

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

March 9, 2011
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Mathews who arrived at 6:34 p.m.

3. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, submitted for consideration some requested modifications to the minutes of the Commission's January meetings.

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 again on March 3. He said the group finalized the evaluation criteria.

7. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram shared with the Commissioners photos of the new Uwajimaya store that is set to open on March 25 in the old Larry's Market store.

Mr. Inghram said city staff have been working to address the issue of parking at City Hall on

nights when there are big events or multiple events. One option would be to issue permits to the Commissioners which would allow for parking in the main garage. The focus is on having a well-defined plan by the time the hearing on the Shoreline Master Program occurs.

Mr. Inghram informed the Commissioners that the City Council has endorsed moving ahead with annexation of the three unincorporated islands of land in the Eastgate area. State law allows for some level of sales tax reimbursement for the costs cities incur in taking on annexations, and the city has the opportunity of taking advantage of that if the actions are taken within a certain time period. The Council wants the annexations to occur via the petition method.

8. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

A. Shoreline Master Program Update

Land Use Director Carol Helland noted that the packet materials included revised policy language reflecting the direction provided by the Commission in January, and the draft shoreline restoration plan. She said staff was seeking from the Commission approval of the documents for purposes of the public hearing.

Ms. Helland noted that the revised policies included some text changes to reflect direction provided by the Commission; format changes to ensure consistency with other Comprehensive Plan elements; elimination of redundancies; some language clarifications; and some text changes to ensure consistency with the RCW and the Land Use Code.

Ms. Helland said most of the Shoreline Master Program Element goals were not taken directly from the WAC or RCW but rather from the existing Shoreline Master Program. Goal 6 was added in line with direction from the Commission to give priority to single family residences. The goals as a group were moved to be the first thing in each section.

The changes to the policies on page 9 of the packet were made to reflect the direction of the Commission to ensure that all policy and code language is tailored to Bellevue circumstances. The revisions recognize that Bellevue is a substantially urbanized condition, and that the no net loss concept applies to existing conditions, not predevelopment conditions. The revisions also focus on enhancing neighborhood livability through the preservation of natural features; acknowledge shoreline property owners as good stewards; seek to make sure the regulations are clear and will be easy to understand and administer; stress the importance of resource management practices undertaken by the city; and ensure consistency between regulations and constitutional limitations and private property rights.

Calling attention to page 20 of the packet, Ms. Helland noted the addition of a new policy that speaks to tailoring regulatory components of the Shoreline Master Program to be responsive to the varied environmental conditions found on Bellevue shorelines.

Ms. Helland acknowledged that the Commission had voiced concerns about policies SH-41 and SH-43 speaking to the same thing. She allowed that the policies were inartfully drafted but were intended to address two different things. The first was meant to speak to accessory parking associated with water-dependent uses, while the second was meant to address accessory parking for non water-dependent uses. The edits made were aimed at providing clarification.

The language revisions made on page 24 of the packet were intended to ensure a nexus between mitigation and impact. Policy SH-52 was edited to identify the need for proportionality between the mitigation requested and the impact associated with vegetation removal.

The water quality policies SH-60a and SH-60b on page 25 were added to capture concerns voiced by the Commission. Policy SH-67a was added on page 27 to address footprint expansion options. Policy SH-86a on page 30 encourages collaboration between local, regional, state and tribal entities to address watershed impacts that affect lake levels.

Throughout the document, acronyms were written out rather than abbreviated. On page 37, the reference to soft stabilization measures having been found to be cost-effective was removed on the concern that the city does not know that to be fact.

Commissioner Sheffels commented that nothing is said in the document about fish farming, which could certainly be a possibility in Lake Washington and possibly in Lake Sammamish. She said she would like to see language included that disallows the use. She suggested adding language to page 13 under the aquatic environment heading, and on page 27 under applicability of resource use policies.

Commissioner Lai called attention to the new language on page 9 that references facilitating stewardship efforts that start with the shoreline property owners. He agreed with the addition but suggested there should be some mention of the impacts caused by areas upstream of the shorelines.

Referring to the restoration plan, Ms. Helland noted that the materials had been updated since the Commission saw them in December. She noted that in the introduction section the language revisions reassert the notion that the plan is primarily focused on public property but includes opportunities identified on private property. At the direction of the Commission, staff contacted the private property owners to verify their positions relative to including their properties. To the goals and objectives section on page 3 language was added asserting that each is to be specific, measurable and action-oriented. On page 21 ownership type, public or private, was added the potential project list. On page 41 section 8 was retitled to include performance measurement, and on page 43 new section 8.1 was added regarding performance measurement. Appendix F has all of the restoration concept plans, and staff reviewed them to make sure they indicate they are drafts and opportunities only.

