

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

January 26, 2011  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioner Hamlin

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Lai, who arrived at 6:36 p.m., and Commissioner Hamlin, who was 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

Chair Ferris reported that he represented the Commission before the Council in presenting three code amendments. He said there was very little discussion about the electric vehicles amendment, and only a few comments regarding the performing arts code amendment. They had a number of comments, however, regarding the single family code amendment focused on irregular lots; they were not questioning the work of the Commission but rather were seeking to better understand the issues and directed staff to provide more information at a future meeting.

Chair Ferris said he presented to the Council the request of the Commission to be allowed to take on the issue of housing affordability sooner rather than later, ideally once the Shoreline Master Program update work is completed. The Council were respectful of the request but voiced concern about the current staff workload. The upshot was that staff was directed to review its agenda to determine when the issue could be brought forward.

6. COMMITTEE REPORTS

Comprehensive Planning Manager Paul Inghram reported that the Eastgate/I-90 CAC toured the area on January 22. The tour was very thorough on either side of I-90. A few members of the community joined in. Councilmembers Robertson and Lee also participated. The next CAC meeting is slated for February 3 and the group will conduct a debriefing and talk about their observations.

## 7. STAFF REPORTS

Mr. Inghram noted that the city held an open house on February 25 on the B7 Revised East Link alternative. About 180 people attended and provided comments. No significantly new materials, options or analyses were presented, but a lot of good feedback was received. Another open house will be held in March.

Mr. Inghram said an open house regarding the design for NE 15th Street will be held on February 2.

With regard to changes to the East Link light rail line that will run through the Bel-Red area, Mr. Inghram said when the subarea plan was adopted, it included the recommendation made by the Commission that the light rail alignment would be aligned with NE 15th Street/NE 16th Street. The discussion of a different alignment located to the north outside of the street right-of-way arose after the subarea plan was adopted. The subarea plan was not sent back for a new public hearing because at the time of adoption the NE 15th Street/NE 16th Street alignment was the preferred alternative. Sound Transit is continuing to review all of the alternatives it has identified and is scheduled to make a final alignment decision later in the year. When that happens, it may be appropriate to come back and make amendments to the Bel-Red subarea plan.

## 8. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

### A. Shoreline Master Program Update

Land Use Director Carol Helland briefly described the materials in the desk packets, which included the elements for the notebook, the cover page to the policies, the use chart provisions, and the shoreline restoration plan. She also provided an updated outline for Attachment A.

Ms. Helland noted that some of the Commissioners had previously raised concerns about being able to find information on the website. She said staff have worked on repairing the issues.

Ms. Helland said staff was seeking from the Commission acceptance of the draft Shoreline Master Program elements provided to date in preparation for conducting an open house and holding a public hearing. She said staff are working with facilities staff to ensure there will be plenty of parking for the public hearing, and making sure there will be no conflicting meetings at City Hall the evening of the public hearing. Staff are also working to locate monitors in the concourse area to accommodate any overflow should the number of attendees exceed the seating capacity of the Council Chambers. Dates for both events are being held for the second week of March and the fourth week of March.

The Commissioners were provided with data about permit review times and cost. Ms. Helland pointed out, however, that the issue is complicated by the fact that over time the permit costs have changed, so getting continuous information requires some assumptions. One matrix reflected the permit fees by shoreline permit type, and a second matrix showed the total number

of permits and the associated costs for permits issued between 2007 and 2010 following adoption of the critical areas ordinance. She noted that the median permit cost for shoreline exemptions was in the \$250 range, though the full range was between \$64 and \$1216. Shoreline exemptions are dictated by state law. There is currently a glitch in the state law that makes the exemptions subject to the State Environmental Policy Act; Ms. Helland said she is currently working on a separate stage with a planning director's group to get that glitch fixed through a state legislative change. Some things, including overwater coverage that would normally fall within the scope of the exemption, trigger the application of SEPA which under state law requires notice, a public comment period and the potential for an appeal.

About 60 percent of the permits issued are shoreline exemptions, and 40 percent are shoreline substantial development permits, which have higher associated permit fees.

Ms. Helland shared with the Commissioners a matrix outlining the permit review times by permit type. She pointed out that shoreline exemptions average about a month, but where SEPA kicks in the review period is longer.

The number of revisions to an application is an indicator for why some reviews take longer. Required revisions often relate to the quality of the application materials. Because the shoreline substantial development permit is a Process II permit, which requires notice and a comment period, it is never possible to come in under 60 days given the minimum comment period of 30 days and the appeal period of 21 days.

There are costs associated with permits that property owners must shoulder but which are not under the control of the city. They include costs charged by design professionals which are at times required by code, and the costs levied by other agencies involved in reviewing permits.

Ms. Helland said the information has been helpful for the staff to have. She said in those areas where a lot of revisions have been required, the provision of better information by the city will help people be more successful in the preparation of their applications and permits. The staff are also wanting to limit as much as possible the instances in which people must hire qualified professionals in order to meet the code requirements; using the options menu and the prescriptive avenues available in the code will ultimately help to alleviate some of that expense. Offering training for consultants has in the past been helpful. Where the city has been able to streamline the process it has tried to do so.

