CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

December 8, 2010 Bellevue City Hall
6:30 p.m. City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Lai, Mathews

STAFF PRESENT: Mike Kattermann, Department of Planning and Community Development; Carol Helland, Michael Paine, Kevin LeClair, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:42 p.m. by Chair Ferris who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Sheffels, who arrived at 6:43 p.m., and Commissioners Lai and Mathews, 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. COMMITTEE REPORTS – None

Commissioner Hamlin said the Eastgate/I-90 CAC met on December 2 and continued to receive background information. The focus has been on existing conditions, a preliminary screening analysis, and development opportunities for the Eastgate area that had been grouped into themes. He said a committee tour of the area has been scheduled for January.

7. STAFF REPORTS

Senior Planner Mike Kattermann reported that in a lengthy session on December 6, the Council adopted the 2011-2012 budget. The planning functions made it through the process fairly well intact.

The Council also adopted the 2010 package of Comprehensive Plan amendments. The window for Comprehensive Plan amendment applications for 2011 began December 1 and runs through January 31. He said staff would be coming back to the Commission in January with an update regarding the Enatai tree ordinance.

Mr. Kattermann noted that the Commission would not be meeting again in 2010 and took the time on behalf of Comprehensive Planning Manager Paul Inghram and the entire Department of Planning and Community Development staff to wish each Commissioner a very happy holiday.

8. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

A. Shoreline Master Program Update

Land use planner Kevin LeClair said according to the state rules restoration is defined as the reestablishment or upgrading of impaired ecological shoreline processes or functions accomplished through measures including but not limited to revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. The law is clear that restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions. Restoration refers only to improving existing conditions to some degree.

Mr. LeClair said one required element of the shoreline guidelines is a shoreline restoration plan. The guidelines are fairly prescriptive with regard to what is required to be in the plans, including identification of degraded areas or impairments in the shoreline areas; identification of goals and objectives for restoration; identification of ongoing and existing non-regulatory programs that aid in or support restoration goals and objectives; identification of additional projects in the shoreline jurisdiction that could be implemented over time to further the goals and objectives; and a plan for implementing and monitoring restoration activities.

While the guidelines require having a restoration plan, they do not require the act of restoration. Mr. LeClair said it is the opinion of the staff that the Department of Ecology requirements are met by the city's current restoration plan.

Within the original working draft policies, 213 through 219 were supportive of restoration. Staff has been working to winnow those policies down to only four. The policy framework seeks to develop a restoration plan that would encourage or promote projects the city could do, and which could serve as restoration examples for private property owners; and to protect and restore areas that are sensitive and provide benefits to the community and the environment.

The plan was developed with the Development Services Department acting as the lead, but the parks, utilities and transportation departments all joined the effort. The focus was on making certain that restoration balances public access and the interaction of the community with the water in public spaces. The first goal speaks specifically to that concept. The second goal is aimed at biological functions. It calls for restoration efforts to be focused on maintaining or enhancing watershed processes, including sediment, water, wood, light and nutrient delivery, movement and loss. Maintaining or enhancing fish and wildlife habitat during all life stages and maintaining functional corridors linking the habitats is the focus of the third goal. Each goal is followed by specific objectives aimed at providing clarity and specificity.

The restoration plan is specific with regard to the Comprehensive Plan policies already in place, and there is some dialog around the existing codes and regulations that are supportive of restoration.

Mr. LeClair said the Shoreline Master Program update is intended to ensure through policies and regulations that there will be no net loss of ecological function over time. The restoration plan is supportive of the no net loss intent and ideally will provide some lift above the no net loss baseline.

The list of projects and programs was developed through interdepartmental collaboration. More than 170 ideas for restoration were brought up and discussed by the various department staff. Some were deemed infeasible for one reason or another, and ultimately the list was narrowed to 32 projects. Those projects were then scored and ranked by the resource area they are in: Lake Washington, Lake Sammamish, Phantom Lake/Lake Hills Greenbelt wetland complex, and Mercer Slough/Kelsey Creek. Six projects of the 32 rose to the top and were conceptualized to a higher level.

For each project, the existing conditions are described, and the project goals are outlined, along with the strategies for restoration. The vision for the tool is to have it be used to demonstrate to the public what the city can do in terms of restoration and how restoration can serve multiple goals and objectives, such as improving public access and ecological functions.

While there is no requirement to conduct restoration, the city will receive a lot of mileage from the restoration plan by focusing on ongoing and funded programs the city is already operating. They include the storm and surface water utilities programs aimed at protecting wetlands and managing flooding, and education efforts such as those at the Mercer Slough Environmental Education Center.