B. Shoreline Master Program Update – Public Comments

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said faulty logic was used as the basis for the restoration plan. It states that it is understood that some uses and developments cannot always be fully mitigated, resulting in incremental and unavoidable degradation of baseline conditions. The document suggests that shoreline processes and functions can be protected only through restoration. The fact is that change is the one constant in life; that cannot be regulated by the city. Redevelopment should trigger mitigation, not restoration. The restoration plan uses semantic tricks to equate mitigation with restoration. The document states that private property restoration opportunities will occur only voluntarily, or through redevelopment proposals. It appears, however, that in fact the restorations will be triggered by redevelopment. It appears the real goal of the restoration plan is to require mitigation and restoration; through faulty logic and semantic tricks, no net loss becomes a net gain, and the language appears to bear that out. A careful reading of the document equates no net loss to current conditions; it states that Lake Washington is highly altered, current and future use practices all but eliminate the ability of the shoreline to function as a natural shoreline to benefit salmonoids, and similar to Lake Washington the ecological function of Lake Sammamish is of low- to moderate-value, and the ecological functions within the Phantom Lake and Larson Lake areas rate moderate to high primarily due to the large associated wetlands systems. The fact is, eutrophic lakes cannot

function higher than non-eutrophic lakes. The document states that the majority of proposed projects are on public property but that a number of them are on private land which represent potential for voluntary restoration. However, inclusion of projects on private land, and the semantics game of mitigation versus restoration puts targeted private properties on a slippery slope if redevelopment occurs. The document states that the city's Shoreline Master Program does not require restoration on private property, but that there are many opportunities for private property owners to restore or enhance shoreline functions on a voluntary basis. The plan then goes on to cite mitigation measures, like armoring changes, in- and over-water structures, vegetative cover, impervious surfaces, and converting undeveloped lots into community lots. That sounds like redevelopment can trigger restoration plus mitigation. The document states in the introduction section that the Shoreline Master Program and by extension the restoration plan are to be put in place to ensure no net loss of shoreline ecological function over time. That brings things full circle. To really ensure no net loss, even though it is said to be voluntary, restoration will need to be required to ensure no net loss over time, not from present conditions, but for ever after.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, noted that the document states that performance measures are to provide a sense of the activities contributing to the shoreline changes, and that performance measures should be identified consisting of a unit of measure in a baseline point against which to measure progress. The proposed units of measure are square footage and lineal footage of selected shoreline elements that say nothing about fish, water quality and quantity. If the ecological function cannot be measured, there is no logic in measuring bulkheads and docks. A valid performance measurement would show no new net loss or net gain. The document states that increased enforcement and addressing nonconforming structures over the long run are to be addressed by requiring major redevelopment projects to meet current standards. The city's own goals relative to stormwater management and flood control are not being met. The document states that the program will construct improvements to drainage systems to alleviate flooding where the utility's goal for the level of service for the protection from flooding is not met. Project improvements could involve increasing conveyance, capacity, rerouting, drainage, and adding detention infiltration or other runoff control mechanisms. The document calls for addressing water quality and high-flow impacts from creeks and shoreline development through NPDES Phase I and II permit updates consistent with the Department of Ecology's 2001 stormwater management manual. There is an unspecified amount of funding to support stormwater planning studies and projects. It is not clear what is being done to meet the goals for Lake Sammamish and Phantom Lake. The restoration plan reveals that the city's intention is not to fix the problem but to acquire lakefront property as it becomes available and establish a conservation easement along the shoreline and resell the properties. It is questionable who would buy devalued properties. Staff on January 26 explained that the city is using Department of Ecology-provided science, the restoration plan relies heavily on the science included in WRIA-8 products. The limited science calls for the use of large woody debris, shallow water habitat, and shade to control water temperature to protect fish fry. Balanced peer-reviewed science was presented to the Commission by the Washington Sensible Shorelines Association, yet discussions continue to be based on irrelevant science. The guidelines in fact require the Shoreline Master Program to be based on all available science, not just a sampling selected to support the desired outcome.

Mr. Jerry Liszack, 16663 SE 17th Place, said historically flooding around the perimeter of Phantom Lake has not been found to be a problem of record. All of that changed, however, when the I-90 business park was created. Since then three-quarters of all stormwater flowing into Phantom Lake is from that development. The volume of stormwater runoff in the Phantom Creek sub-basin increased substantially in the Phase II study years when compared to the Phase I study. The city shared costs with the contractors to construct the I-90 business park and

approved designs to allow a significant increase in runoff volume into the lake. The conveyance ditch from the development into Phantom Lake was cleared, graded, enlarged and armored on private property to carry additional flow of up to 40 cfs into Phantom Lake. A cutoff dike was constructed at the north end of the lake which now prevents 152 acres of flood storage that previously went into the greenbelt from Phantom Lake. The outlet creek for Phantom Lake along SE 17th Place is the recipient of the additional drainage; the culvert can only handle about 10 cfs. The city's consultant report stated that replacement of the culvert was needed to prevent lakeshore flooding, yet that recommendation was overlooked, and the stream on private property that flows into Phantom Lake was enhanced while the culvert on the outlet creek was not replaced. The city claims it is not responsible for the increased conveyance into private property and will not maintain the creek or clean out the culvert. The behavior is both dangerous and irresponsible. The outlet stream often overflows during storm events while the cutoff dike at the north end of the lake retains water at a level one foot or higher than the water level on the Larson Lake greenbelt side of the berm. The city is protecting its roads, SE 16th Street and 156th Avenue SE, at the impairment and expense of the private street SE 17th Place. Annual stream maintenance has not been performed since the city assumed responsibility for lake level regulation. It is puzzling why the utilities department changed its policy in the 1990s to arbitrarily abandonment the maintenance of some streams over others. The city claims it cannot maintain streams on private property, yet it has no problem enhancing private inflow streams to accommodate increased storm flow into Phantom Lake.