## B. Shoreline Master Program Update – Public Comment

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, stated that prior to the 1990 implementation of the weir and berm, residents were told that the outlet weir was intended only to keep the lake level higher in the summer and that it would not increase flooding. However, the weir engineering drawing set the lake level such that any rain event would in fact flood properties above the CH2MHill capacity of 261.0 NAVD. The only drainage for the entire 64-acre lake, and all the basins stretching up into the Boeing property, the airfield property and the I-90 business park, relied on a V-notch no thicker than two pieces of cardboard. The staff's targeted above peak capacity is only 1.2 inches above the capacity of the lake; previously, a natural flow toward Larson Lake occurred. Currently, mud has filled in the weir and the channel to the same level, despite the terms and easement to maintain it; the result is a permanently higher lake level. The KCM2-A predesign report shows a proposal for grading the outlet channel to a new slope before and after the SE 17<sup>th</sup> Street bottleneck culvert, and replacement of the two-foot culvert with a deeper-set four-foot culvert, thereby quadrupling capacity; that aspect was never implemented. The upshot has been wetland creep and elevated high water advancing up the lakeshore properties. The

increase was in fact intentional but not approved by the residents committee. The residents were misled into believing that water quality improvements were being implemented, when in reality it was a municipal stormwater detention system. Stormwater detention systems are excluded from the Shoreline Master Program and the critical areas ordinance, therefore Phantom Lake is exempt from both.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said he appreciated receiving the information about permitting fees but suggested that from the viewpoint of a property owner it is pretty flat and does not tell the whole story. The rules and regulations as to plantings and everything that is being required is not reflected in the permit information. He also reminded the Commissioners that Mr. Radibaugh from the Department of Ecology stated that the ordinary high water mark cannot be fixed at a certain elevation and said if that is the case, and if the jurisdictions are not going to do an adequate job of regulating water flow into the lakes in Bellevue, a flexible setback should be considered, one that changes depending on the actual water level. The regulations should be creative in every way possible.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, reminded the Commissioners that he had conducted a study of Lake Sammamish regarding the actual degree to which the lake is armored. At the last Commission meeting, staff stated that they had not been presented with any inaccuracies to date. The inventory report done by The Watershed Company indicated that the lake is about 72 percent armored, but anyone living on the lake knows that figure cannot possibly be accurate, especially on the Bellevue side of the lake. The Bellevue side has 24,690 feet of waterfront according to King County records. The ordinary high water mark, according to the city, stands at 28.2 feet, and his study indicated that only 10.2 percent of the shoreline had rockery touching the water based on the 1929 data which set the ordinary high water mark at 27.35 feet; there eight inches or so between the two standards could mean the percentage would be somewhat higher, but nowhere near what inventory indicates. A large number of properties that do not have armoring that touches the water either in the summer or the winter months were counted as being armored in the inventory report. There must be a nexus between good data and city policy. If the city uses the inventory study in developing the Shoreline Master Program, and if it is later proven to be wrong, the city will have a big problem.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said if left higher than they should be, lake water levels will prove to be a prescription for disaster. The lake levels are continuing to rise, and basing regulations on current levels will be a concern. The pipe coming into the lake is 28 square feet, whereas the pipe going out is only three square feet. Accordingly, during the winter months and during storm events, the water level rises; often the outflow is inundated. Over time, the ordinary high water mark has increased. Storms that come when the lake is already full will find there is no detention capability left, and the result will be damage to lakeshore properties. A monitoring program will be necessary for effective management. The Shoreline Master Program should step beyond the isolation of unmonitored regulations. The Commission should insist on resolution of the current issues, which include mismanaged water levels, storm and water lake discharge system impacts, and integrating meaningful concurrent public actions with property owner requirements.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, reminded the Commission of the need to sort information and make reasoned decisions. The state regulations direct the Planning Commission to review the most current and accurate technical information available, and to consider all information provided by interested parties, even non-technical information based on citizen information and other data that some might call anecdotal evidence. The Department of Ecology guidelines do not require a certain result but rather provide that the city must sort through conflicting information and make reasoned decisions. Regulations can require mitigation but not

enhancement. Development regulations can only impose mitigation of impacts caused by projects, and all mitigation must be based on the impacts to the currently existing shoreline functions. The guidelines encourage enhancement as part of nonregulatory programs; the city's draft shoreline analysis report says the same thing. To require enhancements would be to violate property rights. Under state law, all requirements must be reasonably necessary as a direct result of a proposed development. The term vegetation conservation is being used to reinstitute the concept of buffers, which are not required at shorelines. Buffers are designed to be vegetation conservation areas needed to protect native vegetation where it exists next to defined critical areas. Lake shorelines are not critical areas, so buffers or vegetation conservation areas, are not appropriate. The current critical areas rules call landscaping a buffer and then presume that yards function as natural shorelines. That in turn justifies shoreline enhancement to compensate for the assumed harm to the buffer, no matter how trivial a project. However, the premise is simply wrong. Building something in a landscaped yard or on a patio is not the same as clearing native vegetation from a natural state. The new shoreline rules must recognize the distinction. The city's own studies establish that the shorelines were altered long ago and will never function as natural shorelines. The guidelines are clear that vegetation conservation areas, or buffers, are not required on shorelines, especially where the shoreline is altered.

