

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

October 20, 2010  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Hamlin, Lai

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland, Michael Paine, Heidi Bedwell, David Pyle, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:31 p.m. by Chair Ferris who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioners Hamlin and Lai, both of whom were excused.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram indicated that concurrent with the Commission meeting there was an open house regarding a greenway along Main Street at the Botanical Garden. The design concepts under review will improve pedestrian access in a way that will enhance the entrance to the garden. Information about the project is available on the project website.

Mr. Inghram reported that no decision has been made yet by the city with regard to hiring a new planning director. The candidates are Nathan Torgelson, who works for the city of Seattle; Ray Gaskill, who has a consulting firm; Stephanie DeWolf, deputy director for the city of Pasadena; and Mike Chinn, who works for the city of Tampa Bay. The candidates have been interviewed by a staff panel and by the city manager and deputy city manager, and an open house was held at which the public was invited to meet the candidates.

## 7. STUDY SESSION

### A. Shoreline Master Program Update

Land Use Director Carol Helland reminded the Commission of the need to complete the drafting of the update and release the revised draft by the end of the year. She outlined the agenda for the meeting and the process for getting to a revised draft. She noted that the code language asked for by the Commission at its June 9 meeting had been included as Attachment 3 of the packet materials. She also commented that the menu options for reducing the 50-foot setback to 25-feet were provided in a table in preliminary regulatory form on pages 24 and 25 of the packet materials, and in Attachment 6.

Ms. Helland said staff also clearly heard from the Commission that any code approach will need to address the variety of issues of interest to the regulated community along the shorelines, including legally nonconforming structures and uses; a fast, predictable and inexpensive process for minor expansions and modifications; accommodations for recreational uses; accommodations for new and legally existing accessory structures; accommodating ornamental landscaping in the vegetation conservation areas where native plants are the preference; and view protections and landscape preservation.

Associate Planner Heidi Bedwell reminded the Commission that under the current rules there is a no-touch buffer scenario as well as a structure setback. The current rules also include the concept of a footprint exception that allows existing primary structures to be reconstructed on their footprint, which is something the Commission in June indicated it would like to see retained. There are performance standards for the buffer area and specific provisions for the maintenance of existing landscaping which should be clarified and retained in the code. There are provisions in place that limit the repair of accessory structures, which has been a hot topic as the code has been applied over the last four years.

The regulatory concepts discussed in June included an overall setback dimension of 50 feet. The revised language includes the footprint exception. The setback is divided into two areas defined as the vegetation conservation area and a primary structure area, both of which are 25 feet. The vegetation conservation setback focuses on the area with the most functions and is defined as the area landward 25 feet of the ordinary high water mark. As envisioned, up to 40 percent of the vegetation conservation area can be used for recreation uses, including patios and storage of personal watercraft. The concept includes a provision for no new structures within the vegetation conservation setback. Generally, vegetation is required to be preserved, and the removal of any vegetation within the 40 percent would have to be mitigated. The standard tree preservation requirements for the rest of the site require the retention of 30 percent of the significant trees within the shoreline jurisdiction.

The primary structure setback is measured from the edge of the vegetation conservation setback and is intended to protect the vegetation conservation setback as well as the ecological processes and functions in the second 25 feet landward of the ordinary high water mark. The primary structure setback has a more flexible range of uses allowed. The regulatory concept would allow new accessory structures up to 200 square feet to be placed in the setback without any commensurate mitigation. The provisions also allow for minor lateral expansions defined as up to 500 square feet over the lifetime of the development. Additional expansion, either waterward or greater than 200 square feet, would trigger a list of prescriptive menu options. The public has been clear about wanting to know what it will take to reduce a setback or place a structure in a particular location. The setback reduction allowed under the menu options corresponds to the

ecological function or benefit provided.

Ms. Bedwell noted that the nine menu options in the table included in Attachment 3 were based on other codes, including those from Kirkland and Sammamish. She reviewed the options with the Commissioners and noted that the greatest relative setback reductions would be allowed where the highest ecological contributions exist or are created along the shoreline. Conversely, where the ecological contributions are lowest, the relative setback reduction allowed will be lower. No specific dimensions have been determined yet, but staff believes reductions of ten to fifteen feet could be allowed in the higher category, five to ten feet for the medium category, and two to five feet for the lower category.

The Commissioners were informed that the regulatory concept also includes a landscaping standard. It is similar to other Land Use Code regulatory regimes that apply when development or redevelopment triggers compliance with development standards. A portion of the conservation vegetation setback would be required to be planted with vegetation, but there are a limited number of circumstances in which that requirement would be triggered; even then the requirement would apply only to 60 percent of the first 25 feet. Totally new development on a site that does not currently have any development would trigger a requirement to bring the site up to all current development standards for landscaping; an increase in the footprint size would do the same, as would the expansion of an existing primary structure waterward and closer than 50 feet from the ordinary high water mark, an accessory structure greater than 200 square feet, and impacts to the vegetation conservation setback. Lateral expansions up to 500 square feet would not require mitigation or trigger the landscape standards.

Ms. Bedwell demonstrated how the regulations would apply by using specific examples.

Chair Ferris asked how the setback reductions would be evaluated based on the ecological contribution. Ms. Helland said the range provided by staff was intended to be a starting point. She said it would be necessary to eventually get a specific square footage plugged into the chart in place of the high, medium and low designations.

Commissioner Sheffels observed that encroachment into a setback can be very small and for a good reason. She asked if a weighted system could be devised. Ms. Helland agreed the topic should be given some attention. She commented that an existing structure could extend into the setback and the property owner might want to take advantage of the 500 square foot expansion in the primary structure setback without mitigation.