Ms. Elfi Rahr, 16509 SE 18th Street, reported that since December the three water samples taken from Phantom Lake all tested positive for blue-green algae. That is highly unusual given that blue-green algae generally proliferates when the water temperature is high in a lake system, which in Phantom Lake generally occurs in the warm summer and fall months. The only previous occurrence of blue-green algae in February was in 1991 when the ill fated aeration system de-stratified the lake system and brought up nutrients from the bottom. The old landfill is continuing to leach into waters that flow into Phantom Lake. It is time to stop playing around and take things seriously before the whole system collapses.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, commented that hundreds of hours were spent by citizens in the summer of 2010 reviewing the initial draft policies and regulatory concepts. The typical approach is for goals to drive policies which in turn drive regulations. The Shoreline Master Program update is taking a different approach, with regulations driving the policies. The policies are being rolled out with matching regulations. If the regulations are broad and squishy, ultimately the policies will rule and too much will be left to discretion. If the regulations are developed to the nth degree, the resulting documentation will be encyclopedic. There must be a balance.

Mr. Rory Crispin, PO Box 40443, commented that at the last Commission meeting on the Shoreline Master Program one of the city attorneys stated that parcels divided into ten or more lots would be required to have public access to the shoreline. When the statement was made, several of the Commissioners appeared to be surprised, as were many from the public. In 2004 a citizen's advisory group determined that shoreline regulations should not be part of the critical area update, but the city decided otherwise, which disregarded the state statute that says shorelines of statewide significance are not critical areas. The state law was clear but was ignored and the Commission was steered in a different direction. A similar pattern is unfolding with regard to the Shoreline Master Program update. It is concerning what the policies and associated regulations may evolve into. With regard to the policy of public access for subdivided properties, he noted that the Attorney General's office has published the advisory memorandum avoiding unconstitutional takings of private property. Jurisdictions cannot condition the subdivision of land upon a grant of public access to the shoreline without just compensation.

One overarching provision of the Shoreline Management Act involves recognizing and protecting private property rights. The state legislature has given wide deference to local governments to adopt master programs that reflect local circumstances by liberally construing the policies and provisions established within the Shoreline Management Act. The draft policies, however, include sentences containing a mixture of goals, directions and philosophies plucked out of the WAC and relabeled Bellevue's shoreline policies. The public still has no idea what the regulations will be or if the so-called policies are actually umbrellas to the regulations that reflect local conditions, or even if a number of them can be consolidated into a single policy. The Commission should keep a watchful eye open for so-called policies and question them if they are simply relabeled guidelines from the WAC.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, referred to policy SH-103 and noted that when first drafted it simply called for minimizing aesthetics and habitat impacts of piers and their components by allowing light-transmitting canopies designed for minimum visual impact. He said he had no argument with that language. However, the policy has been redrafted to refer to existing piers through the addition of policy SH-103a which prohibits all new covered piers. No scientist has come before the Commission, nor has any study been presented to the Commission, to say that canopies are bad so it must be assumed that staff have made the determination on their own. Light-transmitting canopies are far more expensive to install than regular canvas canopies, and they tend to wear out much faster and must be replaced more often. The policy language has morphed from allowing light-transmitting canopies to requiring them. Light-transmitting canopies do not provide protections for boats any more than a regular canopy, and in fact they are probably worse in that they allow UV rays to penetrate. Boats are not themselves transparent, so requiring a light-transmitting canopy over a boat will not improve the amount of light hitting the water.

Ms. Diane Tebelius, 2650 West Lake Sammamish Parkway SE, said while the update process has been ongoing for some time, it does not appear that things are closer to finding a resolution. Earlier in the day the release of the revised draft Shoreline Master Program policies included 32 new pages, and the draft shoreline district overlay outline included five new pages. A number of new pages were also added relative to 20.25E.030, 20.25E.409, the general requirements applicable to all shoreline development and uses, the residential shoreline regulations, the specific use regulations, and the shoreline modifications. The document has reached 355 pages and the regulations have not yet been included. It is almost impossible for members of the community who live along the shorelines to spend their time figuring out what is going on because they have to earn a living, whereas the staff can get paid to spend all of their time developing more and more pages. The length of the document is unreasonable. The Commissioners were appointed to represent the community in coming up with reasonable and rational regulations and a statute. Continuing down the present road will not result in that goal.

C. Shoreline Master Program Update – Commission Discussion

Ms. Helland reviewed with the Commissioners the documents delivered to them to date, noting that they had everything but the non-shoreline edits and the acronym list.

Chair Ferris said the next big events will be the open house and the public hearing. He noted that the Washington Sensible Shorelines Association has asked to have a minimum of 45 days from the time all of the materials are released before the public hearing is held.

Ms. Helland noted that there are other city commissions waiting to review the policies. She said it would be useful to know the level of acceptance from the Planning Commission before sharing the policies with the Environmental Services Commission and the Parks and Community

Services Board. The Commission has continued to seek the inclusion of water quality, lake level and watershed-related policies, which will be of interest to the Environmental Services Commission; they may have feedback along the lines of preferring to see the policies housed in the Utilities Code. There are policies related to recreational uses that the Parks Board will want to review.

Commissioner Hamlin voiced support for moving forward. He said he would like to see the whole package put together and submitted for public feedback. If the Commission has concerns, it can spend more time discussing the particulars after the open house and the public hearing. Of greatest importance is having a complete package in hand.

Commissioner Himebaugh said it was his belief that the staff had responded to all of the Commission's comments from the last meeting in revising the policies. He said he was ready to comment on the revised policies but would not want the Commission to officially accept them before seeing the regulations.

Ms. Helland explained that the process of going through the regulations and aligning them with the policies will be iterative. She added that it would be disrespectful to the Commission to release the policies with the staff revisions without the benefit of the Commission seeing them. Staff is being pressured from the other commissions and other departments, however, because the policies may have an impact on their operations and plan updates. They will not be shared, though, until the Commission gives its approval to do so.