Ms. Helland said the proposed plan was drafted to meet the requirements and obligations of the guidelines, and goes further with the conceptualizations that help to facilitate, encourage and remove barriers for city departments by incorporating restoration activities into their projects on public properties. It is hoped that the work done by the departments to identify opportunities will help to tell the story better to the public.

Commissioner Sheffels asked if other jurisdictions have initiated some of the new concepts. Environmental Planning Manager Michael Paine said Seattle has some programs going and has done some projects and are monitoring them. Bringing some of the Bellevue projects online would allow for good tests that could be translated to private situations. Ms. Helland said the conceptualized idea can be used almost as a handbook is a somewhat unique approach in restoration plans. It has not necessarily been tested or approved.

Commissioner Turner said he likes the idea of using a public project as an example for others to follow.

Mr. LeClair pointed out that some of the 32 projects are in fact on private property and that they were scored along with all of the other projects. He stressed, however, that will be no regulatory obligation to enact the restorations as envisioned. In order to be fair and balanced, it was necessary to look at the entire shoreline irrespective of property lines in looking for restoration opportunities. Ms. Helland added that the scoring exercise gave preference to opportunities that will return the most benefit for the improvement made.

Commissioner Himebaugh said he hoped the restoration plan would not become a catalog for mitigation opportunities during the permitting process. Ms. Helland said it will not generally be handled in that way. She commented that when the Kelsey Creek Shopping Center sought to trade off an obligation to do a specific restoration required of them by their concomitant zoning agreement, the plan would have provided a list of projects that could have been done as an offset. The city has not incorporated a fee-in-lieu or arrangement similar to the transfer of development rights; it is always better during development to mitigate for impacts as close as possible to where they are created. Mr. Paine added that for large regional projects where the applicant struggles to find

mitigation opportunities in the city, the list of projects would be very helpful to have. While it might not be classified as restoration, the shoreline improvements probably would not be turned down by the City Council. Ms. Helland noted that Sound Transit and WSDOT projects often struggle to find offsetting opportunities to create new wetland areas or to replace shoreline ecological functions required by mitigation. Regionally the city would rather have the projects undertaken in Bellevue, so where opportunities can be identified the door to conversations with the private property owners could at least be opened.

Commissioner Turner asked if the listed projects include opportunity to conduct some measuring of ecological functions that could be applied to the overall Shoreline Master Program to help it hold together better over time. Ms. Helland said the hope is that there would be monitoring. There are monitoring requirements for projects for restoration purposes, and that would be one way to measure the effectiveness of the techniques.

Commissioner Himebaugh suggested the focus should be on monitoring ends rather than monitoring means. He said it would be far better to understand what improvements to ecological functions have been brought about rather than how much square footage has been converted. Ms. Helland allowed that it is often less expensive to use markers and tags. The Commission could in its recommendation to the Council include a section that speaks to the importance of funding monitoring. The city is limited in its monitoring potential by funding, and that requires figuring out workarounds which often are surrogates for restoration.

B. Shoreline Master Program Update – Public Comments

Mr. Brian Parks, 16011 SE 16th Street, said he attended the December 2 meeting of the Environmental Services Commission during which they discussed issues relative to the Shoreline Master Program update. He said he informed them about the bottleneck situation occurring on Phantom Lake given the limited outflow channel and weir. At the meeting utilities suggested revisions to their comprehensive drainage plan, but they appeared to be skirting many of the issues the Planning Commission has been discussing. The information in the current Commission packet is contradictory to what utilities was saying at the Environmental Services Commission meeting. Two studies were done in the 1970s following which the city decided to go with an economical storm drainage conveyance and detention system by using existing streams and lakes and ponds, rather than running parallel pipes. The two studies recommended the same approach and the master drainage plan was developed accordingly. The decision was made to use Phantom Lake as a detention pond with an outlet weir controlling the outflow, but nothing was done for about a decade. The same consulting firm did the Phantom Lake restoration plan in the 1980s and suggested the weir for water quality purposes. The studies forewarned that an outlet capacity of over 20 cfs would be required. The studies also raised concerns about increased sedimentation buildup from stormwater use and maintenance issues. Utilities is now recommending revisions that will excuse them from all responsibilities relative to sedimentation and deltas and channel infill, at the same time denying environmental stewardship. The current drainage plan says the overall drainage mission of utilities is to manage the storm and surface water systems to prevent property damage and protect water quality. Staff is proposing a change to the language to have it read "The mission of the Storm and Surface Water Utility is to provide a surface water system designed to control damage from storms and to protect water quality." The current plan defines deltas as deposits of sand and gravel near the mouths of streams and rivers. The new language says delta formation is a natural process and that sediment deposition rates and channel locations are likely to change over time. The current plan says the migration paths of fish may be disrupted and navigation hazards may be created, and delta growth may interfere with swimming or boating and reduce channel capacity and increase flood risks. The proposal is to strike all of that language.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said he understood that restoration will not be required and that the city would not be committing itself beyond its budget. The demonstration concepts should be realistic from the standpoint of private property owners who do not have deep pockets. The transfer of development rights as a concept is acceptable, but the projects should be proximate to the source of the impact. He provided the Commissioners with copies of a graph depicting the number of days the water level on Lake Sammamish exceeded the ordinary high water mark as determined by the Corps of Engineers at 27 feet NGVD. He noted that the average was 100 days per year until the last four or five years. The average is currently 160 and to date in 2010 the water level has exceeded the ordinary high water mark for more than 200 days. The unnatural and possibly illegal rise in water level is encroaching on private property, could trigger a change to the current ordinary high water mark causing additional structures to fall within the shoreline setbacks, and cause the loss of existing shoreline through erosion and established trees falling into the water. Lake water management cannot be disconnected from the Shoreline Master Program and vice versa. Monitoring must be meaningful. Quality and quantity of stormwater flowing into the lakes; the number of feet of shoreline eroded due to the replacement of bulkheads with soft stabilization; the actual costs to permit applicants for studies, attorney fees and actual mitigation; and salmon recovery should all be tracked and monitored.