Mr. Jeff Hancock, 3110 West Lake Sammamish Parkway SE, said he was unclear as to exactly what he could do as a property owner on Lake Sammamish without having to ask. It is not clear what really is exempt from regulation. Every citizen of the city should have the right to be able to maintain and repair their yards and primary dwellings. Those who have docks should be allowed to repair them to a new condition; those with bulkheads should be permitted to maintain them as needed; bushes should be able to be removed, trimmed or replaced; there should be allowed to maintain lawns; and if someone wants to have a patio instead of a deck, or the other way around, the work should be exempt. About a century ago, all of Bellevue was heavily forested; unless the city intends to turn the clock back to that pristine state, the city should not seek just to penalize the shorelines. The water level in the lakes is an issue, and the city should stand on the side of its citizens in facing up to the Corps of Engineers and King County. The claim has often been made that the weir on Lake Sammamish is an issue for one of those jurisdictions, but the fact is Bellevue should take the lead in seeking resolutions on behalf of its citizens that are being affected. Following the storm event in December, a brown slick of water was seen emanating from the stormwater or sewage treatment facility located near Vasa Park; the slick extended about half a mile into the lake. That water quality issue was not caused by property owners. The storm drainage system is where the city really needs to look if it is serious about improving water quality.

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

Commissioner Turner noted that he had on several occasions previously expressed concern about a lack of analysis and rigor that has gone into the process of determining what the Commission is supposed to be doing. He said he appreciated receiving the information regarding permit costs but suggested it was not presented in the proper context to have it make enough sense to be valuable. Each of the applicable codes should be reviewed in terms of their cost, impact on property rights, the associated science, and if it will really have the desired impact.

Commissioner Himebaugh concurred, especially with regard to scientific justification for the proposed regulations. He said he was still not satisfied that a link had been established as strongly as he would like. He allowed, however, that there is much riding on the portion of the draft that has not yet been seen, which primarily covers the development regulations.

Chair Ferris said he has largely been holding back on expressing his opinions until all the pieces

are in place. He allowed that at every meeting he understands something he did not understand before. Hopefully once all the pieces are in place, most of the holes will be filled in and the dots will be connected.

Commissioner Sheffels said she has found it very helpful to review all of the materials received from the public and from staff. There is no lack of information on which to base judgments, but the Commissioners will need to determine which information is the most valid. It is not true the Commission cannot move ahead due to a lack of information.

Commissioner Turner agreed that a great deal of information has been presented. He suggested it would be better if the information were put together in a way that would make it more digestible. He noted that the city of Mercer Island is trying to take a much simpler approach to updating its Shoreline Master Program and he said he would be reviewing their approach to see if something they are doing could be applied to Bellevue.

Chair Ferris commented that the issues facing Mercer Island are very different from those facing Bellevue. They have only one lake, the level of which is regulated within a few inches, and they have only two land uses associated with the waterfront, residential and park. Their task is simply not as complicated. Furthermore, their Shoreline Master Program was updated not very long ago and they are only seeking to amend it, which is not the case in Bellevue.

Commissioner Lai agreed that the issues Bellevue is facing are more complex than those in Mercer Island. One issue in particular is Phantom Lake which has much different issues than either Lake Sammamish or Lake Washington. Phantom Lake is interesting in that everyone is using it as an example of what can go wrong; in many ways it would be good to isolate Phantom Lake from Lake Washington in terms of regulations.

Ms. Helland said staff has clearly heard from the Commission a desire to regulate different water bodies based on different circumstances. Staff is evaluating that possibility as part of the development regulations; that is one reason it is taking longer to draft that section. Layers of regulation that address different circumstances always creates more complexity, as does choosing philosophically not to reference out to other codes. Staff are pursuing a stand-alone shoreline code more in keeping with the Bel-Red Overlay. Mercer Island is specially referencing their critical areas code and is not seeking to have shoreline-specific regulations. The Mercer Island approach is heavily reliant on policies, whereas the Commission has been clear it wants to see proscriptive requirements that will generate a more certain outcome.

Answering a question asked by Commissioner Lai, Ms. Helland said one of the hardest bits of code writing is to make sure all of the various aspects are integrated and conflict free; that is the work staff is currently working on, and in the end it will make things easier for the client.

Commissioner Mathews commented that the Commission has received a lot of testimony concerning issues over which the city has no control, such as managing lake levels and controlling runoff from highways. He stressed the need for the Commission to keep its focus on what the Shoreline Master Program does have jurisdiction over. Ms. Helland said that is one reason why all the correct annotations need to be highlighted.

Commissioner Himebaugh said he did not see any reason the Commission should not have a watershed mindset with regard to how problems are caused and the things outside the shoreline jurisdiction that impact the water bodies. Chair Ferris noted that if nothing else can be done, the Commission can bring issues to the attention of the City Council in the transmittal memo. Ms. Helland said staff will make every attempt to be clear with regard to the things the city does

control and the things it does not control, all within the context of containing costs and time.

With regard to the policies, Commissioner Himebaugh commented that some of them use words such as “prohibit,” “acquire” and “mandate,” while others use words such as “avoid,” “encourage” and “discourage.” He suggested it would be more appropriate in the policies to use the less exacting language. He said he could point to about a dozen policies where mandatory language was used but in which directory language might be more appropriate. Ms. Helland explained that the policies that use mandatory language were written that way deliberately. The policies and the code must be consistent, so where the code outright prohibits something, the associated policies are being written correspondingly.

Commissioner Sheffels commented that the organization section of the working draft lists no shoreline restoration policies or guidelines. That has been a big issue for many. While there must be no net loss, restoration is not a requirement in most circumstances.

Commissioner Sheffels also stated that the shoreline management goals reflect everything that has to do with the public and the city, yet to some extent the family residential designations are not all reflected. Single family residential is noted, but multifamily residential is not and ought to be included in Goal 5.