Commissioner Turner said he could see no reason not to share the policies with those who want to see them.

Commissioner Lai agreed, adding that the other commissions and city departments should be made to understand that the policies remain a work in progress. He noted, however, that the Commission will need more time before approving the package for purposes of the public hearing. Commissioners Mathews and Sheffels concurred.

Chair Ferris said it was his understanding that the Commission would get the entire packet of materials following the holiday break and would be tasked with reviewing it in its entirety. That did not happen and in fact the package has been divided into parts. He said he was uncomfortable with the way it has been segmented and was desirous of being able to read the policies alongside the regulations to see how they work together. He said he had no argument against letting the other commissions see the policies.

Commissioner Lai said he was anxious to hear the comments of the Environmental Services Commission. Ms. Helland explained that they were briefed around the time the Commission was hearing from the science panel. They were briefed again in February and March; they saw the draft policies that were released in January. Their next briefing will be in April.

With regard to the goals, Chair Ferris commented that the items in Goal 6 are not otherwise related other than they are all given priority. He suggested it would be clearer to have a priority for single family residences and separate priorities given for the rest of the items. Ms. Helland said the paragraph was intended to reflect the Commission's desire to call out the single family preference. The language is taken almost directly from the RCW where the various priorities are lumped together. She stated, however, that staff would be willing to separate the single family preference from the others. Mr. Inghram added that the intent from the state level was to allow people access to the water both through recreation and private residences along the water. Chair Ferris said he did not want the inference to be that priority would be given for single family

residences that give access for substantial numbers of people to enjoy the shorelines of the state. Ms. Helland said the RCW language is intended to mean that access to the shoreline is provided in part by allowing shoreline property owners to have their homes there. Chair Ferris suggested the goal would be much clearer if it read “To give priority to a) single family residences, and b) water-dependent recreational development and other development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.” Ms. Helland said it would better to simply split the paragraph into two separate goals.

Chair Ferris suggested that goals 3 and 4 are redundant with regard to the second half of goal 6. Ms. Helland said goals 3 and 4 were taken from the existing shoreline code, and 6 was added to reflect the priority given to single family.

There was agreement to split goal 6 into two separate goals.

Chair Ferris called attention to the first paragraph on page 8 of the packet and suggested the part crossed out was in fact informative. He suggested retaining it.

Commissioner Himebaugh disagreed. He said every opportunity should be taken to streamline the document and the crossed out language was removed to eliminate redundancy.

There was agreement to delete the language from the paragraph.

Chair Ferris referred to the second sentence of the third paragraph on page 8 and asked where the referenced identified shoreline resources are spelled out. Ms. Helland said they are in the shoreline characterization and inventory. She agreed the sentence could be revised to clarify that point.

Commissioner Lai called attention the fourth bullet on page 9 and reiterated his call to complete the thought by indicating that stewardship extends to the community at large. Ms. Helland said she would be willing to divide the bullet into two, with a focus in the first on the stewardship theme and including the regulatory reform issues in the second.

Commissioner Turner reiterated his concern over basing regulations on the concept of no net loss, which has no real way to measure it. He said he understood that the state will not allow no net loss to be left out of the document. Absent a true way to measure no net loss, individuals will be required to make subjective decisions at every step of the way and no one will be able to say if conditions are the same, have improved, or have worsened. He acknowledged that the second bullet had been included in part due to comments he made relative to not requiring a return to pre-development conditions.

Commissioner Himebaugh said the big question is whether or not the body of existing science upon which the program is supposed to be based provide a sufficient basis to connect the dots, which is needed in forming the policies and regulations. At some point it will become necessary to determine if the program actually accomplished the goals it set out, and that will require some monitoring and measuring. It would be dangerous to go into the program predicated on the promise of monitoring. He said he would not argue with including no net loss as a policy, but said he had major questions about whether the concept can truly be defined or measured. Any attempt to return to pre-development conditions would be absolutely unrealistic.

Chair Ferris observed that early on in the process the Commission asked whether or not the measurement is quantitative in any specific way. He allowed that science is full of qualitative measures that are broadly based on judgments and marked as high, low or medium. Science is

not always empirical; it is also often judgmental. The program for the most part will not include standards of empirical measurement; much of it will be qualitative. The Commission will need to decide if both types of measurements are captured.

Commissioner Lai allowed that multiple viewpoints have been presented, both from the Washington Sensible Shorelines Association and scientific experts brought forward by staff. At the end of the day, the Commissioners will need to weigh all of the testimony and reach a conclusion about what the program should be.

Ms. Helland pointed out that the work to update the Shoreline Master Program began in 2008 with a boat trip around the lakes. The process has included public participation as well as the shoreline characterization and inventory work, which was done largely by consultants. Early on the decision was made that public participation would be managed by the Commission; there were good reasons voiced at the time for taking that approach. It was known that the process would take a long time and that there would be numerous starts and stops along the way. The shoreline characterization and inventory work was done in 2008 and in 2009 staff came back to the Commission with maps showing what the shorelines conditions were. That information was forwarded to the Department of Ecology who had to review and comment on it. In 2009 the Commission was presented with all of the science as part of preparing to serve as a steering committee; staff brought in science and the public brought in science. Ultimately, the Commission will be responsible for digesting the mountains of information, reconciling it, and coming up with policy choices. In 2010 the Commission moved into its role as a steering committee. The Shoreline Master Program update documentation was released in May 2010 and it included pieces and bits from other master programs, including policies. The document has since morphed into a much different document; it now reflects a number of comments received from the public and the Commission. The work of the Commission in reviewing policies and codes, which is its typical work, really started in January.