Mr. Dwight Martin, 5101 East Lake Sammamish Parkway NE, Sammamish, commented on the introduction to the restoration section and the statement that restoration should never be confused with mitigation. He suggested that the point of view of regulators is often different from that of those who are regulated. The document talks about incentives but does not define them anywhere; the Commission was encouraged to create as many incentives as possible, and to be creative in thinking about how the incentives can be used. The document states that adverse impacts from road runoff should be prevented through stormwater best management practices. The Bel-Red corridor is a prime example given all the impervious surfaces there that were created in the 60s and 70s without any detention or water quality treatment features; the city has a huge opportunity there to improve the waters that flow into the lakes. The document includes a comment from WRIA-8 that says enforcement should be increased and nonconforming structures should be addressed over the long run by requiring major redevelopment projects to meet current standards. From the perspective of developed shoreline properties, there is already an impact. Should someone want to put a new house on the property, they would be required to comply with all current rules, including impervious surfaces and setbacks. If deemed a major redevelopment, there would be a requirement to mitigate the impact. The mitigation would look and feel like restoration to a shoreline property owner who would have to spend thousands of dollars just for permits and design work, not counting the cost of mitigation for putting a new home where an existing home is sited. The rules should allow people to use their properties in ways that will not increase the impacts that already exist without forcing them to mitigate for those impacts by requiring full compliance with all the new rules.

C. Shoreline Master Program Update – Commission Discussion

Ms. Helland reminded the Commission that they directed the staff to be most flexible in the area of nonconformance. The footprint exception will keep most properties from being rendered nonconforming. The flexibility allowed there, however, is one of the reasons why a restoration plan needs to be in place so that when the regulations and the non-regulatory elements are bundled it will be possible to meet the no net loss test.

Commissioner Sheffels referred to the Section 2 goals and objectives and commented that people who live on the water report that they experience a great deal of noise pollution from motorboats and jet skis. She asked if there is anything currently on the books that seeks to control noise pollution on the lakes, or if indeed the city receives complaints on a regular basis. Ms. Helland said there is an existing noise goal to make people's lives more harmonious by limiting the overall level of ambient

noise. Jet skis and boats are, however, largely exempt from the noise code; they have traditionally been very difficult to regulate. Commissioner Sheffels said it stands to reason that the faster a boat travels along the shorelines the more noise there will be and the more wave action will result, which is harmful to the beach. She suggested it would be helpful to establish a control area near the shore in which fast boats and jet skis would not be allowed to operate. Ms. Helland allowed that docks to some degree have the effect of keeping boats some distance away from the shore. She added that there are some no wake zones on the city's waterways, including in the Sammamish Slough and in Meydenbauer Bay.

Mr. LeClair said the noise goal is less about boats and more about preventing people from putting speakers out on their docks and blaring music up and down the shoreline. Part of the enjoyment of the lake are the moments of quiet contemplation, which property owners are entitled to be able to enjoy.

Commissioner Turner suggested that any objective should be measurable and asked if the Commission will be able to see what the measurements are going to be. Mr. LeClair agreed that the results of restoration should be measurable. He allowed that some language could be added to the implementation and monitoring section that would call out more specific monitoring parameters. He added, however, that monitoring will require more resources than the city currently has.