Commissioner Turner said he saw little in the proposed language about employing incentives. He suggested establishing something like a 25-foot setback and including incentives to move back. Ms. Helland said that approach would be different and would change the analysis required for the cumulative impacts; it would essentially entail going back to the drawing board. She reminded the Commission that about 60 percent of the primary structures along Lake Sammamish currently are more than 50 feet back of the ordinary high water mark. The proposed approach in essence provides them the option of moving closer to the water. The framework of the critical areas approach is similar to what is proposed for the shorelines and it includes a great deal of flexibility. The shorelines regulations could employ the same kinds of flexibility.

Senior Environmental Planning Manager Michael Paine said options could be incorporated that would allow people to encroach into a critical areas hillside as opposed to going toward the shore. He suggested, however, that it would be very difficult with any package of incentives to encourage a structure to move back from the first 25 feet if they are already there.

Commissioner Mathews commented that the regulations applicable to shoreline areas will need to treat property owners the same way all property owners in the city are treated. To take the opposite approach with incentives to move back would certainly not be on a par with homeowners in critical areas.

Commissioner Mathews asked if the menu options are intended to be cumulative. He pointed out that a property could have a soft structure shoreline, Option 1, and a lot of vegetation covering more than 20 percent of the lot, Option 6. Ms. Helland said the contemplation was that under certain conditions one could get down to 25 feet. Mr. Paine added that if someone were to pay for a study showing that a different approach would work, they will certainly be allowed to do so.

Ms. Helland stressed that none of the regulations will apply where no new development or redevelopment is contemplated. One must do something to trigger the application of the regulations. Existing legally created structures will be allowed to remain and be maintained and repaired even if they are nonconforming. The proposed regulatory regime mimics others that exist in the city for reasons of consistency citywide.

Ms. Helland noted that the public had expressed concern about nonconforming uses and developments would have to be removed. She reiterated that the provisions will not apply if no changes are made, and legally established uses and developments will be allowed to remain and can be maintained and repaired. There is no intention to require such structures to be torn down.

With regard to process simplification, Ms. Helland said the provisions include minimal requirements relative to permitting and process which is evident in the context of the allowed primary structure expansions and lateral expansions, and in allowing accessory structures to expand up to 200 square feet. There is also allowance for minor building elements, such as bay windows and chimneys.

The provisions address the call by the public for gathering spaces, walkways and recreational uses by allowing for up to 40 percent of the vegetation conservation area to be used for those purposes, provided there is an offset of appropriate vegetative mitigation.

There are restrictions that apply to locating new structures within the setback. Structures are allowed within the primary structure setback, and up to 200 square feet can be added to existing accessory structures without having to turn to the menu options. No new accessory structures will be permitted within the vegetation conservation area.

Ms. Helland allowed that the public expressed concern about the vegetation conservation rules that could prevent the maintenance of existing ornamental landscaping. She clarified that as drafted the rules allow for the maintenance of existing landscaping, and the vegetation planted in the 60 percent of the vegetation conservation area that must be in landscaping is to be primarily native, though ornamental vegetation that is compatible with native vegetation will be deemed appropriate and will be allowed.

The concern that the landscaping rules will require the placement of tall trees directly in view corridors is addressed by including templates similar to those in the critical areas ordinance for planting plans that include view corridors. The landscape standard allows for flexibility in siting vegetation, especially trees.

The setbacks proposed total 50 feet, and through incentives property owners can buy down to 25 feet through a menu of options through a concept not dissimilar to buying up additional FAR.

## B. Shoreline Master Program Update – Public Comments

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said the proposed approach will work well for anyone not intending to do anything with their property, but anyone who so much as turns around will face the full force of the regulations. The regulations as outlined by staff sound palatable, but they will not be so by the persons having to comply with them. Table 2 in the staff report lists two references, the first by C.W. May which is 80 pages long and mentions lakes and lake shores only six times, but never pertinent to Puget Sound lakes. The listed Vermont study has no technical scientific references at all. With regard to ecological functions, hyporheic functions are stream based and have nothing to do with lake shorelines. There has been very little testimony provided with regard to hydrologic function; shoreline property owners are not the cause of the hydrologic problems and the proposed regulations will not solve those problems. The overall message appears to be that the shorelines are places where humans should not be. The city must recognize that humans already live along the shorelines and in an urban setting, not a wildlife setting; it would be very difficult to return the shorelines to a natural wildlife setting. The options matrix in Attachment 6 has three attainable objectives: linking upland and aquatic resources in an urban setting, though rationale and feasibility have not been justified; providing space for wildlife, though clear goals and objectives are needed; and pollutant removal and improving the water, though it has been shown that introducing large woody debris and leafy debris will produce both safety and pollution problems. Shoreline property owners should not be burdened with extraordinary or unreasonable attempts to solve municipal water quality issues. The proposed 50-foot setback is unreasonable; the current Shoreline Master Program setback is only 25 feet. The setback in Redmond is less than 50 feet and the proposed Bellevue setback will result in a tunnel effect. The 60/40 split for the vegetation conservation zone is arbitrary; there should be no vegetative requirement at all beyond what the stormwater code requires. The templates are onerous with regard to the type of vegetation required.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, demonstrated from aerial photos that there are differences in vegetative cover from neighborhood to neighborhood. That should be taken into consideration when establishing setbacks and other shoreline regulations. Bridle Trails has a park associated with it where it is appropriate to retain trees and significant vegetative cover; that neighborhood is also less densely populated, which means there is far more room on which to retain vegetation. Surrey Downs has become far denser over the years, and the vegetation has been replaced with manmade objects such as houses, driveways and roads. Significant tree removal has occurred in most of Bellevue's non-shoreline neighborhoods. Even so, shoreline properties in Meydenbauer Bay have as great or greater retention of vegetation as elsewhere. Newport Shores has little native vegetation since the area developed from what was once a lakeside airstrip. The Somerset neighborhood stipulates that the trees on one person's property cannot block the views from another person's property, thus giving favor to views and reducing the number of mature trees. Lake Hills, one of the older neighborhoods, has a surprising retention of trees and other vegetative cover. Phantom Lake residents have shown good stewardship by retaining vegetation in an exemplary fashion. The Tam O'Shanter neighborhood is zoned three units per acre but can only be given passing grades on its vegetative cover. The East Lake Hills area has succumbed to the desire for views, thus there is far less tree coverage than the immediately neighboring areas along the edge of the lake. The pattern persists moving north, even in areas such as Bass Cove where lot depth is much shallower. Lochmore residents above the lake have much less vegetative cover than the neighbors on the lakeshore. The Urban Forest organization's report on tree canopy loss, delivered at last year's Commission retreat, attests to the fact that shoreline property owners have not been responsible for the losses witnessed over the last 20 years. The conclusion is obvious: development has been accompanied