Ms. Helland acknowledged that the document is very long. She said staff took very deliberate steps to get everything into it that applies to the shoreline areas and property owners. Beyond that, however, the document had to be made consistent with the other codes and regulations of the city. The Commission can still choose to shorten the document by removing the administrative sections. That will not, however, mean that the administration will go away; it would mean that the city would have to rely on the state administration process. Mercer Island made the choice to regulate solely based on policies; that approach makes people nervous because it gives staff a great deal of latitude in issuing permits. The proposed Bellevue approach is very specific in answer to the concerns voiced about wanting to know exactly what is meant by each and every policy. She said she was absolutely certain that there are no gaps in the proposed program.

Ms. Helland said it is absolutely reasonable for the Commission to want to see the policies and the regulations together to make certain everything synchs up properly.

Commissioner Sheffels said she had asked specifically to make sure the program would have no gaps. It is better for the public and for everyone to put as much on the table as possible. The program is still a work in progress, but at least the Commission will not have to face issues that have not been talked about or considered.

Commissioner Hamlin called attention to page 11 and suggested the organization section could be a bit cleaner and more detailed. With the overall goals moved to the start of the document, they are somewhat disassociated. He said the same was true for each section to which the goals apply.

Commissioner Lai called attention to the paragraph titled “Purpose of the Aquatic Environment” on page 13 and pointed out that the aquatic environment does not itself protect anything; it is the designation of the environment that provides the protections. He suggested the same issue should be clarified throughout the policies to help make things clear.

Commissioner Sheffels asked if the aquatic environment section would be the right place to include a prohibition against fish farms in the lakes. Ms. Helland said the resource section includes policy SH-76 that allows aquaculture if it is sponsored or co-sponsored by a public agency or federally recognized tribe. Commissioner Sheffels said she recently traveled to Costa Rica where it has been shown that certain kinds of aquaculture are extremely damaging to the environment. If allowed at all, it should be through conditional use or some other method that would bring to light whether or not the science should allow it. Ms. Helland said some additional information could be incorporated in the section on aquaculture about managing food sources, sediment and disease.

Environmental Planning Manager Michael Paine said hatchery options are typically operated in streams and rivers. Given the fact that fish stocks are continuing to decline, the tribes are always looking for enhancement opportunities and they do not want to possibility foreclosed. Under the existing laws, it is unlikely the city could prohibit the use altogether. The associated impacts could, however, be included in the document.

Commissioner Hamlin commented that the paragraph under the shoreline environment designation maps heading on page 13 references Section 2.C but pointed out that the referred to section is not easily found. Ms. Helland said staff would fix that citation.

Commissioner Mathews called attention to policy SH-12 and noted that the question of legally established structures had previously come up. He asked if some clarification could be included to make the policy clear. Ms. Helland answered that the terms “legally established” and “lawfully established” have common meanings under the law. She said there is additional information included in the regulations about what the term means and how to establish that something has been legally established. In essence, a structure that was legally allowed and permitted at the time it was constructed is a legally established structure.

Commissioner Hamlin pointed out that the only difference between policy SH-11 and SH-15 was the reference to boathouses. He asked why there should be two policies that are so similar for the two environments. Mr. Paine suggested the two policies should read exactly the same and include the reference to boathouses.

Turning to page 19, Commissioner Hamlin pointed out that in the introduction paragraph the word “chapter” should be “Element.” He also suggested that from a formatting point of view the original six bullets get lost.

Commissioner Himebaugh agreed with the public comment that policy SH-29 on page 20 should be readdressed. He said there is a more public access than just saying it should be granted; there are certain limits that should be put in place. Beyond that, the policy as written does not make a lot of sense if it is to include the reference to public access. The main focus of the policy is on managing new subdivisions within the shoreline to ensure no net loss of ecological functions, and goes on to list several associated items. The inclusion of public access is not a good fit in that it is not related to ecological function. Ms. Helland said the policy could be divided into two for purpose of clarity. She added that there is a WAC provision with respect to when public access is provided, and the citation is included in the policy. The reality is there is not much land

are in the city on the shoreline that could accommodate a subdivision. There are public access requirements of public facilities, of boating facilities such as marinas, of commercial facilities, and the creation of clusters of new dwelling units.

Commissioner Himebaugh said his preference would be to eliminate the policy regarding public access as it relates to subdivisions. The issue of public access has been addressed in other areas. If the Department of Ecology thinks it necessary for the city to have a public access standard for a private subdivision, they will have the right to raise the issue in turn.

Ms. Helland said the public access requirement specifically does not apply to single family homes. It is only applicable in the context of a subdivision, which is consistent with the WAC.

Answering a question asked by Commissioner Lai, Ms. Helland allowed that policy SH-29 was poorly crafted. Subdivisions must adhere to the no net loss standard with respect to ecological function. That translates to things like clustering, keeping structures away from the most sensitive areas, and providing for community beaches rather than beaches for every single lot. According to the WAC, public access is required when new clusters of dwelling units are created. The regulation will state that subdividing in a certain way will result in a requirement to provide public access.

Commissioner Himebaugh said such a requirement is simply not fair and there is no justification for it. The WAC guidelines are guidelines. It should be left out of the Bellevue policies. Commissioner Turner concurred and said in fact the requirement for public access has the look and feel of a taking.