Commissioner Sheffels said she would like to see another goal added to recognize that the existing single family residences want to preserve and improve their properties by maintaining the shoreline ecology, improving maintenance and/or replacement of overwater structures and stabilizations with proven techniques and materials in a cost-effective way, and to encourage private property owners to improve conditions with help from guidelines rather than overlays of regulations. Ms. Helland informed the Commission that the information listed on the pages ahead of the policies was taken directly from the Shoreline Management Act. That does not mean that additional comments cannot be incorporated. The section articulates the state goals, but Bellevue-appropriate goals could be included.

Commissioner Turner stated that a very large majority of the shoreline is residential and as such it makes sense to have objectives and goals that relate to the major land use. He allowed that having different sections for the state goals and Bellevue-specific goals would make sense.

Answering a question asked by Commissioner Turner, Ms. Helland explained that the ordinary high water mark is a jurisdictional measurement in the Shoreline Management Act. The city cannot change the jurisdictional requirement, which is the area within 200 feet upland of the ordinary high water mark as defined by state law. The study done by the city in the mid-2000s identifies a surrogate ordinary high water mark for the purpose of measuring setbacks; that will be incorporated into the development guidelines.

Chair Ferris observed that the section on administration and enforcement says the ordinary high water mark is the condition that exists as of June 1, 1971. Ms. Helland pointed out that the definition goes on to say the mark may change over time. Chair Ferris agreed, noting that the language states that the mark may naturally change over time or in accordance with permits issued by the city or the Department of Ecology. He asked if the installation of a weir or other device that is subsequently not maintained, which can lead to a rise in the water level, would be considered a natural change over time; he added that in his opinion it should not be considered a natural event and accordingly the 1971 ordinary high water mark should be considered the ordinary high water mark for Phantom Lake and Lake Sammamish. Ms. Helland argued that in accordance with the state definition, a permit issued by the city or other jurisdiction for a weir or other device could contribute to changes in the way a watershed works, and thus can contribute

to changes in the ordinary high water mark. The state holds that ordinary high water marks are not static; they are dynamic and change over time for a variety of reasons.

Commissioner Turner suggested that if what Ms. Helland said was correct, a government agency could basically flood out private landowners, leaving them with no recourse.

Chair Ferris suggested the Commission might want to consider referencing manmade structures that are permitted and maintained. Mr. Inghram allowed that while the Commission could elect to add some notations that talk about how they are interpreted, the fact is the language reflects the definition provided by the state.

Chair Ferris noted that there are two ramifications associated with the ordinary high water mark. First, it is the mark that determines where a bulkhead or shoreline armoring can be placed, and second, it is the line from which the setback is calculated. For purposes of establishing the setback, the city's study has fixed the mark and has provided some surety. The placement of shoreline armoring, however, is dependent on the actual ordinary high water mark because state law prohibits the construction of shoreline armoring below the mark and backfill behind it for the purposes of creating dry land.

Answering a question asked by Commissioner Sheffels, Ms. Helland said the Commission could elect to add Bellevue-specific policies provided they would not result in a violation of the Shoreline Management Act.

Commissioner Sheffels called attention to Policy SH-29 which calls for having appropriate standards for public access for all new subdivisions. She said the language is not clear as to whether or not all new subdivisions must provide public access. Ms. Helland said state law requires public access for all new subdivisions other than single family. Subdivisions and planned unit developments are actually considered larger actions which are groups of single family dwellings of ten or more. Mr. Inghram said the standard is different for short subdivisions, which have fewer than ten lots. The policies do not include a public access requirements for short subdivisions. Very few locations on Bellevue's shorelines would accommodate a subdivision of ten or more lots.

Ms. Helland noted that the shoreline residential canal environment was treated differently from other environments based on the characteristics of the very artificial armored shoreline that exists there.

With regard to the section on shorelines of statewide significance, Chair Ferris commented it would be helpful to know which requirements were from the WAC and which were local. Ms. Helland allowed that Policy SH-18 was taken directly from the WAC. She clarified that under the state guidelines, only Lake Sammamish, Lake Washington and Mercer Slough are shorelines of statewide significance; Phantom Lake is not included.

Commissioner Sheffels asked if language should be included under the shorelines of statewide significance that recognizes the existing conditions, which for the most part involves residential uses. Ms. Helland said the shoreline characterization talks about the uses that predominantly make up the shoreline. The characterization and inventory describes what percentage of the total shoreline is residential, where the park areas are, where the marinas are, and so forth. She allowed that the information could be added to the Bellevue-appropriate list as well.

Commissioner Himebaugh suggested the Bellevue-specific policies should be identified as such, especially if they are not ultimately grouped all in one place. Ms. Helland said staff would find a

way to accomplish that.

Commissioner Turner referred to Policy SH-23 and asked if the language is intended to shift the focus away from private single family uses to public water-dependent uses. Ms. Helland explained that the preference indicated flows from the preferential hierarchy provided in the Shoreline Management Act. The section it comes from includes a preference for residential development and appurtenant structures. The specifics will be reflected in the development guidelines that show the relatively flexible development guidelines attached to residential. The use charts not specific to residential will focus on water-dependent uses, such as marinas.

With regard to critical areas in shoreline jurisdiction, Commissioner Himebaugh said he still was not clear how the current critical areas ordinance will relate to the Shoreline Master Program. The policy states that critical areas in shoreline jurisdiction are regulated in accordance with the provisions of the Bellevue critical areas regulations, and the current critical areas ordinance treats shorelines as critical areas. The Commission has been informed that the city is not intending to apply regulations that would derive from the classification of the shorelines as critical areas in the Shoreline Master Program. Asked how that is to be accomplished if the current critical areas ordinance is to be incorporated by reference, Ms. Helland said in the final Shoreline Master Program there will no longer be a shoreline buffer, and amendments will need to be made to the critical areas ordinance to strip shorelines from it as part of the Shoreline Master Program update.

