphorous getting into the water. To date, the maximum phosphorus level in the lake has not been exceeded and the lake water is about equal to that of Lake Washington, which is considered to be an ideal lake as far as the comeback it has made from its polluted state in the 1960s. Along the shoreline of Lake Sammamish are properties that have recently been redeveloped; the mitigation required has included the placement of logs in the water which will eventually harbor bass which will in turn eat young salmon. Between the logs is dirt and plants, most of which will be washed away during storm events, adding additional phosphorus to the lake.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, asked the Commissioners to continue asking tough questions of staff. He said it is very frustrating to sit in the audience and not be allowed to ask additional questions. The Commission should carefully consider the answers given by staff and determine whether or not they are scientifically sound. Staff has said the hydrology needs to be improved, but they have not explained if that means water quality, stormwater runoff, or something else. There need to be scientific measurements made so the problems said to exist can be understood. If there is a problem and it is being made worse by the property owners, the property owners will step up to help, but they are not wanting to be told to do something just because.

****BREAK****

Chair Sheffels observed that the conditions along Lake Sammamish and Lake Washington are similar, but Phantom Lake is in a class of its own. There have studies, reviews, suggestions and personal observations from a variety of persons regarding Phantom Lake, and if another layer of regulations were to be established for that area without addressing the basic questions, the Commission would be remiss in doing its job. She said she would like to see a means devised under which the city and the Phantom Lake community could work together to figure out what the true picture is and what the ordinary high water mark ought to be. All of that should be settled before the Commission lumps the Phantom Lake area in with the Shoreline Master Program update.

Mr. Paine suggested that at the Commission's next meeting there should be a presentation on the full history of Phantom Lake. The Commission has been hearing a lot about the lake and its environment, but only one side of the story is being told. All of the lakes, but particularly Phantom Lake, face significant watershed problems, and those impacts are preeminent in terms of the overall degradation of the lakes. The issue of parsing out what happens along the shoreline from what happens in the overall watershed is not completely clear, but there are still things property owners can do to make the interface better and consequently improve the habitat

for juvenile salmonids and other fish and insects. Phantom Lake presents a unique situation, and the method for moving ahead suggested by the city is a lake management district. That approach, however, is beyond the scope of the Shoreline Master Program update. Phantom Lake is largely constrained by wetlands and flood plains, so much so that deciding there should be no setback at all would have no effect on how people can build and use their properties given that the rules for wetlands and flood plains are far more demanding. The Commission should defer thinking about how to handle the Phantom Lake situation until more information about the area can be shared.

Mr. Paine said the city is willing to partner with a lake management district in ways that would be beneficial to everyone. However, the city cannot act alone. The properties involved are privately owned and the city has absolutely no obligation to manage the channel.

Commissioner Hamlin said he was confused as to why there should be a proposal for a 50-foot setback for Phantom Lake properties, or indeed why the Phantom Lake area should be called out separately, if the rules for wetlands and flood plains will carry the day anyway. Mr. Paine said the issue is that virtually every lawn is a wetland. There are fringe wetlands along the edge of the lake; that is clearly evidenced by the fact that willows, which are wetlands plants, are cropping up everywhere. The Phantom Lake shoreline if left untended would mirror the shoreline of the property owned by the city.

Commissioner Turner said it appeared to him that many of the issues Phantom Lake is experiencing are based on the development that has gone on in the areas that drain to Phantom Lake, not on the development that has occurred on the actual Phantom Lake properties. He suggested the city may in fact have an interest in addressing the problem resulting from commercial development over which the Phantom Lake property owners have absolutely no say. Making their regulations more severe will not actually solve the problems. Mr. Paine said if there were no wetlands or flood plain associated with Phantom Lake, there would still be an existing 25-foot buffer and 25-foot structure setback. Adopting a structure setback only would immediately lessen the impact on property owners by getting rid of the buffer. Buffers are far more restrictive by their very nature.

Chair Sheffels said a full presentation on the history of Phantom Lake would be very helpful.

Commissioner Hamlin allowed that under Option B Phantom Lake is in a way being treated equal to Lake Sammamish and Lake Washington given the percentage of structures in the setback area.

Ms. Bedwell allowed that the ordinary high water mark calculation for Phantom Lake could be on the conservative side and thus reflect a somewhat higher elevation. She said it is possible that fewer structures are actually in the setback area. Staff will be working with the local residents in clarifying what the elevation should be.