Commissioner Lai suggested the policy as written could be interpreted to mean that if public access is required, appropriate standards should be applied.

Chair Ferris asked if a developer creating a subdivision would otherwise have to include public access if not required to do so by the Shoreline Master Program. Mr. Inghram said the city could not require it absent being included in the Shoreline Master Program. The Commission is free to conclude what should be included and left out of the Shoreline Master Program, but the Department of Ecology will use the WAC guidelines in reviewing the program for compliance. Ms. Helland added that while the WAC guidelines are called guidelines, they are in fact codes.

Ms. Helland said the only two properties that are large enough to be subdivided into four or more lots are Vasa Park and the Sisters of St. Joseph Peace. Mr. Inghram clarified that in the future should a developer acquire four adjacent lots and seek to reconfigure the property lines, the action would be a boundary line adjustment. If no new lots are created, the action would not be deemed a subdivision. A subdivision involves the creation of new developable lots.

Commissioner Lai pointed out that the public access policy language could be written so as to limit its applicability to the two identified parcels.

It was agreed the Commission would hold off making a decision about policies of public access until after reviewing the corresponding regulations.

Answering a question asked by Commissioner Hamlin, Ms. Helland clarified that policy SH-36 is redundant to policy EN-40 in the Environmental Element, not to Shoreline Master Program policy SH-40.

Commissioner Mathews asked if policy SH-40 would have any bearing on the Phantom Lake

situation. Mr. Paine allowed that it could.

Commissioner Lai asked if one could argue that the Phantom Lake situation and the associated management issues fit into the category of flood hazard reduction. He suggested that if it does, some policy language regarding management responsibilities should be included in the section. Ms. Helland responded by saying the proposed policies in the section are intended to be additive to those in the Environmental Element and the Utilities Element. The Utilities Element has flooding and floodplains as one of its major components. The flood hazard reduction policies are intended only to capture the WAC directive to address floodplain management that is not otherwise addressed in the Comprehensive Plan. Commissioner Lai suggested it would be useful to provide a reference to the other applicable policies.

Commissioner Turner noted that a public comment was made regarding a specific plan from the 1970s to make Phantom Lake part of the overall drainage plan for stormwater runoff. If that is the case, it might put the lake into a different category for regulation. Ms. Helland said it is not in a different category for purposes of the shoreline code. The issue has been raised with the Environmental Services Commission and with the utilities department, both of which are looking at the situation vis-à-vis their flood control and drainage policies.

Chair Ferris observed that there has been a lot of testimony about issues that go beyond the Shoreline Master Program update. The Commission may want to call out some of those issues in attempt to make sure they will be addressed through the proper venue. Many of the issues facing Phantom Lake as well as the water level on Lake Sammamish are outside the purview of the Shoreline Master Program and may need to be addressed separately.

Calling attention to the paragraph under applicability of public access policies in the Public Access section on page 23, Commissioner Sheffels noted that there are some multifamily developments on the city's shorelines. She suggested the last sentence of the paragraph should read "This section does not apply to existing residential development." Ms. Helland agreed to make the change.

Commissioner Himebaugh thanked staff for making revisions to policy SH-52 but suggested the emphasis continues to be a little off. The amount of vegetation to be conserved should be limited by the proportionality principle. As the policy reads, it is focused more on requiring mitigation than on explaining that mitigation should be limited. He proposed having the language read "Balance vegetation conservation with appropriate recreational use of the shoreline and limit required mitigation to that which is proportional to adverse environmental impacts associated with vegetation removal." Ms. Helland said one of the findings that must be made in the staff report when the entire package is assembled is consistency with the other elements of the Comprehensive Plan and state law. There is already a policy in the Comprehensive Plan that speaks globally to the issue of vegetation conservation citywide, EN-26, and the language of policy SH-52 was drafted to conform to that policy.

Chair Ferris commented that the second paragraph under the Vegetation Conservation heading on page 20 describes the pre-development standard, especially the second sentence of the paragraph. He suggested it is inconsistent with the recognition that Bellevue's shorelines are fully developed which will never return to their pre-develop conditions. If taken as a prelude to what follows, the paragraph sets the bar too high. Ms. Helland explained that the second paragraph is focused on the aquatic environment, which is everything below the ordinary high water mark. The language is consistent with the environmental policies related to habitat that are in the critical areas section of the code which will need to be addressed in some way, though not in the Shoreline Master Program. In those policies, the lakes are identified as habitat for

anadromous species.

Chair Ferris countered that the phrase “continuous stretches of vegetation” does not sound like the aquatic environment but rather a shoreline condition. Mr. Paine clarified that the paragraph relates to the aquatic environment as well as the associated shorelines. He allowed that the language could be better tailored to Bellevue conditions.

Commissioner Lai asked if using the word “native” in association with “vegetation” is necessary. Mr. Paine said the direction is toward prescribing native vegetation but not exclusively. Non-native species can be incorporated provided they are not incompatible with native species. Ms. Helland agreed the language could be revised to read “native or native compatible.”

With regard to policy SH-56 on page 21, Commissioner Lai suggested the policy statement should be more compatible with the idea of no net loss of ecological function rather than be tied to state and federal requirements. Ms. Helland said the language of the policy was used as a way to create a measurable and actionable policy. Mr. Paine added that the no net loss standard if applied to stormwater discharge would be impossible to meet, and utilities would greatly object. They are aiming at specific standards in state and federal law, not the no net loss standard. Commissioner Lai said he was troubled by that inconsistency.

Commissioner Turner said that means private property owners will be held to one standard while the city will be held to a completely different standard.

