

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

March 23, 2011  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioner Lai

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:32 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 Turner who arrived at 6:34 p.m.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. COMMITTEE REPORTS – None

7. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reported that the Council recently discussed the accessory dwelling unit regulations as well as the multifamily tax exemption credit, and expressed interest in the overall housing work program. He noted, however, that while the City Council provided some direction to staff regarding the issue of affordable housing, he had not attended the meeting and had not been briefed with regard to the specific Council action. He said he would provide details at a future meeting.

8. STUDY SESSION

## A. Shoreline Master Program Update

Land Use Director Carol Helland reminded the Commission that on March 9 staff provided an overview of the regulations and pointed to the revisions made at the direction of the Commission when acting in its role as a steering committee, and revisions made as a result of public comment.

Ms. Helland called attention to page 5 of the packet and the Bellevue-appropriate goals that were determined by the Commission in January and which were incorporated into the policy document. She said acknowledgement of the substantially urbanized condition of the shoreline was identified during the inventory process, which became the basis for the nonconforming provisions, which are more flexible than those provided citywide. The objective to ensure no net loss can be seen in the proscriptive requirements of the Shoreline Master Program, the standard of which is presumed to be met by compliance with the code. Enhancing neighborhood livability has been an important theme citywide. Recognition of the shared responsibility for shoreline protection is included in the document. The Shoreline Master Program regulates both public and private entities. The goal of protecting resources through resource management practices is met through city programs that are held to a higher standard. The city's stormwater standards are some of the most stringent in the nation, and compliance with all state and federal mandates under the Clean Water Act serves to reduce discharge pollutants and protect water quality.

Continuing, Ms. Helland said an acknowledgement was included that shoreline goals are not achievable through regulations alone. The cumulative impacts analysis, the city's high program operational standards and the public restoration plan are all pieces of the whole. The regulations have been tailored to unique shoreline circumstances, and the objective is achieved by having regulations that address conditions within the shoreline jurisdiction that are quite varied. Opportunities for restoration are provided, but they are not required.

Ms. Helland said staff shares with the Commission the objective of creating code that will be user friendly. Back in 2001 the development services initiative focused on achieving a streamlined permit review process with a resulting reduction in both timelines and costs. In its totality, the Shoreline Master Program in its totality captures those same principles. Staff approached the Shoreline Master Program in a manner similar to that used in preparing other code amendments. The regulations are consolidated in a single overlay, which is what was done in Bel-Red. Proscriptive requirements that address a wide range of uses and developments are included, and they offer applicants an off-ramp if needed to address specific and unique circumstances. Additionally, an attempt was made to balance specificity with simplicity so the public will be able to understand exactly what is expected of them through the regulations.

Ms. Helland said staff understands that crafting a document that is Bellevue-specific makes the code lengthier in some cases. It is at the same time, however, more digestible and predictable for those who must use the code.

With regard to the schedule, the Commissioners were directed to the matrix on page 31 of the packet. Ms. Helland noted that they left-hand column of the matrix represented the schedule proposed by the Commission on March 9, and pointed out that the center column represented an alternative option devised by the staff. She explained that City Hall would not be available to host the open house on April 6, though it is available on April 5, which is a Tuesday; the problem is April 5 is the same night set aside for conducting a courtesy public hearing with the East Bellevue Community Council, which would mean staff would have to split their time between the two functions. Additionally, it would not be possible to meet the 14-day notice

requirement, and April 5 falls in the middle of the Lake Washington school district's spring break.

The staff-proposed alternative option factors in the time needed to brief the other boards and commissions that need to be kept up to date. City Hall is also not available on April 27, the date selected by the Commission for the public hearing. The public hearing would, therefore, need to be held at Meydenbauer Center at additional cost to the city. The alternative option would have the open house held on April 20 and the public hearing on May 25, both at City Hall on Wednesdays.

Commissioner Sheffels commented that the traditional open house approach is to have various stations set up manned by staff and for the public to move from station to station. She proposed having all the primary topics of interest to the public be the focus of separate stations manned by staff and Commissioners. The public could then sit down and engage in more lengthy discussions about each topic. More could be learned about what is on the minds of the public by taking that approach. Ms. Helland said there are no rules associated with how to conduct an open house. If a quorum of Commissioners were to be present, the open house would have to be advertised as a Commission meeting. Staff are hoping the open house, in whatever format it takes, will be a tool to help people digest information.

Commissioner Turner suggested the Commission needs to be clear with regard to what the document that will be the focus of the open house is. He pointed out that there has not been any agreement on the part of the Commission with regard to the document. He said he would favor crafting a format for the open house that would allow for hearing from the Washington Sensible Shorelines Association without time constraints.