Mr. Paine said staff would welcome anyone's interest in trying to unravel the ordinary high water mark study. He said it was done at the highest caliber of scientific research and subjected the peer review by PhD statisticians, so the validity of the study really cannot be effectively argued. The confusion lies in the interpretations. For example, in 1999-2000 the salmon were listed as an endangered species. A study of the bulkheads on Lake Washington and Lake Sammamish was conducted that involved the use of GPS devices in measuring bulkheads. At the time, bulkheads were defined as structures located at or above the ordinary high water mark because bulkheads interrupt the habitat forming processes that support juvenile salmonids living in the lake. Everything within a reasonable distance from the shoreline was counted as a

bulkhead. In terms of the environment, it really does not matter whether a bulkhead is at the ordinary high water mark or the edge of the flood plain because the effects are largely the same. The bulkhead study findings are correct, but they do not mesh with the study done by local citizens because the baselines and definitions are different. The ordinary high water mark is defined as the usual and accustomed mark made by the water in the lake, which is not specific to high water or low water.

Commissioner Turner said during his tenure on the Commission he had heard numerous questions and issues about the studies that have been used, but no real solid rebuttal for what the public has been saying. The recommendations of staff are based on the studies which the public claims are flawed. As a result, there should be some attempt made to address the issues raised by the public. If the city claims development along the shoreline is causing trouble, there should be some evidence presented with regard to exactly what the damage is and how extensive it is.

Mr. Paine commented that in the city of Bellevue there are far more residents living under the requirements associated with streams under the critical areas code than the requirements associated with lakes. There is an enormous amount of science that looks at the connection between the riparian area and the impact it has on the stream. One of the most important things in a natural setting is wood falling into streams that form pools and drops that provide habitat for salmon. The addition of leaf litter and insects all contribute to a biota that supports other life. The same thing occurs in the aquatic environment, which is a living and breathing system. The life forms in the lakes rely heavily on the nearshore area and waters of less than nine meters depth where light filters down and where vegetation grows. There is a movement across the land/water boundary, the evidence of which was presented by the highly qualified scientist Tessa Francis who talked at length about the importance of the interchange. Her report was summarily dismissed by the public. With respect to the pollutants that get into the lakes, distinguished scientists, including Dr. Pauley, have made the case that urban development in the watershed has some very significant adverse impacts and is directly tied to the diminishment of salmon habitat and salmon populations. That is why there have been so many listings in the Puget Sound area that suggest the fish are threatened or endangered. The connections, however, are difficult to unravel at the site scale. No one can say with any certainty whether a buffer of 25 feet, or 35 feet, or 50 feet will make a difference. It can be said, however, that some number will make a difference, and that having native vegetation close to the water and no bulkhead is better than having no vegetation close to the water and a vertical bulkhead.

Commissioner Ferris stated that he had read the report on how the shorelines were inventoried and classified. He noted that the report includes only a few categories, all of which were evaluated on a somewhat judgmental basis in terms of the contribution of each to the overall ecology. He suggested that a formula could be developed based on the five or six things that contribute to the ecological function of lakes. The formula could, for example, include a weight for each item. An inventory for a specific property could then generate a point total based on the weighted criteria and be used in determining how a proposed development will impact the ecological functions. Such an approach could allow property owners to develop while at the same time allowing the city to achieve improvements to the overall ecological functions over time.

Mr. Paine said that is exactly the approach staff will be proposing; he said he already has a draft table drawn up with the various functions listed. The options menu will be based on that table. He said the most important thing in determining the quality of functions on shorelines in built-up areas is whether or not there is a bulkhead in place. The study done by Mr. Evans makes clear to everyone that bulkheads not located directly on the shoreline have large associated areas that could be planted, thus creating a beneficial habitat and a place for the interchange to occur. Staff

did not consider that in looking at site-by-site and reach-by-reach functions.

Asking a question asked by Commissioner Himebaugh, Mr. Paine clarified that the focus is on the concept of no net loss of ecologic functions. Commissioner Himebaugh allowed that inventory indicates the shorelines in Bellevue are largely built up and suggested that staff should highlight non-regulatory options for shoreline restoration in addition to the regulatory options. He said non-regulatory options should avoid putting property owners in the position of having to meet an ecological bar that may in fact be impossible to measure on a site-specific basis. Mr. Paine said one function of the city's restoration planning effort is to address the cumulative impacts that do not get mitigated on site, either because they are not measured precisely enough or because of the temporal issues. The city is supposed to have a plan that identifies potential mitigation sites to offset the loss that is inevitable with development over time. However, while the city is obligated to have a plan in hand, it is not obligated to fund the plan. The city could institute a fee in-lieu approach under which property owners could buy into a potential mitigation project at some other location. Alternatively, the city could purchase properties from willing sellers on which to allow mitigation or restoration, thereby offsetting the impacts of hundreds of shoreline lots, but that option would be very costly.