Commissioner Sheffels called attention the policies regarding flood hazard reduction and commented that the current flooding issues on Phantom Lake are impacting the FEMA flood insurance program. She suggested that fact should be recognized in some way and made Bellevue-specific. Ms. Helland agreed to look at that issue.

Chair Ferris proposed that policies SH-41 and SH-43 say different things about the same item: one prohibits while the other allows. He said his preference would be to eliminate SH-41 and retain SH-43. Ms. Helland said the two policies could be blended to provide clarity. She allowed that two different uses are actually spoken to by the policies, though not very artfully.

Commissioner Himebaugh referenced Policy SH-52 and suggested the policy should include an indication that mitigation will be required only where the removal of vegetation causes an identifiable adverse impact to a shoreline ecological function. Ms. Helland commented that the issue ties back to the cumulative impacts analysis. If all property owners along the shoreline were to remove vegetation from their properties, the code would not meet the no net loss test. It will be necessary to balance the reinstallation of vegetation and test it against the cumulative impacts analysis. Commissioner Himebaugh asked how the cumulative impact analysis could be failed if the code determines that removing vegetation results in a specific impact. Ms. Helland said the focus is on developing a code that will be prescriptive enough that property owners will know what they need to do and what can be done without having to hire qualified people. In order to get to that safe harbor, it is necessary to make some assumptions about how many people will remove vegetation that will result in loss.

Mr. Inghram added that the final language will clarify that some vegetation, such as ornamentals and invasive plants, can be removed without requiring mitigation.

Ms. Helland cautioned that tying everything to a rough proportionality argument down to the lot level, the individual property owners will feel the burden. That is why the focus is on a prescriptive standard. Commissioner Himebaugh asked why the burden should be on the property owners, suggesting that it should be the city's responsibility to show that harm will be

caused by removing vegetation. Ms. Helland said in the absence of a regulation that is presumed to meet the no net loss standard, to the extent a property owner wanted to modify their shoreline they would be required to show that their activity will result in no net loss.

Commissioner Turner said taking that approach would be backward. The burden of proof should be on the city, not the property owner.

Commissioner Lai said the focus of the policy should be on making sure that a fair balance is met for the property owners of Bellevue.

Chair Ferris pointed out that in every instance, the person taking an action is the party that must show compliance with the applicable policies and regulations. Every permit issued by the city and every other jurisdiction operates on that principle. Anyone who does not satisfy the permit criteria is penalized in some way.

Commissioner Himebaugh agreed but suggested if the city is going to require a property owner to keep up to 40 percent of their property in vegetation, it should be up to the city to prove the requirement is necessary. Ms. Helland said the intent is to develop policies and regulations that will ultimately serve as a no net loss shield for anyone conducting activities along the shorelines. Commissioner Himebaugh said his argument was that if the city is going to require vegetation to be retained on a certain percentage of each property, the city should be required to show that retaining the vegetation is necessary. Commissioner Turner concurred.

Mr. Inghram stressed that the details will be worked out in the development regulations. He agreed to have staff modify Policy SH-52 taking into account the comments of Commissioner Himebaugh and bring it back to the Commission for review.

With regard to the water quality policies, Commissioner Himebaugh commented that the section would be the proper place to insert a policy regarding drainage outflow of Phantom Lake and the ordinary high water mark issue the public has raised. He offered no suggested policy language but implied it should include the notion of working with property owners to address the outflow of Phantom Lake. He allowed that the policy language could be included in the stormwater section as well.

Commissioner Turner espoused the view that the issue of water quality in general is related to Policy SH-60.

Commissioner Himebaugh referred to Policy SH-94 and said he knows what a BMP is but had no idea what the policy was referring to. Ms. Helland said the policy relates to erosion control best management practices that are required during development.

With regard to Policy SH-102, Commissioner Himebaugh observed that language indicates that except for single family, a new pier or dock can be constructed only when an applicant has demonstrated an identified need for the use. He asked how an applicant would go about doing that and who would decide if in fact there is an identified need. He was informed that a market study or other such specific means would be used to determine need.

Commissioner Sheffels said it appear Policy SH-103 would prohibit covered moorage. Ms. Helland said light-transmitting canopies are allowed. Mr. Inghram agreed the policy could be worded more clearly.

Commissioner Himebaugh asked if the language of Policy SH-106 was intended to refer to any

specific structure. Ms. Helland said it is related to the whaling building, which is an identified building of cultural significance.

With regard to shoreline restoration, Commissioner Himebaugh pointed out that the Commission had talked quite a bit about the need for monitoring and suggested the section would be the appropriate place to insert a policy identifying the need for monitoring of shoreline ecological conditions as restoration is performed.

Commissioner Sheffels referred to the last paragraph in the shoreline stabilization section and the list of materials typically used in constructing hard shoreline stabilization structures. She noted that the recommendation often is that boulders should be at an angle and suggested that boulders should be removed from the list. Ms. Helland agreed.

Commissioner Himebaugh called attention to the last sentence on the last page of the shoreline stabilization section and the reference to soft stabilization measures that are found to be cost-effective and practicable solutions. He asked who would determine if the measures are cost-effective and practicable. Ms. Helland explained that the language was included as a nod to green shoreline techniques. The legislature has said fees cannot be charged for certain types of things that involve habitat restoration; they actually provide economic incentives for some of those approaches. Soft shoreline stabilization requires less structure and is often less expensive to create. She said the policy could be deleted. Commissioner Himebaugh said he could see no reason to include it, unless it could be written to be more specific.