Answering a question asked by Chair Ferris, Ms. Helland said following the open house and public hearing a debriefing session will be conducted during which the Commissioners will be asked to share the high points they heard. Staff will put together a master compilation of comments which will help to determine which topical areas should be given the most attention, where reconciling needs to be done, which areas do not need to be changed and which areas do. Chair Ferris said his desire would be to have the public hearing, followed by the debriefing session and being presented with the public comments transcribed and collated by topic area, before the Commission begins the task of going section by section through the document and deliberating the specifics. Ms. Helland said the objective of staff, if the alternative option schedule is followed, would be to conduct the debriefing session on June 8, then have the full content ready for the June 22 meeting. She added that it may be necessary for the Commission to meet more often than twice a month.

Chair Ferris said in his opinion it would not be possible for the Commission to wrap up its work on the Shoreline Master Program update before the August break. Some deliberations will need to occur in September and possibly beyond.

Commissioner Turner asked if the cumulative impacts assessment will be completed prior to the public hearing. Ms. Helland explained that the assessment is done on the ultimate program, not the draft. Commissioner Turner suggested the public may want to know what the impacts are going to be prior to the public hearing so they can provide constructive comments.

Commissioner Himebaugh said he believed it would take most of the year for the Commission to work through to a conclusion. He questioned why the Commission would schedule a public hearing before having a chance to work through all of the material. The rationale behind having the public hearing is to receive comments from the public, but without the Commission going

through all of the materials first, the public may in fact be prevented from meaningful engagement with the Commission. For one thing, once a topic has been the subject of a public hearing, the time allowed for comments by the public is reduced from five minutes to only three, and the public has already made it clear it is difficult for them to make their points in five minutes. He said he was not comfortable with the notion of conducting a public hearing on a document or program the Commission has not either accepted or approved in any way; to do so would seem to require a disclaimer of some sort, and could risk having to conduct a second public hearing. The public hearing should not be scheduled until the Commission has reached consensus on the program.

Commissioner Sheffels said the standard approach is to include everything possible in draft documents sent to public hearing. That way, no one is blindsided at the last minute. The draft in its final form will certainly be more refined. It will be revised based on the comments of Commissioners as well as the public. It certainly will be changed, though it will not be expanded in any way to include issues and topics not already in the draft; the draft will undoubtedly be reduced through the process. She said if her suggestion for the open house is followed, members of the public will be given much more time in which to get their points across, all in a non-formal dialogue. A number of very good comments and suggestions have already been made by the public, and they should be given every opportunity to show they can defend them; the open house could be the right venue. She proposed scheduling the open house on April 6 and the public hearing on April 27 as suggested by the Commission. The time to refine the document will be after the public hearing, not before.

Chair Ferris commented that the information presented for review at the open house should be the same as the information open for comment at the public hearing. He said he did not want to work through the document section by section and formulate opinions about the various topics without having in hand the benefit of the public input. If past experience rings true, there will be many who show up for the public hearing who have not attended any of the meetings at which the program was deliberated, and they may have ideas that have not yet been presented. The Commission should refrain from delving into the wording of all the regulations, which is the meat of the document, until having the benefit of the open house and the public hearing. In time there will be a revised draft and at that time a decision will need to be made relative to conducting a second public hearing.

Chair Ferris suggested the Commission should take public comment and then provide input to staff relative to issues or topics missing from the draft. Once the Commission is satisfied that nothing has been left out, the public hearing date should be discussed.

Commissioner Mathews said the process followed for the Bel-Red study included having a draft document be the subject of both an open house and public hearing. Following the public hearing, the CAC was able to be specific in addressing the issues and working toward a final document to recommend to the City Council. He said he would prefer to utilize that approach.

Ms. Helland said the staff will work diligently to get the public comments compiled following the public hearing; they could possibly be ready for the meeting on June 8. She said it would be very difficult for staff to have materials ready for an April 5 open house. She suggested that the alternative option is more realistic.

## B. Shoreline Master Program – Public Comments

Mr. Charlie Klinge, 11100 NE 8<sup>th</sup> Street, spoke as a land use attorney on behalf of the Washington Sensible Shorelines Association. He said the Association was excited to present to

the Commission the Sensible Shoreline plan, the community alternative that focuses on the six key issues for single family residential properties. The plan explains the concerns and explains why specific recommended policies and key standards are being promoted. The Commissioners were asked to carefully consider the plan and the issues covered. He said he and the WSSA members are still working to review the 350-plus pages of the draft Shoreline Master Program. The next step will be to collect and analyze the input from everyone, communicate it to the WSSA board for discussion, deliberate the issues, and then reach a conclusion on the draft document. That will take a few weeks. It would be better to schedule the public hearing on May 25 as recommended by staff. Mercer Island elected to hold a public hearing early and recently decided to hold a second; that approach could work for Bellevue as well. It will be important to let the public know that the draft is a staff document not the Commission's document. The materials presented to the Commission are incomplete in a critical way. The Growth Management Hearings Board has ruled that any documents to be incorporated into a Shoreline Master Program must be reviewed and subject to public participation requirements, but there are at least 11 documents that have not been presented to the Commission. One document, the shoreline inventory and characterization, has some inconsistencies the staff have yet to resolve. For instance, the Commission asked what ecological benefit results from a larger buffer, to which the staff maintained that the benefit cannot be quantified, leaving no science to support a larger setback.