by the removal of vegetation, with more recent higher elevation neighborhoods contributing greatly to tree removal, while shoreline properties provide exemplary coverage even down to the shoreline itself. That fact, along with the lack of fact-based wildlife needs and documented safety needs, and the very real potential for actual increases in phosphorous loading to the water bodies, should help the Commission conclude that tree requirements for shoreline properties should be dropped, and only sensible levels of vegetation should be required.

Ms. Elfi Rahr, 16509 SE 18<sup>th</sup> Street, said she has been luckier than most Phantom Lake shoreline property owners in that extensive monitoring of the food rep interaction has been done. For the past ten years it has been astounding to see how quickly the food rep has changed and shifted as the lake columns have warmed. The food supply is not available for July, August and September. When it comes to ecological functioning, the food rep must be considered because in the end it is what feeds the animals and the fish. Woody debris is not needed in Phantom Lake. A distinction must be made between peat bottom lakes and gravely lakes. In Phantom Lake the peat is 20 feet deep and to add to it would not be wise. With regard to vegetation along the shoreline, the focus should be on plants that are flood adaptable, especially for the Phantom Lake shoreline given that the water level fluctuates. A single approach will not fit all lake shorelines.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway SE, spoke on behalf of himself and the board of the Washington Sensible Shorelines Association. He said there were a few positive points in the staff presentation, but the organization still has issues with regard to setbacks and vegetation. There still has not been an answer to the most basic question, which is what existing ecological functions will be harmed on the highly developed urban shorelines. The current staff report continues the mistaken references to large woody debris, temperature regulation, and vegetation as salmon necessities. Professor Pauley has pointed out that those are stream functions. Flawed science was the basis for the 25-foot vegetative shoreline buffer. The draft code refers to the critical areas handbook for the landscape standard; that requires trees for every nine feet that will grow to a height of 120 feet. The purported ecological basis is to create shade that will regulate water temperature, create a food source, and create large woody debris when trees die, all of which are needed by streams, not lakes. The concepts proposed by staff are not acceptable to WSSA. Staff stated previously that buffers would not be used and that lake shorelines are not critical areas, yet the code language creates a 25-foot buffer and then regulates it using the same highly restrictive critical area buffer rules. The rules requiring the planting of trees on 60 percent of the shoreline are not acceptable. The impetus for imposing a setback as outlined in the staff report is that projects near the shoreline will harm ecological functions, yet the specific harms are not identified, thus the requirement for a new 25-foot setback beyond the existing 25-foot setback is arbitrary. It is unacceptable to use minor construction projects to leverage planted buffers and other restoration projects. It is unacceptable to impose vegetation conservation buffer requirements on existing developed properties; even the WAC shoreline guidelines do not require that. The 25-foot historic setback is adequate and there has been no science shown to require a larger setback.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said reading the staff reports is like reading past agendas. Presenting the same information over and over will not make it become true. The setback information presented by staff contains a new twist: it gives property owners only one choice from which to select, which is 50 feet. There should instead be a discussion about available choices. Prior to 2006, the structure setback was 25 feet. The staff said new science called for revisiting the standard and thus the critical areas ordinance 25/25 standard was created. At the June meeting staff said they cannot say if 25, 30 or 50 feet is better or what is necessary, but came down on the side of more being better. The staff report states that there are a limited number of studies regarding width and effectiveness of lakeshore setbacks, but claims that the

many studies done for wetlands and streams are relevant because lakes provide many of the same functions. That ignores the fact that there have been science presentations that clearly showed that stream, wetland and marine functions as distinct from lake shoreline functions. The Commission in fact previously instructed the staff to stop using inappropriate science references to support their positions. WSSA believes a 25-foot setback is sufficient; it is what has been in place for many years and to which most residential properties conform. Unlike the critical areas ordinance, the Shoreline Master Program is required to be based on valid science. If the shoe does not fit, it does not fit. The guidelines are only guidelines, not rules as staff seems to believe. The Commission must make its decisions based on science; no one should try to make the available science justify the guidelines, regardless of how much the Department of Ecology might like that. The same is true for the issue of vegetation; staff has not yet presented any science that validates the need for increased vegetation along the shoreline. Even if there were science to show more vegetation is needed, there is no science to show how much is needed. The guidelines simply state that vegetation conservation standards are not to apply retroactively to existing uses and structures. With regard to the issue of no net loss, the WAC is quoted as stating that local jurisdictions are to evaluate and consider the cumulative impacts of reasonable future development and draft policies, programs and regulations that address those impacts and which fairly allocate the burden of addressing cumulative impacts among development opportunities. Unless it can be shown that there are impacts from 25-foot setbacks and the current patterns of vegetation, the staff are only wildly speculating that intense urban development will come to the shorelines from which a vegetative mote is needed for protection. The guidelines require regulatory and non-regulatory actions. Where the city deems regulations are necessary, they should fall within the guidelines and do so responsibly.