Commissioner Lai called attention to SH-74 on page 28 and suggested the language should be reconciled with policy SH-55 where the reference is to chemicals approved by the Department of Ecology. Ms. Helland said she would rework that language to accomplish that.

Commissioner Hamlin referred to the shoreline modification provisions on page 31 and noted that in other parts of the document the provisions are referred to as policies. Ms. Helland said she would make the change.

Commissioner Hamlin said he concurred with the public comments regarding policy SH-103. The proposed revision appears to introduce new language that would make it difficult if not impossible to meet the policy. The change from “allowing” to “requiring” certainly raises the bar. Ms. Helland explained that it was always the intent to prohibit new covered moorage, though not canopies. The prohibition against buildings to provide covered moorage is in the existing code, whereas canopies are allowed. The language of SH-103 is not intended to restrict canvas canopies.

Chair Ferris suggested that at the very least the language of SH-103 and SH-103a should be clarified with regard to canopies and covered moorage. Mr. Paine agreed.

Commissioner Himebaugh argued against use the word “requiring” in policy SH-103 and in favor of using “allowing.”

Commissioner Sheffels referred to the third paragraph under the shoreline stabilization section on page 33 and noted the word “boulders” had been deleted. She said boulders are not mentioned anywhere else even though they can be a form of soft shoreline stabilization if placed correctly. Mr. Paine said the regulations will help to add some clarity.

Attention was given next to reviewing the restoration plan. Chair Ferris asked if the final version of the plan would include recognition that the plan was prepared by The Watershed Company.

Ms. Helland said it would be no problem to change the coversheet since the final adopted plan will become the city's plan.

Commissioner Himebaugh called attention to the last sentence of the second paragraph on page 2 and suggested that the phrase "or through redevelopment proposals" should be deleted. Ms. Helland pointed out that redevelopment proposals sometimes require mitigation that cannot be accomplished on-site. In those cases, opportunities to provide mitigation elsewhere must be sought. That is what the sentence is intended to refer to. Commissioner Himebaugh said the plan is otherwise clear that restoration is to be focused on public properties. The sentence as written casts doubt on that principle.

There was agreement to delete the phrase.

Ms. Helland highlighted the changes to the document. She noted that language had been added to page 3 talking about objectives intended to be specific, measurable and action oriented, which ties to the changes in Section 8. She said a language change had been made on page 21 in response to Commission comments to make clear the public or private status of land ownership for the recommended projects. The title of Section 8 was changed in response to the conversation the Commission had regarding performance measures. Section 8.1 was added to include the performance measurement objectives. Finally, all of the appendices were stamped "Draft."

Mr. Inghram called attention to the reference on page 41 to the draft 2009 Stormwater Management Program and said it was his understanding that the document has in fact been adopted.

Commissioner Sheffels commented that often Phantom Lake and Larson Lake are referred to as a single unit. On page 51, however, Larson Lake is specifically called out with regard to stream restoration. She proposed always referring to them as a unit so that the problems they face can all be addressed together. Ms. Helland said the document identifies locations that were analyzed, studied and sorted for optimal project goals toward restoration. Larson Lake is specifically noted on plate 4 as a project. There was no project that was described and conceptualized that rose to the level of conceptual level planning, which did happen for Phantom Lake. Commissioner Sheffels suggested that the addition of a footnote indicating that fixing one part of the Phantom Lake/Larson Lake ecosystem will not address all of the problems facing the system.

Commissioner Mathews said he lives right between the two lakes and walks the trails often. He said from his view the two lake ecosystems are in many ways distinct and separate. The language on page 51 is specific to Larson Lake and as such should be retained.

Ms. Helland provided the Commissioners with a brief review of where the various materials should go in their notebooks. She noted that the dimensional requirements include the option for Lake Sammamish property owners to measure setbacks either from elevation 31.8 or from a site-specific elevation. The general requirements include the safe harbor of the rebuttable presumption under which if the standards are met no net loss is presumed to have been met. The section also includes mitigation sequencing.

Ms. Helland said Section 20.25E.065, the residential shoreline regulations, represents an attempt to consolidate most of the residential requirements in one place. The section talks about the differences between the canal environment and the residential environment, the different shoreline stabilizations that are allowed, and the setbacks in those cases as a result of the unique characteristics of the sites. It also talks about Phantom Lake and its wetlands characteristics. In

the context of Phantom Lake, the critical areas regulations in all cases are more protective than the shorelines regulations, thus in the conflict section one would always rely on the critical areas code with respect to those properties. The critical areas code would still have to be applied through a shoreline substantial development permit because the city cannot jurisdictionally get rid of the permitting requirement. However, to avoid creating a conflict by including regulations in two different codes, a reference to the critical areas code is included rather than the requirements.

Ms. Helland allowed that staff had not yet developed the graphics for inclusion in the document but said the intent is to have it be relatively graphic rich.

The options and incentives package is included in the residential shoreline regulations. The document also includes the landscape information, though the application of landscape standards that apply elsewhere in the city were removed to avoid confusion and duplication. The concept of stewardship follows, including the opportunity to take advantage of existing native vegetation, and removal of noxious weeds and hazard trees.

The document refers the reader to another chapter for the shoreline stabilization requirements, but information on residential moorage is included.

Ms. Helland noted that Section 20.25E.070 includes regulations associated with specific types of uses, including aquaculture, recreation, transportation and utilities.