Commissioner Turner suggested that before the city takes steps to direct property owners how to mitigate something on their properties, there should be a better understanding of what the ecological functions are for the properties in question and the system overall. Mr. Paine's response was that that would be very tall task and could potentially stop the city from regulating anything. Commissioner Turner said the fact remains that the regulations will impact property owners along the lake while the owners of properties throughout the ecosystem will not be impacted. A balance needs to be sought. Mr. Paine pointed out that the same could be said for property owners living on steep slopes or near streams, all of whom are already being called on to work for the public benefit in protecting those areas. Commissioner Turner said he would prefer to see incentives and non-regulatory approaches identified as the best way to go.

Commissioner Mathews asked if the current approach of drawing setback lines around existing structures to avoid the issue of nonconformance could be incorporated into either Option A or Option B. Mr. Paine said Option B would establish a bright line under which structures are either conforming or they are not. Under Option A, all structures would be conforming until the 25-foot limit is reached. Expansions would be allowed, but only in line with the options menu.

Commissioner Ferris agreed that conducting a full study of the ecology of the entire system would not be practical, and would be outside the bounds of what the city is trying to achieve with the Shoreline Management Program update. However, within the limits of the scope of the task at hand, drawing a line between specific ecological improvements and incentives would be a good idea. He said he generally favored Option A but needed far more details before developing a recommendation for what the setback width should be. Additionally, the prime focus for improving ecological functions should be on where the streams flow into the lakes and areas where the greatest impact could be realized, and the fee in-lieu approach would fit perfectly into that scenario. The concept is already in use in the form of transfer of development rights.

Commissioner Hamlin concurred with the choice of Option A and with the notion of focusing improvements in areas where they will have the greatest impact. With regard to the width of the setback, he said he had no argument against what was proposed by staff.

Commissioner Mathews added his support for Option A as well. He commented that while the degree to which any mitigation on any particular property may be small, the incremental impact of improvements along the entire shoreline can be huge over time.

Commissioner Turner said Option A would be the better choice. He concurred with Commissioner Ferris in wanting to see a matrix developed. He stressed the need to have a strong rationale on which to base both regulations and incentives. Some effort should be put into addressing the specific concerns that have been raised by the public.

Commissioner Himebaugh said he was not prepared to recommend either Option A or Option B because he had not previously seen the map book. He said the limited information in the staff memo allowed him to gain a basic idea of where the nonconformities would exist. He suggested that Option A would be preferable to Option B. He said he had some concerns with the issue of transferable rights and agreed that a matrix is needed to connect the dots between the impacts on ecological functions and the use of property. The footprint rule should be kept on the table as a part of Option A.

Ms. Bedwell asked Commissioner Himebaugh to clarify if he would support the line around a footprint for structures closer than 25 feet from the ordinary high water mark. He answered that he would.

Chair Sheffels noted the general consensus of the Commission in favor of going with Option A, the notion of a transfer of rights as an incentive, and retaining the footprint approach.

Attention was given next to the policies in Attachment 1. Commissioner Mathews referred to SH-22 and the notion of multifamily or multi-lot residential/recreational developments providing public access. He asked how that would work. Chair Sheffels added a question about the zoning and the potential of having three or more houses on a single lot as multifamily and how to require public access. Ms. Bedwell said the majority of the zoning along the lake shorelines is single family residential, with the exception of the multifamily development in the area of Meydenbauer Bay, and the existing multifamily development at the south end of Lake Sammamish that has an underlying single family zoning. She said she did not have specific data on the number of lots with the potential for subdivision. The environmental designation will not change the underlying zoning from a density standpoint. There is no anticipation of new multifamily development, other than for redevelopment actions.

Commissioner Hamlin sought confirmation that the proposed policies are based on the Shoreline Management Act, which Ms. Bedwell provided. Commissioner Hamlin called attention to the policy language calling for increased public access to the publicly owned areas of the shoreline, and increased recreational opportunities for the public in the shoreline, and asked if those policies will be relied on to provide more public access. Ms. Bedwell said the language was taken directly from the WAC guidelines. Commissioner Hamlin said he could see nothing in the language calling for the use of private property to increase public access. Mr. Ingram pointed out that the guidelines have a section that specifically addresses what cities should do regarding public access. That topic will be before the Commission for discussion at a future meeting.

Chair Sheffels called attention to policy SH-41 and the references to water-dependent uses and water-related uses. She asked if the policy language would prohibit things like a restaurant or other public use that might be considered not exactly water-related. Mr. Paine said the language refers to the priorities expressed in the Shoreline Management Act and the WAC. Water-dependent is first, water-related is second, and water enjoyment, which is where restaurants typically come is, is third.