Mr. David Radabaugh with the Department of Ecology, 3190 160<sup>th</sup> Avenue SE, said the department is willing to consider the notion of drawing buffers around existing residences, especially given that the provision is included in the existing critical areas ordinance. He said the staff has asked the department about the approach, and the department is considering it largely because of the efforts of city staff. He stressed that in fact the WAC guidelines are mandatory. The guidelines state that master programs shall include provisions to address vegetation conservation and regulatory provisions that address conservation of vegetation. When the city's draft Shoreline Master Program is finished, it will be given a thorough review by the department. The review of the vegetation conservation provisions will include an analysis of the cumulative impact analysis. He observed that Option A proposed by staff has a lot of merit; the concept is good in that it seeks to conserve vegetation on the shoreline while allowing of use of the shoreline. With regard to the issue of allowing additions of up to 500 square feet to structures within the setback without any mitigation, he said during his review he will look at what the cumulative impact could be; appropriate vegetation conservation measures should be considered along with additions in the setback area. The 60 percent vegetation conservation proposed for the first 25 feet landward of the ordinary high water mark may be a bit low and will need to be further reviewed. The area of most concern is the area closest to the ordinary high water mark; in theory, the 60 percent provision could yield a scenario in which the ten feet closest to the ordinary high water mark would have no vegetation at all. The menu options appear to have merit; many of them are in the approved Kirkland Shoreline Master Program.

Mr. Richard Johnson, 2824 West Lake Sammamish Parkway SE, read into the record a letter from Mr. Tom Shafer, a shoreline resident. The letter noted that in previous meetings the Commission asked staff to explain why certain rulings were applied and the staff was unable to provide answers, and no follow up has been done. Staff has not been able to say why a 50-foot setback would be better than a 25-foot setback, and there has been no follow up. Many other questions have been asked and never answered, and just seemingly discarded. Staff should be asked to explain why. Staff has presented an options list but is not able to explain the options or

their long-lasting consequences. The Commission will not be able to reach appropriate conclusions if the staff does not answer question or research answers and report back. The consequences are too great to do a poor job. The issues are great and the long-term consequences are even greater. The Commission may want to do its best, but has not been given the tools or the time to become informed and knowledgeable. The Commission should not just ask the questions: it should insist on getting answers. If the right answers are not forthcoming, the process should be stopped until those answers are provided. Staff has succeeded in creating a code that is exceedingly simple. It simply neglects water level changes; simply neglects trying to get plantings to survive; and simply neglects the issue of blocking the views of neighbors.

Mr. Norman Ballinger, 16226 SE 24<sup>th</sup> Street, said he is a resident on Phantom Lake. He stressed that one regulatory approach will not fit all circumstances. Phantom Lake is a different lake and the rules that apply to Lake Washington and Lake Sammamish do not apply. Phantom Lake is mostly developed and very few lots are left to develop. The area is largely wooded and vegetated, so setbacks are not even applicable. The lake is impacted by stormwater runoff and the plant material in the lake that contributes to the phosphorous loading. Nothing is said about how to measure ecological benefit and adverse impacts, nor the impacts of mitigation efforts. Steep slopes are not addressed at all but they should be.

Mr. John Strong, 1604 West Lake Sammamish Parkway NE, said he supports the work being done by WSSA. He said the organization has smart people who are problem solvers and he encouraged the Commission to work closely with them. He said he was not satisfied with the Option A approach for many of the reasons stated. He said he lives in Rosemont where there are 50-foot lots. The view corridors are already very narrow, and the notion of having to plant more trees will not be welcomed. Trees on a larger waterfront might be a good idea, but not on a 50-foot property.

Mr. Terry Lemke, 2016 West Lake Sammamish Parkway SE, said his family has lived on the lake for 90 years. In years past there was much more wildlife, including bears. He said his property on the west side of the lake is still more forested than other areas along the lake, but more habitat that would encourage additional wildlife is not wanted. Children live along the lake and play fearlessly along the lakeshore and in the woods. There are some deer in the area, but deer in greater numbers would possibly attract cougars and other predators. Consideration should be given to families and pets ahead of enhanced wildlife habitat that may attract dangerous animals. There has been an explosion in the mountain beaver population, and they would become even more prevalent with more dense habitat to hide in.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said sometimes things sound good on paper but do not work well in real life. On Phantom Lake the ordinary high water mark is so high that vegetation required in the first 25 feet would basically yield a lot of lawn, the native planting area, and more lawn. That would seem out of place. What is not broken should not be fixed. The trees and vegetation coverage along Bellevue's shorelines is very well preserved, which is remarkable given that the shorelines are mostly developed with residential uses. That is particularly true along Phantom Lake where the highest shoreline analysis scores were given. Some clarification from staff is needed given that the draft states that buffers will no longer be required except on Phantom Lake. The 40/60 split is also confusing with regard to how it will be imposed on Phantom Lake. If lawns are properties are allowed to go native with willow trees and bramble, the phosphorous levels in Phantom Lake will escalate. The USGS white papers support that notion. It makes no sense to consider such an approach when Phantom Lake properties are intentionally being flooded by Utilities in an attempt to reduce the phosphorous levels. The consulting firm Entraco was hired by the city in 1996 to produce a report assessing the restoration activities being done on Phantom Lake. In their summary conclusions they stated