The Commissioners were informed that Section 20.25E.080 includes the regulations regarding shoreline modifications. It covers breakwaters, jetties and groins, non-residential moorage, and shoreline stabilization, including residential shoreline stabilization.

Ms. Helland provided the Commission with a new definition section and noted that some new definitions had been added. She also stated that the Shoreline Master Program website includes a public involvement tab under which there is access to all materials reviewed by the Commission, including the open house materials.

Chair Ferris proposed scheduling the public hearing prior to the end of April, noting that he would be out of town for the first three Wednesdays in May. That would be within the timeline sought by the Washington Sensible Shorelines Association. The open house should be scheduled sooner rather than later so people will have the opportunity to ask questions and gather information before the public hearing. The Commission should next work through the regulations and consider how they mesh with the policies. Ms. Helland said staff would work on the scheduling issues and provide the Commission with an update at the March 23 meeting.

11. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, informed the Commissioners that the vendor who sells translucent canopies says they are guaranteed to hold up in the sun but are not guaranteed to protect boats. She referred to page 23 and said the indication that it does not apply to existing single family residential should be reviewed to determine if new single family has inadvertently been omitted. With regard to Phantom Lake, she reminded the Commission that it is a kettle lake and did not originally have inflow or outflow; a farmer many years ago created the outflow, and when the city permitted the I-90 business park development it created an inflow. The Commissioners were urged to read the public takings memorandum from the Attorney General; it highlights the red flags to look for. Any science relied on must be replicable in order to be considered valid; that is why peer review is so important. Any results that cannot be

validated cannot be called science. With regard to the restoration plan, she stated that if the city endorses the removal of bulkheads on west- and southwest-facing properties there will be problems. Meydenbauer Bay park must be subject to the Council-approved park master plan and Council-approved implementation principles; it will not be at all acceptable to allow changes through conditional use or any other kind of permit. Finally, she said it is appalling that the utilities department can be allowed not to meet the no net loss standard while the residents will be required to do so.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, referred to policy SH-51 and noted that it includes the statement “to protect human safety and property.” He disagreed that trees along the shoreline will in any way provide protection of human safety or property. With regard to page 37, he suggested the focus appears to be solely on primary structures, which certainly applies to residential units but is less clear with regard to other structures; applicability should be to all structures that have been legally established. He said he gets nervous when hearing staff make general statements about needing to be consistent with existing code; that could be interpreted to mean that elements of the critical areas code could be applied to the shorelines. He suggested the public would benefit from guidance on how to effectively provide input during the public hearing and just what the format will be, including how much time each speaker will be allowed. It is still unclear how much of the lakes are considered critical areas and by what definition, and how they will be treated and regulated.

Mr. Inghram pointed out that the open house will provide the public with the opportunity to have unrestricted conversations with Commissioners, the staff and with each other. The public hearing has formal rules and procedures, including a five-minute limit per speaker. Written comments can be accepted at the public hearing.

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

9. OTHER BUSINESS

Commissioner Sheffels raised the issue of Commissioner Mathews’s term ending prior to the Commission completing its work on the Shoreline Master Program update. She asked if it would be possible to extend his term for a period of time. Mr. Inghram said he spoke earlier with Commissioner Mathews and found that he is willing to continue serving beyond the end of his term. It will be necessary for the Council to take action to make that effective. Staff will carry the request forward to the Council.

10. APPROVAL OF MINUTES

A. January 12, 2011

Motion to approve the minutes, amended to incorporate the changes suggested by Mr. Nizlek, was made by Commissioner Himebaugh. Second was by Commissioner Turner and the motion carried unanimously.

B. January 26, 2011

Commissioner Sheffels expressed concern about amending the minutes at the suggestion of the staff without verifying that any proposed revisions are valid. At the very least, proposed amendments should be submitted in advance of the meeting at which the minutes are to be approved.

There was agreement to postpone approving the minutes until the next Commission meeting, allowing for time to review the suggested revisions.

12. NEXT PLANNING COMMISSION MEETING

A. March 23, 2011

Mr. Inghram noted that the agenda items that were scheduled for the February 23 Commission meeting, which was canceled due to inclement weather, will need to be rescheduled. He said the main item was a proposed Comprehensive Plan amendment involving a site off of Bellevue Way to the south of the downtown. Along Bellevue Way there are adjacent residential neighborhoods with a few exceptions, including a couple of churches, a nursery, Chase's Pancake House, and a few pockets of higher-density single family and some multifamily. The proposed amendment asks whether some of the single family properties convert to multifamily. From the threshold review stance, however, the question is whether or not the proposed amendment meets all the applicable criteria, including changed circumstance.

There was consensus to schedule the Shoreline Master Program update open house for April 6, the study session and hearing for the Comprehensive Plan amendment for April 13, and the Shoreline Master Program update public hearing for April 27.

13. ADJOURNMENT

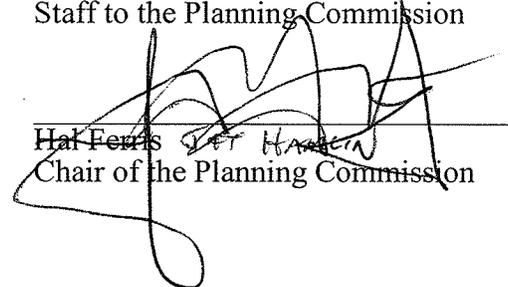
Chair Ferris adjourned the meeting at 10:24 p.m.



Paul Inghram
Staff to the Planning Commission

5/11/2011

Date



Hal Ferris
Chair of the Planning Commission

5/11/11

Date