Ms. Helland pointed out that in the opinion of staff the restoration document meets the WAC guidelines. The Commission can, however, make changes to the language and provide additional guidance, but to mandate monitoring will require dedicated funding. The Commission certainly could include in its transmittal to the Council a recommendation to see dedicated funding identified and implemented.

Commissioner Himebaugh asked if more flexibility will be gained on the regulatory end of things by asking staff to change the monitoring portion of the document. Mr. LeClair said additional flexibility would not necessarily be gained by going in that direction. The state's focus, fortunately or unfortunately, will be on the linear feet of bulkheads removed and the total square footage of shoreline restored. Dollars for restoration are very limited and the amount of monitoring that can be included will be limited as well.

Ms. Helland said if at the end of the no net loss conversation the Department of Ecology finds that there is too much flexibility in the regulations and concludes that the restoration plan is not robust enough to support them, there could be a Council dialog about dedicating some money to specific projects. That same conversation happened in the context of critical areas.

Chair Ferris called attention to the language that said generally the restoration opportunities identified in the plan are focused on publicly-owned spaces and natural areas, and that on private properties restoration efforts would be voluntary or a means through the redevelopment process. He suggested that language does a good job of framing the plan and as such the paragraph should be moved up closer to the beginning of the document. He also suggested that the objectives should all include the notion of "to the greatest extent practicably feasible."

With regard to the first objective and the notion of managing stormwater runoff, Chair Ferris said the language is not clear as to whether it refers only to the runoff from the adjacent land. He noted that the Shoreline Master Program is focused on the shoreline area only, not the entire stormwater system.

Chair Ferris referred back to the initial evaluation of the ecological function of the shorelines. He noted that there were about six categories, including the hyporheic zone. He suggested that the low, medium and high rating for each of the criteria would be one way to measure the quality of the

shoreline. An inventory could be done prior to a project and then after completion of the project as a means of demonstrating the delta. Mr. Paine said that is exactly what conventional monitoring does. What needs to be known are the habitat functions formed and how successful the formation was, which is a much more complicated effort.

Commissioner Himebaugh asked if the Department of Ecology will consider the city's funding situation when it does its cumulative effects analysis. He added that while it is possible to balance regulatory flexibility with good specific non-regulatory programs, the fact is that some of the programs will be very difficult to fund. Mr. LeClair said now that the budget process for the next two years has wrapped up it will be necessary to get back to the program managers prior to the cumulative impacts analysis to determine which of the programs, if any, will be funded. Parks will also be asked where they intend to conduct master planning of certain sites during the planning horizon.

From the audience, David Radabaugh with the Department of Ecology, said the department will look in the restoration plan for some discussion of funding and timing.

Mr. Paine said from the plans approved to date by the Department of Ecology, it is clear that the majority of their focus is on the regulatory component. They do take into account all of the other elements, but not to the same degree. Mr. Radabaugh agreed. With regard to the restoration plan specifically, he said the department will be looking at what can be accomplished in terms of projects that will restore ecological functions along the shorelines.

Commissioner Turner asked if incentives will count toward regulation. Mr. Radabaugh said they will in concept, provided they are part of a whole package of regulations.

Ms. Helland said the hope in telling the story of what the restoration document does is that by going the extra distance and providing the projects and conceptual designs, barriers for accomplishing the projects will be removed, even if there is no dedicated funding for them. Mr. LeClair added that hopefully the regulations will include the removal of barriers that would prevent a property owner from undertaking a restoration project; several have pointed out that the cost of permits is equal to the cost of the actual work.

Chair Ferris pointed out that the language of the document includes projects and organizations that can become outdated very quickly. Specifics of that sort should be housed in an attachment instead the plan itself. An appendix could be updated as needed without having to reopen the entire plan.

Commissioner Turner called attention to section 4.2 Utilities, Stormwater Management and Planning, and said he did not see how any of the programs would measure or seek to improve deltas created as a result of stormwater runoff. Mr. LeClair said he had personally worked to permit sediment removal projects. The city removes literally thousands of cubic yards of sediment from detention facilities that were created in-stream to deal with the problem. The work goes on annually on a very large scale. Commissioner Turner said it appears as though the effort is not being carried out on Phantom Lake. Ms. Helland said Phantom Lake is a unique situation. The issue belongs to the Environmental Services Commission, not the Shoreline Master Program update.

Commissioner Sheffels commented that there has been a difference of opinion with regard to Lake Sammamish in particular and what should be considered shoreline armoring. She asked if the numbers in Table 1 accurately reflect what is really considered shoreline armoring. Mr. LeClair said the figures in the table are a direct reflection of the shoreline inventory. No additional time has been spent in investigating whether or not the inventory is accurate. Ms.