that improved consistency of performance on the restoration program could probably be achieved by maintaining high lake levels to reduce shallow groundwater nutrient loading. There is not, however, any data to support that notion. Responding to a letter from a Phantom Lake resident complaining about the higher water levels, Utilities staff stated that a minimum of two full years of data would need to be collected before any conclusions could be drawn as to the impacts or effectiveness on lake levels and water quality. Due to the kettle topography of Phantom Lake and the problems with nutrient loading, there is no practical reason for requiring additional vegetation. The average lake levels should be lowered by six to nine inches, and the phosphorous levels should continue to be monitored.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said much has been said about shoreline stabilization. He said staff and the Department of Ecology are simply not acknowledging the fact that Lake Sammamish is unique and different from Lake Washington. The Kirkland coves approach simply would not work on Lake Sammamish given that the water level during the summer is more than two feet lower than during the winter months. If the cove were to be established at the summer levels, it would be wiped out during the winter storms for most of the shoreline. The high water mark is so far above where the water line is during the summer there is about 20 feet of shoreline that is not being taken into account. A structure may need to be as much as 70 feet back from the shoreline during the summer months. The current regulation regime does not work for people on Lake Sammamish. A soft shoreline treatment simply will not work, especially during the winter months when the storms will wipe them out. Bulkheads are needed to hold back parts of the shoreline. The WSSA has been instrumental in getting the weir cut back by working with King County. With regard to the Department of Ecology, the fact is the buck will stop with Mr. Radibaugh. City staff graciously agreed to take a guided tour of the shoreline to see how the Kirkland shoreline differs from the Bellevue shoreline, but Mr. Radibaugh has refused to do the same. It is disingenuous for him to say one approach or another looks good to him without really seeing the shoreline for himself.

### C. Shoreline Master Program Update – Commission Discussion

Commissioner Turner asked if the proposed 25/25 buffer is directly the result of the critical areas ordinance. Mr. Paine said the city has never had a 50-foot buffer for developed sites; there has been a 50-foot buffer for undeveloped sites. The critical areas ordinance has a 25-foot buffer and a 25-foot structure setback. The proposal does not include a buffer, only a vegetation conservation area of 25 feet that is only applicable with development, 40 percent of which can be used as the property owner sees fit for recreational purposes. In the critical areas ordinance the first 25 feet landward of the ordinary high water mark is truly a buffer and touching it in any way triggers a requirement for restoration. Commissioner Turner suggested that regardless of what it is called, the proposal appears to be for a 50-foot buffer. Mr. Paine said the overall dimension is 50 feet, and that was established primarily on the GIS data and the fact that the city cannot backslide from its prior regulation, which is the critical areas ordinance. Most of the functions in need of regulation are encompassed in the 50 feet. The proposed approach is different in that it does not involve a buffer, which must be held inviolate without triggering restitution.

Commissioner Turner asked how taking a less aggressive approach, by calling for a vegetation conservation area and a building setback, is not backsliding from the city's prior regulation. Mr. Paine said the issue with shorelines is the cumulative analysis process. All of the regulatory pieces of the program must be balanced, but that approach allows for giving a little in one area provided the loss is made up somewhere else. The critical areas ordinance aims at particular best available science standards, so each individual critical area has its own bundle of science attached to it. The shoreline approach is focused on balancing what is being done with docks, bulkheads, setbacks and vegetation. It will be up to the Commission to decide what the right

balance is.

Ms. Helland further explained that the Shoreline Master Program requires equivalency with prior regulations. What staff has been focused on is formulating a package of tradeoffs which will achieve equivalency from a cumulative impacts standpoint while allowing for some flexibility. Under the adopted critical areas ordinance, for developed sites in shoreline critical areas there is a 25-foot buffer and a 25-foot structure setback; for undeveloped sites there is a 50-foot buffer and no structure setback. Currently, 60 percent of all dwellings are located more than 50 feet from the shoreline. The proposal allows structures to be closer to the water through a series of incentives.

Commissioner Himebaugh said it was his understanding that the 50-foot number was chosen based on the fact that the city currently regulates shorelines as critical areas. He also noted that the intent is to not treat shorelines as critical areas but asked if they will be defacto critical areas if the new approach simply adopts the old 50-feet, even if the area is less aggressive in that it is not called a buffer. He asked if there is an ecological basis for doubling what previously applied to the shoreline, which was 25 feet. Ms. Helland said the 50 feet was identified as an appropriate buffer and setback combination in critical areas to address the functions and values that occur in that range landward of the ordinary high water mark. The effective buffer for terrestrial habitat has been shown to range from 300 to 820 feet; no one is proposing a buffer anywhere near that width. The call for a 50-foot vegetation conservation and building setback combination is aimed at addressing the most functions and values as possible without being too onerous. Science does not work in minimums: it works in optimums. Scientists focus their work on optimal conditions; accordingly, there is little or no research aimed at determining the minimum a system can bet by with before tipping the balance in favor of being fatally flawed. That is where the policy discussion and the application of a cumulative impacts analysis come into play.