With regard to the authority section, Commissioner Himebaugh called attention to page I-2 and asked staff to explain the statement that the policies and regulations of the Shoreline Master Program apply to all shoreline uses and develops regardless of whether a shoreline permit or approval is required. Ms. Helland stated that as with any regulation in city code, not meeting the threshold above which a permit is required does not obviate the need to comply with the regulations contained in the code.

Commissioner Himebaugh noted that on the same page it states that the regulations providing the greater protection of the shoreline natural environment and aquatic habitat shall prevail. He expressed discomfort with that standard and suggested it would make more sense to just state that in the case of a conflict the Shoreline Master Program will apply. Ms. Helland agreed that would be a good revision.

Turning to the procedures section, Chair Ferris said during his review of the materials he became confused as to what Process I applies to versus Process II and Process III. Ms. Helland allowed that the section could be knit together a bit better. She said the section follows exactly the framework of the Land Use Code. The procedures outline all of the administrative things, including appeal periods, comment periods, notification and the like. Each of the various permits is assigned a process. Mr. Inghram suggested a link to the use charts would provide some clarification.

Commissioner Himebaugh said in his opinion the procedures section was well written and useful. He said his only question was in relation to Process III ministerial decisions and the letter of exemptions. He noted that paragraph A.4 indicates that a decision can be made on a letter of exemption with or without conditions. He said it seemed strange to him that the director could condition a letter of exemption, which is granted only where the letter of exemptions section of the code is satisfied. Ms. Helland said the contrivance is set up only in the Shoreline Management Act. The Act states that letters of exemption should be conditioned when necessary to ensure compliance with the Shoreline Master Program. The exemptions relate to

broader permitting processes, but every action taken in the shoreline jurisdiction must comply with the code requirements.

Chair Ferris asked if the staff were expecting the Commission to work through all of the draft regulations and offer comments, or to accept them as they are for the open house and public hearing before working through them to make the final revisions.

Commissioner Himebaugh suggested that if the Commission were to just accept the staff draft for purposes of the open house and public hearing, the public would not in fact be getting an accurate depiction of what the final program will look like.

Chair Ferris suggested that to work through everything first, then hold the open house and public hearing, and then to go through everything again would take a great deal of time. He said his preference would be to go ahead with the open house and public hearing first, then go through the documents with the public comments in mind and make changes as necessary. The significance of the changes could, however, trigger the need for a second public hearing.

Mr. Inghram said the key question is whether the document to be the subject of the public hearing should be staff's draft or the Commission's draft. If there are significant issues to be addressed in the draft as it exists, they should be identified, but it will not be necessary to have every issue finalized before the public hearing.

Commissioner Himebaugh said he would not want the public hearing draft to be too far off base from what the Commission wants.

Commissioner Sheffels suggested the public hearing draft should be as broad as possible with nothing is left out by omission. The draft can be changed following the public hearing based to a large degree on the public input. Some of the policy language could be changed before the public hearing.

Ms. Helland said from staff's perspective the draft represents the work of distilling the requirements for a master program, taking into account the feedback received from the Commission and the public, and translating it all into code language. The primary focus before the public hearing should be on determining whether or not anything has been missed, like Bellevue-specific policies mentioned earlier in the evening, and making sure they are included for the public hearing.

Commissioner Himebaugh suggested that if the Commission were to adopt the staff draft for purposes of the public hearing, it would be very likely that a second public hearing would have to be held given the anticipation that additional changes will be made. Mr. Inghram said the changes suggested to the sections already reviewed by the Commission would not rise to the level of triggering a second public hearing. The Commission will want to review the development regulations before determining which draft should go to public hearing. In its review, the Commission will need to determine if on a broad level the regulations meet the general intent of the Commission's direction.

Turning to the permits section, Commissioner Himebaugh called attention to page V-4 and the decision criteria for a shoreline substantial development permit. He suggested the criteria is too vague. According to the language, an applicant must show that an application merits approval and complies with the Bellevue code, and must demonstrate that the proposal is consistent with the policies and procedures of the Shoreline Management Act, the WAC, and the Shoreline Master Program. There is, however, little or no guidance offered. Ms. Helland said the

approach is exactly the same as it was under the current regime, and is the same decision criteria used for every permit, except that land use approvals do not have to comply with the Shoreline Management Act. Commissioner Himebaugh suggested more specificity would help. Ms. Helland suggested the language will make more sense once the Commission has the development requirements in hand.

Chair Ferris called attention to item four on page 6, the use of science and technical information, and suggested it should not be greater than what was used to establish the Shoreline Master Program. Associate Planner Heidi Bedwell noted that RCW 90.58.100, which is referenced, describes the science and technical uses.

Motion to extend the meeting by half an hour to 10:30 p.m. was made by Commissioner Sheffels. Second was by Commissioner Turner and the motion carried unanimously.

Commissioner Himebaugh referenced the special shoreline report process on page 9 and noted that items i and iv provides that an applicant must show the proposal includes plans for restoration of shoreline aquatic area, setback or upland area, such that there is a measurable net gain in overall shoreline and critical area function. He questioned what critical area functions have to do with modifying performance standards for shorelines. Environmental Planning Manager Michael Paine said the language was drafted to avoid forcing someone affected by critical areas in a shoreline jurisdiction from having to do both a critical areas report and a shorelines report. Ms. Helland agreed to clarify the language to make it clearer.