Helland added that to some degree the issue is one of semantics. The shoreline armoring in the inventory identifies a line that essentially stops the interface between the shoreline and the upland areas, regardless of whether or not it occurred at the ordinary high water mark. In fact, more benefit is received for calling out the armoring and identifying it as an opportunity for improvement in that it denotes a highly urbanized shoreline that is largely bulkheaded. Changing the number in the chart to reduce the amount of armoring would have the net opposite effect on the application of the shoreline code and make it more stringent in some ways by making it appear the shoreline is more natural than it really is.

Commissioner Sheffels called attention to Table 8 and the notion of improving habitat functions and retaining or improving flood control functions in outlet channels. She said she did not know how the city could put a lot of teeth in it, but wanted it to be as strong as possible.

With regard to permitting and incentives, Commissioner Sheffels suggested that reducing the permit fee structure would be preferable and more of an incentive than reducing the amount of time necessary to get permits approved. A matrix should be developed that in a general way shows how much benefit will be achieved from restoration or mitigation projects; the permit fee could be reduced in a way that reflects the ultimate benefits. Mr. Paine said he has been working with staff from other jurisdictions and the state to create a permit process for which there would be zero cost to the private property owner for green shoreline projects. As envisioned, a property owner would submit application to Department of Ecology or fisheries and it would be the only permit necessary; the permit would also be accelerated and approved very quickly. The city would have a few days to comment on the permit but would have no regulatory control beyond that. There is significant interest on the part of the legislature to go in that direction even in the face of the current fiscal environment. For projects that would involve both a green shoreline and something requiring a permit from the city, such as moving a building closer to the water or expanding a structure, the city would need to process the permit to make sure all of the accounting is correct.

Chair Ferris asked if there were any discussions with private property owners in developing the list of projects, some of which are on private property, to determine if there are objections to being included in a public document. Mr. LeClair said he had not personally talked with anyone from the public but said there has been dialog with a number of interest groups by other staffers. He said he would not hesitate to pull projects on private property should a property owner voice an objection.

9. OTHER BUSINESS – None

10. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, thanked Commissioner Sheffels for raising the issue of noise along the shoreline. He suggested that the bigger issue is wave action in part because the design of boats has changed; they are weighted in the back and designed to create a huge wave others can surf on. The logic about artificially raising the amount of armoring along the shoreline being beneficial in the long run is suspect; in the end the decision makers may be presented with an issue that is not as serious as represented. The restoration plan, which is non-regulatory, toothless, and could become dated quickly, will not accomplish anything.

Mr. Brian Parks, 16011 SE 16th Street, pointed out that detention pond A at Airfield Park is 30 years old and has never had any sediment removed from it. It is also located next to a landfill and has limited capacity, so it is not functioning well to protect Phantom Lake. The 1979 Environmental

Impact Statement for the pond states clearly that the city is responsible for its frequent cleaning. Utilities is not following its own rules. RCW 90.58.030 said floodways are not to include lands that can reasonably be expected to be protected from floodwaters by flood control devices and which are maintained by or under license by the federal government, the state or any political subdivision. It would appear it does not matter if FEMA identifies the area as frequently flooded if the water level is controlled by a flood control device. He called attention to project PL-3 and said it does not appear to be a public project given that it is in the middle of Phantom Lake. The city has tried in the past to purchase shoreline property and establish greenbelts; it has not worked and it appears the same issue is on the table again.

Ms. Cheryl Ebertine, 1845 164th Avenue SE, said she has lived on her Phantom Lake property since 1966. She commented that back in 1978 the city tried to take over the lake and construct pathways around it, cutting off homes from the lake. She said it was disheartening to see the city try once again to take the properties.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said she was glad to see the restoration plan would not be made mandatory. It is in fact a work of fiction. It is absurd to think that west-facing properties on Lake Washington can have their bulkheads removed. The sewer line in Lake Washington is in the water, and removing the bulkheads will lead to full exposure of the line. In many ways the restoration plan solidifies the absurdity of much of the Shoreline Master Program.

11. NEXT PLANNING COMMISSION MEETING

A. January 12, 2011

Ms. Helland said the intention of staff is to release the draft Shoreline Master Program update shortly after the first of the year. At the January 12 meeting the Commission will be asked to develop a plan for deliberately working through the draft and moving the topics forward.

12. ADJOURN

Chair Ferris adjourned the meeting at 8:51 p.m.

Paul Inghram
Staff to the Planning Commission

1/26/2011
Date

Hal Ferris
Chair of the Planning Commission

1/26/2011
Date