Commissioner Himebaugh commented that the Commission has been told a number of times that it will need to weigh the facts as presented in making a policy decision. The effective buffer range for terrestrial habitat width shown in the staff report is based on stream science, which was used to develop the critical areas ordinance. That in essence ties the hands of the Commission. The Commission must make decisions based on the science, particularly applicable science, but it has not been given any applicable science. He asked if the city should follow the precautionary principle in developing the Shoreline Master Program update, and if so how it should be interpreted, and how it relates to the protection of private property rights, which the Shoreline Management Act requires be promoted. Ms. Helland the precautionary principle is embedded in the cumulative impact analysis. The starting point is the functionality for the use that is to be accomplished, such as recreational uses; everything works upward from there. It will not be possible to know how any of the elements will fit together until a regulatory package is developed on which a cumulative analysis can be run. It would be safe to say that allowing a structure within 25 feet of the shoreline on every property along Lake Sammamish would create an unacceptable impact. The code adopted in the 1970s included a 25-foot setback. The legislature in its wisdom concluded that the shoreline regulations needed to be updated. During the intervening time the city updated its critical areas code.

Ms. Helland said she understood the concerns of the Commission with regard to the science, and the comments of the public to the effect that the science is flawed. However, the city must use the information it has. The Sammamish Council grappled with the same issue when holding a public hearing on its proposed Shoreline Master Program update and came to the conclusion that the various systems cannot be looked at in isolation. The available science from wetlands, rivers and streams and shorelines offer the best starting place. Staff has provided the Commission with science, as has the public.

Mr. Paine said he recognized the concern of the public over using stream science and applying it to lakes. He said there is no question that lakes have unique biological characteristics. That, however, is not what is in question. What is in question is the individual functions. For example, sediment removal occurs in a buffer from a stream and a buffer from a lake in exactly the same way. Staff agrees that vegetative lawns properly designed with a certain slope are great for removing sediment. Sediment loading from shoreline areas is not a huge issue given that most of the sediment load coming into the lakes is coming from storm pipes, Issaquah Creek and other streams. Pollutants are filtered by soil particles in the same way for streams and lakes. Terrestrial habitat adjacent to streams serves exactly the same functions as terrestrial habitat adjacent to lakes. With aquatic habitat, however, there are differences. There is no question that large woody debris in a salmonid stream is critical to habitat; good salmon habitat simply does not occur without it in the Northwest, particularly in the upper reaches of the streams where the salmon breed. That does not mean that coarse woody debris is not important in lakes, it is just not as important. He said the Commission can decide not to require the introduction of coarse woody debris into the lakes through the planting of large trees on the shoreline that will eventually die and fall into the lake, but it can still decide that bank stability is vitally important and can be enhanced through root structure. The Commission can show its interest in aquatic habitat by not allowing for the creation of a swimming pool in the lake. The Commission may also be interested in pollutant removal that can be brought about by having a certain amount of open, non-impervious area where rainwater and runoff can penetrate and be filtered.

Mr. Paine said the science indicates that a buffered area of 50 feet can do a pretty good job of protecting and providing the necessary functions. He said 60 feet might be better but there is no specific study to support that notion, in the same way there is no study that says the same functions can be provided in only 40 feet. The genius of the critical areas process was that it allowed for studies to be done on specific sites to support specific proposals and appropriate levels of mitigation.

Commissioner Himebaugh suggested it all comes down to buying the premise. He said that was where he was having trouble and is also why the Commission early in the process requested a matrix that would connect regulation with ecological functions.

Commissioner Turner said the economic or financial impact on property owners will be a big deal. He said he fully understood the need for regulation but needed to know more about the impacts in all senses of the word. He asked if the desired matrix would be forthcoming. Ms. Helland said the preliminary matrix that had the menu options was included on page 42 of the packet materials. She allowed that it did not include the economic side of the issue. When the options are narrowed down, some economic analysis will be included, at least with regard to the relative cost of some of the options. It will make the most sense to conduct that analysis after the revised draft is in hand. With regard to property rights, she said the legal department has been asked to provide an analysis with respect to code regulations. That analysis should be delivered to the Commission on November 3.

Chair Ferris suggested that it would be very difficult to provide a cost analysis given that every site along the lakes is different. It is unlikely that it will be possible to apply commonalities. The analysis may in fact open more points to argument than it will solve because everyone will look at the issues differently.

With respect to the information in the packet regarding the vegetation conservation area, Commissioner Sheffels noted that the language used talks about "...to protect and restore ecological functions." She suggested the no net loss concept does not necessarily include

restoration of functions. Mr. Paine agreed. He said the primary purpose of the vegetation conservation setback is to protect existing riparian or lake shoreline vegetation. The phrase in question comes from the WAC. The guidelines blend the protect and restore concepts frequently, but clearly the drafters and the agreement between the environmental and development interests never fully got their hands around the issue of restoration. Commissioner Sheffels suggested that since the definition of restore is fuzzy, the word should be removed if possible. Mr. Paine agreed.

Chair Ferris said his reading of the language was that someone with a shoreline property intending to take no action that would change the ecology would not need to do anything. However, if the same property owner were to seek to encroach into the setback or otherwise disrupt an existing ecological function, restoration would be required as a mitigation. Ms. Helland said that was her reading of it as well. She allowed the language could be more clear.

Commissioner Sheffels commented that the same section states that "...conserving vegetation provides additional benefits, such as protecting human safety and property..." and suggested the concept is too fuzzy. The language should be more indicative of what is to be accomplished.

Answering a question asked by Commissioner Himebaugh, Ms. Bedwell said the paragraph in question was taken from Section 173.26.221.5 of the WAC. The references to restoration and human safety are included there, and the latter appears to be a reference to stabilization areas that might be prone to erosion or landslides.