Commissioner Himebaugh asked how the criteria under iii having to do with a net gain in stormwater quality related to obtaining permission to modify a performance standard. Mr. Paine said if the proposed action involved reducing a setback and increasing the amount of impervious surface, the ability to offset the impact would involve some sort of stormwater work, such as a rain garden or pervious pavement. Mr. Inghram said the focus would be on stormwater emanating from the site and flowing into the lake, not coming from elsewhere. Commissioner Himebaugh asked what showing a net gain in stormwater quality would entail. Ms. Bedwell said the criteria is focused on the difference in stormwater function associated with a development proposal. There are low-impact development measures already in the city's natural drainage practices manual, and engineering and design standards that show the net benefit for a given action. She agreed that a reference to those sources would be helpful.

Chair Ferris called attention to page 11 and asked staff to explain what a letter of exemption is and how it works. Ms. Helland said the letter of exemption is dictated by the Shoreline Management Act. It is essentially a letter that says the project in question fits within the scope of the state exemption and outlines the specific circumstances where a Shoreline Substantial Development Permit is not needed. Letters of exemption can be issued quite quickly. The applicant must first show that their planned actions are consistent with the policies and regulations of the Shoreline Master Program.

Chair Ferris noted that item three on page 11 talks about bulkheads, which makes sense, but includes very technical language that talks about bioengineering erosion control projects. Ms. Helland said the language in question was cut and paste from the state law.

Commissioner Himebaugh referenced number 14 on page 14 and asked if it could be interpreted to mean that an Environmental Impact Statement must be produced before removing noxious weeds. Ms. Helland said the text is targeted at the Department of Ecology who must produce the Environmental Impact Statement to identify appropriate weed control measures.

Commissioner Himebaugh focused attention on page 17 and the decision criteria for a conditional use permit. He referred specifically to criterion I and asked how the city would determine if the proposed use has merit and value for the community as a whole. Ms. Helland said the conditional use and variance criteria were drawn verbatim from the WAC.

Ms. Helland explained that the sections ranging from authority to administration and enforcement, once the uses section and the development regulations are complete, will comprise the new Section 20.25E, which is the shoreline overlay. The policies will be in the Shoreline Element of the Comprehensive Plan, and the appendices will live separately from the code.

Chair Ferris suggested it should be easy for users to find where the definitions are, either by having a separate tab for them or by adding the word definitions to the administration and enforcement tab.

Chair Ferris called attention to item three on the first page of the administration and enforcement section and noted that the language indicates recorded variances will survive in perpetuity while unrecorded variances will survive the life of the project. Ms. Helland explained that where someone constructs a structure that received a variance from a setback, so long as the structure remains and the permitting history is in place there is de facto proof that the variance exists. Once the structure is removed, the variance will no longer be in place, and to rebuild would require a new variance approval.

Commissioner Himebaugh noted that item C.1 under the vesting portion of the section refers to vesting of either a shoreline substantial development permit or a shoreline conditional use permit. He asked if there was a reason for not including exemptions and variances. Item C.2, which talks about expiration of a vested status, does include exemptions and variances. Ms. Helland explained that the two paragraphs refer to two different things: the first to the vesting of applications and the second to the vested status of a permit.

Commissioner Himebaugh referred to the rules of statutory construction found on page 3 of the section. He said he read the RCW section that exempts the Shoreline Management Act from the rules of strict construction, but said he did not understand from his reading of the code that Bellevue's Shoreline Master Program would be exempted in favor of a rule of liberal construction. Ms. Bedwell said the city's Shoreline Master Program is a planning document that fits into the state's planning scheme for shorelines. In order to have the liberal construction of the Shoreline Management Act, by logic there must be liberal construction of the Shoreline Master Program. She said she would provide him with the applicable case law citations.

Ms. Helland said the height definition on page 4 is the definition as it reads in the WAC. However, she said the language would be revised to indicate height is measured from the average existing grade instead of average finished grade to be consistent with the way height is measured everywhere else in the city.

Ms. Helland said the balance of the code will be before the Commission at its February 9 meeting.

Motion to extend the meeting to 10:45 p.m. was made Commissioner Lai. Second was by Commissioner Mathews and the motion carried unanimously.

There was consensus to move public comment up on the agenda.

## 11. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, noted his appreciation for the depth of discussion and for the work done, especially for recognizing the dynamics of the issues brought forward by the public.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, commented that the Meydenbauer Yacht Club has its parking in the setback, so they are being accommodated. She agreed with Commissioner Himebaugh that the burden of proof should not rest with the property owners. In the case of the Shoreline Master Program, which deals with proving scientific issues, many of which are in fact unproven, it would not make sense to put the burden of proof on the residents. In the first section there are some things that appear to be arbitrary and somewhat inappropriate; they appear to be unproven opinions and should be looked at a bit closer. The statement about soft stabilization being more economical is blatantly untrue. There is also a statement that says the harder the measure of stabilization the worse it ecologically, which just has never been proven. The special shoreline reporting process that is supposed to help in special cases, the requirements a property owner must go through are horrendous.

Mr. Dallas Evans, address not given, asked why shoreline property owners should have to prove science or ecological function when the planning staff has demonstrated that they cannot produce adequate science for the Commission to consider. The only relevant science the Commission has seen has been brought forward by the public in five-minute increments. The requirement for covered moorage to have translucent roofs makes no sense. In fact boat lifts should be encouraged because when a boat is raised out of the water sunlight shines under it. Translucent covers wear out much faster and they do not allow in any more light when a boat is up against them. In the winter when the boats are not even in the water the sunlight comes in from a much lower angle. There is no documentation proving that conditions in Bellevue are unique, so the city will not be able to prove to the Department of Ecology that the city should be allowed to operate outside the box.