Commissioner Hamlin referred to 3.B.1.c paragraph 5 and suggested “accept” should read “except.” He suggested the balance of the policy appears to prohibit boats from being on the

water year round. Mr. Paine explained that the policy is based on an existing city policy that does not permit the dead storage of watercraft. However, “water ward” should be changed to “landward.” He added that the policy is intended to prevent the storage of boats on the beach.

Commissioner Ferris suggested the policy language as written could be interpreted to mean boats cannot be parked water ward of the shoreline to serve as a breakwater.

Commissioner Himebaugh called attention to policy SH-93 and policy SH-101, both of which address the issue of restoration, and suggested the city should be very careful in distinguishing where the policies encourage restoration and where they require restoration. Mr. Ingram allowed that the guidelines make a clear distinction between mitigation and restoration and the policy language should do the same. The policies should also allow and encourage where appropriate those who want to do restoration.

Motion to extend the meeting beyond 10:00 p.m. was made by Commissioner Ferris. Second was by Commissioner Mathews and the motion carried unanimously.

Mr. Paine commented that the draft contains too many policies. He said staff intends to pare the down to just the appropriate ones.

8. OTHER BUSINESS

Mr. Ingram said one of the potential dates for the annual Commission retreat is June 23. If that date is selected, the agenda items for that date will be shifted.

9. PUBLIC COMMENT

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, commented that the organization of Attachment 1 improves on the disorganized nature of the initial draft. The designations are in Chapter 2, but it is necessary to go to other chapters to gain the overall pictures. She said she is solidly opposed to the transfer of rights issue. There is no reason for people on the water to pay for benefits that can be accrued in a place like Bellfield. If something benefits everyone, everyone should participate in the cost. It is too premature to be narrowing down the options, but when they are determined the customer should be permitted the leeway of selecting the right option. She said she has an accessory dwelling unit that is 35 feet from the ordinary high water mark, and if it burns down she will not be allowed to rebuild it unless there is an option included on the list. More time should be spent in reviewing the policies even if it means resetting the deadline.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway, suggested that Mr. Paine is an idealist. Too often his answers are wishy washy, and that is frustrating. There are structures located 50 to 75 feet back from the water’s edge that should not be called bulkheads. The Department of Ecology and the WAC both define a bulkhead as a structure at the water’s edge, and that definition was in place well before the study conducted by The Watershed Company. There just is no data backing the notion that that study is valid.

Mr. Brian Parks, 16011 SE 16th Street, agreed that some of the replies from staff have included only half truths. With regard to the ordinary high water mark, there is confusion only in the fact that the city’s FEMA map shows the more recent numbering system and the elevation of 265 feet, while the federal FEMA map shows an elevation of 261 feet. Two different systems are used for the same FEMA map. Staff claims there will be no affect on Phantom Lake property owners because the houses are set back so far, but the proposed setback will in fact regulate what

can be done with the properties. Adding more regulations will take away value.

Mr. Dwight Martin, 5101 East Lake Sammamish Parkway, said the issues of setbacks and nonconformity are very important to him as a builder and to his clients. He said he was surprised to hear the Commission provide staff with specific direction with regard to setback numbers at such an early stage in the process. Option B with the flexibilities of Option A would be a better approach. The Commission should remain open to additional ideas as they come up. The flexibility contained in the existing code is exemplary and should not go away. Nonconformity can be a real problem for property owners and should therefore be avoided. Vertical additions should not be deemed to be an increase to a nonconforming structure. The Department of Ecology does not require buffers on Lake Sammamish, the proof of which is in Redmond's approved code.

Mr. Richard Johnson, 2824 West Lake Sammamish Parkway SE, said where the ordinary high water mark is set is important. Raising it by only one foot can change the depth of some properties by as much as ten or fifteen feet and could be the difference between being in compliance or out of compliance. Those impacts should be carefully considered.

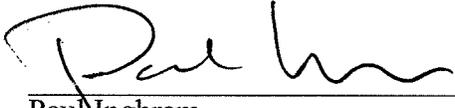
Commissioner Ferris asked the staff to take some time at an upcoming meeting to make some sense of the ordinary high water mark issue.

10. NEXT PLANNING COMMISSION MEETING

A. June 23, 2010

11. ADJOURN

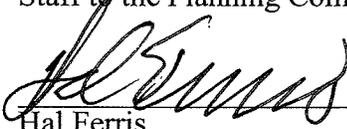
Chair Sheffels adjourned the meeting at 10:17 p.m.



Paul Inghram
Staff to the Planning Commission

10/20/2010

Date



Hal Ferris
Chair of the Planning Commission

10/20/2010

Date