Commissioner Himebaugh asked how the vegetation retention standard would affect the owner of a shoreline property not wanting to make any changes to the shoreline after the new Shoreline Master Program takes effect. Ms. Bedwell said the property owner would be required to retain the vegetation, except that up to 40 percent of the vegetation could be removed to accommodate recreation uses having a pervious surface. Any existing lawn and ornamental vegetation could remain and could be maintained over time.

Commissioner Mathews asked if a property owner could remove existing vegetation and replace it with another type of vegetation provided a workable plan were submitted to the city. Mr. Paine said that could be done. The process already exists in the critical areas ordinance. An approved vegetation management plan is required. Ms. Bedwell added that the focus must be on the significant trees and native vegetation. A property owner wanting to remove some ornamental landscaping in order to replace it with some other type of ornamental landscaping can do so as routine maintenance.

Commissioner Sheffels pointed out that the proposed language prohibits the use of fertilizers, herbicides and pesticides and suggested that anyone with roses growing in the setback area will want to use an appropriate fertilizer on them. She also asked how the city would go about enforcing such a provision. Mr. Paine agreed to take a look at that issue, commenting that the language sounds overly broad. Ms. Bedwell added that the emphasis would be on education over enforcement.

Answering a question asked by Chair Ferris, Mr. Paine suggested the issue of course woody debris has been largely misunderstood. He said where space should be carved out for course

woody debris is in the building of the integrated stabilization structures; all of it would be anchored and unable to move about. He said there is no interest in just randomly throwing trees into the lake, nor is anyone wanting to see trees cut and placed vertically out in any lake; that is not and never has been a proposal made by the city.

Commissioner Sheffels said the public has often raised the differences between Lake Washington and Lake Sammamish, and certainly Phantom Lake. She noted that the Newport Shores area has been singled out for the way in which they are handling things. She said she would support creating a matrix approach aimed at treating the different shorelines differently by condition. Mr. Paine said specific site conditions are taken into account in permitting the construction of bulkheads. He agreed that Phantom Lake is simply not the same as the other lakes and should be looked at and treated separately. It must be kept in mind, however, that for Phantom Lake the Shoreline Master Program is not the primary regulatory driver, and what is done in the Shoreline Master Program must not upset other regulations already in place. He also agreed that parts of Lake Washington have very high winds and very high waves, and those areas will get special treatment with regard to how bulkheads are addressed. All existing bulkheads will be allowed to remain in place and be maintained over time, but if they degrade to the point of being replaced, a different approach will need to be considered.

Commissioner Sheffels commented that several from the public have pointed out that high winds and high waves will only wipe out any vegetation homeowners may be required to plant. Mr. Paine said the argument is relevant, though he added that staff had not been given direct evidence of that happening. He pointed out that wave heights and wind forces are much higher along the shores of Puget Sound where integrated stabilization is also used. It is all a matter of design.

Chair Ferris said one of the major differences between Lake Washington and Lake Sammamish is the fact that Lake Sammamish has a variable water level. He agreed that design will have the greatest impact on how structures hold up over time.

Commissioner Himebaugh asked why certain activities under the proposal would trigger a 60 percent landscaping requirement and how the trigger activities were selected. He said it appeared the requirement was quite onerous, even though the Department of Ecology representative testified that he did not think it was enough. Ms. Bedwell called attention to the bullet items on page 8 of the packet that describe the scenarios that would trigger the landscaping standard. She reviewed the list with the Commissioners and noted that each entails a significant action. However, she said the Commission would be free to determine if the entire 60 percent would need to be planted for a given action, or if there should be a relative scale based on the amount of expanded footprint.

Ms. Helland said the 60 percent figure was arrived at because it represents a majority of the shoreline without being overly restrictive. Ms. Bedwell stressed that the 60 percent does not all have to be in a single block; there can be patches of vegetation scattered around so long as the total reaches the 60 percent mark.

Commissioner Himebaugh said he could not see how the requirement to vegetate up to 60 percent of an area fits with the notion of no net loss, unless one is very careful about establishing what activities are going to trigger the planting requirement. He suggested it should be proportional to the actual impacts of development. Ms. Bedwell said in Redmond, new development adhering to the 35-foot setback, or redevelopment that involves more than 50 percent of the existing value of improvement, triggers a requirement for 50 percent of the minimum 20-foot building setback to be planted in vegetation.

Commissioner Turner expressed some confusion about the relationship of the critical areas ordinance to the Shoreline Master Program. He said it would be useful for staff to show how they are different or the same. Ms. Helland said the chart on page 40 of the packet materials gave some details but said staff would be willing to provide a more robust comparison between the existing code and Option A.

Commissioner Himebaugh said he would not be in favor of going forward with the proposal. It is generally too restrictive, and there are portions of it that are borderline arbitrary based on gaps in the science. He said he did not think the city should err on the side of regulation if it cannot be said for sure how something will affect something else.

Commissioner Mathews said he would favor moving ahead with the general proposals, specifically Option A, so many of the blanks can be filled in. He suggested that improvements have been made since the Commission last discussed the topic, including more flexibility. There are no costs associated with doing nothing, and the flexibility kicks in when some changes are desired. With some creativity things can be allowed for fairly minimal cost.

Commissioner Turner voiced concern about moving forward with the current proposal. He said there is little in the language about the shorelines already being urban environments and even less about leaving them that way; there is the potential that things could be reversed in terms of making the shorelines less urban, particularly with regard to the vegetation conservation area. The property owners have not been given enough credit for being good stewards of the shorelines. The staff have said they do not want to over-regulate, yet the proposal appears to do just that. There are no real incentives included. For each regulatory category, there needs to be an explicit tie to the science, as well as to the economic impacts. While the proposal will not in any way seek to regulate stormwater runoff, it must be noted that those systems are negatively impacting the shoreline environments.