Mr. Jeff Hancock, 3110 West Lake Sammamish Parkway SE, said there is an issue that keeps getting pushed off either to the county or the state, which is segmentation, an issue that vastly affects water quality and water levels that are beyond the control of the city. Those parts of the regulation should either be removed from Bellevue's code or taken up with those government entities that do have authority over them. He voiced concern over a rising lake level through natural factors that could in time inundate his bulkhead or even place his home within a zone in which it will not be allowed.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said he was not clear from reading the document whether or not the removal of a noxious weed constitutes a loss of ecological function. That issue should be clarified. It would also be helpful if the city attorney were to issue a detailed and reasoned opinion relative to the Shoreline Master Program and property rights issues. It seems odd that the Department of Ecology gets to provide all of the science but also gets to be the body that approves the process, which is not unlike an attorney presenting evidence and then acting as the judge.

9. OTHER BUSINESS

10. APPROVAL OF MINUTES

A. October 20, 2010

Motion to approve the minutes as submitted was made by Commissioner Sheffels. Second was

by Commissioner Mathews and the motion carried without dissent; Commissioners Hamlin and Lai abstained from voting.

B. November 3, 2010

Motion to approve the minutes as submitted was made by Commissioner Mathews. Second was by Commissioner Lai and the motion carried unanimously.

C. November 17, 2010

Mr. Inghram noted the receipt of proposed edits to the minutes from Ms. Anita Skoog Neil in which she asked that on page nine the statement “She agreed with the notion that no net loss is a loser from a regulatory perspective, and that Ecology’s lack of science has hampered the effort” be revised to read “She agreed with the staff email that the notion....” She also asked to have her statement “It is true that parcel-by-parcel mitigation is generally unsuccessful and leads to ridiculous results” in the same paragraph revised to read “As staff points out, it is true....” Finally, she asked that the penultimate sentence of the paragraph be revised to read “The staff knows that Ecology is forcing a land use agenda that ultimately will result in (staff quote) unreasonable, nonsensical and ridiculous results.”

Commissioner Lai questioned whether the addition of “staff quote” in parentheses would indicate the words are those of Ms. Skoog Neil and not editorial comments offered by the Commission.

Mr. Inghram said in the opinion of staff it would be fine to put quote marks around unreasonable, nonsensical and ridiculous results. To include the words “staff quote” in parentheses would imply that the minutes taker was identifying the words as those of staff.

There was agreement to incorporate the corrections, with “unreasonable, nonsensical and ridiculous results” in quotation marks.

Motion to approve the minutes as amended was made by Commissioner Mathews. Second was by Commissioner Himebaugh and the motion carried unanimously.

D. December 1, 2010

Chair Ferris called attention to the last paragraph of agenda item 9-D and asked that the sentence “He suggested that the theme of affordable housing should be paramount in drafting planning documents” should be revised to read “He suggested that the theme of affordable housing should be a priority in drafting planning documents.”

Commissioner Himebaugh noted that in the third from the last paragraph of agenda item 9-B the street reference in the second sentence should be to NE 10<sup>th</sup> Street rather than 100<sup>th</sup> Avenue NE.

Motion to approve the minutes as amended was made by Commissioner Lai. Second was by Commissioner Sheffels and the motion carried unanimously.

E. December 8, 2010

Commissioner Sheffels highlighted the state made in the minutes by Mr. Paine to the effect that 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.

She said that is something the city should hope comes to pass.

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

12. NEXT PLANNING COMMISSION MEETING

A. February 9, 2010

Commissioner Lai highlighted the claim made by Mr. Evans that the data behind the shoreline restoration plan is not accurate. Ms. Helland said the concern Mr. Evans has raised is with the shoreline inventory and characterization work done by The Watershed Company, which is not related to the shoreline restoration plan. The document looks at every segment of shoreline and characterizes it; it is not a bulkhead study and was intended only to identify the degree to which the shoreline is armored. That has triggered some confusion because that included hard structures that create a break in the transmission of function and value between the upland area and the water. The study included hardening structures that are ten to fifteen feet landward of the ordinary high water mark. The study indicated that about 72 percent of the shoreline has been significantly altered. The good news, however, is that Bellevue is viewed as a substantially altered state. That means the regulations can start from that altered state. Were the city to do an inventory that indicated only 30 percent of the shoreline is substantially altered, a rethinking of the environmental designations might be warranted.

Commissioner Turner suggested it would be helpful to have on the record a review of what The Watershed Study was intended to accomplish and an outline of the parameters used.

Chair Ferris noted that the public has on several occasions commented on the fact that they have only five minutes in which to present their issues. Following the public hearing, that will fall to only three minutes. He suggested that after the public hearing the Commission should allow up to five persons to come to the microphone, introduce themselves, and yield their time to a single person. That would allow one person to talk for 15 minutes. The Commissioners concurred.

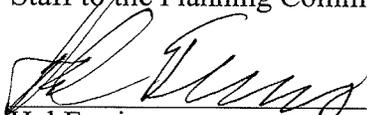
Commissioner Sheffels commented that the Shoreline Master Program update has been the most openly receptive to public comment of any study she has participated in during all her years on the Commission.

13. ADJOURN

Chair Ferris adjourned the meeting at 11:03 p.m.

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

3/23/11  
Date

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

3/23/11  
Date