Commissioner Sheffels agreed that the newest draft is more positive than the last version. The vast majority of properties on the shoreline will not be affected in any way by choosing the status quo. A small percentage, however, will want to build something new or redevelop a property, they will be subject to the new regulations. She suggested the menu options do represent incentives in the form of tradeoffs. She said she looked forward to seeing the next iteration of the proposal.

Chair Ferris concurred that the document has come a long way from where it started out. He said he had come to conclude that science is not always a measurement of specific factors; it is

often judgmental factors that contribute to the overall ecological functions. The staff have answered most of the questions asked along the way. The matrix captures what the Commission talked about in June and gives a measurable way to show how incremental contributions can offset functions that have been taken away through development or redevelopment. He agreed that the stormwater system and associated regulations do have an impact on the lake systems; many of them were not in place when the upland areas were developed, and as they redevelop they trigger compliance with the new regulations. He voiced support for moving ahead with Option A, the 25/25 setbacks, and the revisions called for by the Commission.

Motion to extend the meeting to 10:15 p.m. was made by Commissioner Sheffels. Second was by Commissioner Himebaugh and the motion carried unanimously.

## 10. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said a comment made by staff at a WSSA meeting about the vegetation conservation area was that the WAC guidance is not clear but the Department of Ecology will not let an Shoreline Master Program pass without that component. She said there is already wildlife along the shorelines, including coyotes near Meydenbauer Bay; an increase in wildlife is not desired. The whole point of the Growth Management Act was to concentrate growth in urban areas; it makes no sense to take areas that are developed as urban and force them to become more rural. The WAC says that replacement is a form of maintenance and repair; there is no reason for incremental actions to trigger some of the things that are being suggested by staff. The statement that the city cannot backslide from its current position makes no sense in light of the fact that one of the options offered the Commission included a setback of 35 feet, which is less than what is required by the critical areas ordinance. Too much vegetation along the shoreline will block views from the nearby homes, which could mean mothers will not be able to see what their children are doing there; that is a safety concern.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said the critical areas committee had a CAC that did not even mention lakes. Accordingly, there was no citizen input regarding lakes in the critical areas study. That would seem to be a legal liability issue for the city. Language should be included stating that fire, earthquakes and other acts of God will not trigger the regulations. Two Phantom Lake residents have been told they must leave large fallen trees in the lake; there are active beavers on Phantom Lake so the number of trees in the water could pile up. About ten percent of the residential lots on Phantom Lake are undeveloped currently.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway, showed the Commissioners photos depicting the loss of trees over a ten-year period. He pointed out that Weowna Park includes a large greenbelt. The property was acquired from Warehouse by private citizens and in the 1970s it was sold to King County for use as a park area. Stewardship of the land was paramount from the start and it still is for waterfront property owners. The regulation concept should be thrown out in favor of education and incentives.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, said there will be economic impacts associated with the proposed approach. Over the last four years applicants have faced stiff fees

associated with the critical areas ordinance. With just the looming potential of new regulations, many shoreline property owners are questioning if they want to stay on the lake, and people who are looking at properties are hesitant to buy them. Property values could fall, and that is an economic impact that should be considered.

Mr. Don Kirth, 408 West Lake Sammamish Parkway SE, said he has lived on the lake since 1978. He said he was under the impression that his floating dock had been grandfathered, but he said he was approached about taking the dock out. The dock is out of the water from the first of November through the first of June. To go through the process of getting the dock re-permitted cost more than \$50,000. Staff says they have leeway to do certain things, but they do not abide by it; they see everything as very black and white. It was disheartening to have to spend so much money only to end up with what was already there.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, said the slogan "It's Your City" does not seem true. The Commission should think carefully about how the proposed regulations will stifle economic growth. People will choose not to remodel their homes or redo their docks. There will not be any long-term consequences for staff, but there will be for the property owners, the taxpayers.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway, said he was puzzled by the non-answers provided by staff. Staff just dances around the issues, such as how they came up with the arbitrary 60 percent figure and 50-foot setback. The fact is there are only 30-some properties on the lake that are not developed. He said since he has lived on the lake, four of the six homes near his property have been either rebuilt or completely leveled and started over. That is a lot of economic activity. The proposed setbacks and buffer zones will have a huge impact on redevelopment activities and on property sales. The shoreline area represents only 0.2 of one percent of the total watershed area for Lake Sammamish and it is totally arbitrary to choose 60 percent of the first 25 feet versus 50 percent, or 40 percent, or 30 percent; the actual land area is only a very small fraction of the total.

8. OTHER BUSINESS – None

9. APPROVAL OF MINUTES

A. September 22, 2010

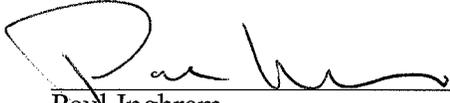
Motion to approve the minutes as submitted was made by Commissioner Mathews. Second was by Commissioner Turner and the motion carried without dissent; Commissioner Himebaugh abstained from voting.

11. NEXT PLANNING COMMISSION MEETING

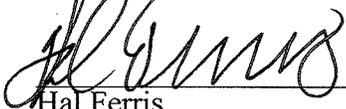
There was agreement not to meet on October 27 and to meet next on November 3 and then again on November 17.

12. ADJOURN

Chair Ferris adjourned the meeting at 10:18 p.m.

  
\_\_\_\_\_  
Paul Inghram  
Staff to the Planning Commission

1/26/2011  
Date

  
\_\_\_\_\_  
Hal Ferris  
Chair of the Planning Commission

1/26/2011  
Date