Ms. Laurie Lyford, 9529 Lake Washington Boulevard, said WSSA hosted a community meeting on March 22 which was attended by 170 persons. The Sensible Shoreline Plan was introduced and discussed, along with the high water level problems on Lake Sammamish and Phantom Lake. She said WSSA aims to keep the community apprised as the process moves forward. WSSA welcomes comments and questions from the Commission regarding the sensible plan or any other factor. The plan can be found online at [www.sensibleshorelines.org](http://www.sensibleshorelines.org).

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, agreed that the April date for the public hearing will be problematic for those with children in school because of the conflict with spring break; the early date could undermine the ability of the public to provide the Commission with input. He said he and other WSSA board members would appreciate being able to talk one-on-one with Commissioners about the Sensible Shoreline Plan.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, provided the Commission with an overview of the Sensible Shoreline Plan. He explained that the document focuses on a mere six topics rather than the myriad of topics that reside in the draft regulations. The six topics in the plan are water issues, bulkheads, nonconformity, setbacks, vegetation and trees, and docks. He said the lake water levels relate to the Shoreline Master Program and the achievement of the Shoreline Management Act. The levels can and must be managed to effectuate the program. The ordinary high water mark can change artificially and arbitrarily; in the same way that water levels affect the program, injected stormwater impacts the program. The water levels are controlled by government agencies through stormwater discharge, and the pollutants as well as the contribution to the water level will affect the program and its achievement. Bulkheads are needed to manage the impacts of high water levels and wave action resulting from wind and boats. The impacts of bulkheads can be mitigated, and WSSA is in favor of techniques that do that. Soft stabilization will not work and will carry with it dangerous consequences. The residents should not have the responsibility of the risks involved. Nonconformity is a primary issue of concern for many. Existing legally developed improvements, including accessory structure, should be protected. The economic impacts to the residents would far exceed the ill-defined benefits. With regard to no net loss, he stressed that it is based on existing conditions and noted that both the impacts and how evaluations are going to take place are undefined. Most shoreline properties developed since the 1970s were subject to a setback of 25 feet. The setback

was changed to 50 feet under critical areas, but the science upon which the change was made is questionable. The incentive options to move away from the 50-foot requirement are more punitive than incentives. Newport Shores, which is greatly bulkheaded, is differentiated from Rosemont on Lake Sammamish, which is also bulkheaded; there really is no difference. The lakeshore communities are committed to retaining the trees on their properties. No touch buffers, whether called vegetation management or conservation areas are critical areas carryovers, for which there has been no justification to substantiate a 60 percent restriction. Urban-appropriate vegetation is justifiable: it will result in urban-appropriate types of wildlife in backyards. The city should recognize that higher agencies, including the state and the Corps of Engineers, control docks and there is no need to duplicate or create more restrictive regulations. Light-transmitting prisms were at one time a requirement, but their use turned out to be follow and they have since fallen by the wayside. The new idea of flow-through decking has problems as well: there recently was a report of an eagle caught in the decking. Flow-through decking could also at some point go by the wayside. If the city locks itself into things that might get changed by higher agencies, it will have to go through an update process.

Mr. Brian Parks, 11611 SE 16<sup>th</sup> Street, said the city has told Phantom Lake residents that the lake is private, though no advantages to being private have been identified. The Phantom Lake residents oppose the Shoreline Master Program's draft shoreline restoration plan items PL-2 and PL-3. He proposed a new PL-7 aimed at restoring the Phantom Lake outlet channel as far as the Weowna Park boundary. The inlet ditch from Pond A to Phantom Lake is not a natural stream. According to a USGS map from 1898, there is no inlet to Phantom Lake and only a hand-dug outlet going toward Lake Sammamish. Like the outlet channel, the inlet channel is on private property, and the utilities department has stated they are not willing to take on the maintenance responsibilities for the channel. The polluted inlet waters are inappropriate for encouraging wildlife habitat. Disturbing the existing gabion rock baskets lining the outfall pipe and replacing it with soft stabilization would encourage sedimentation into the lake. Salmon shading is not needed for the seasonal inlet flow which is already lined with native vegetation. The outlet channel, however, has little vegetation and is bare for long stretches. The language of PL-3 calls for the city to acquire more property along the shoreline of Phantom Lake. Phantom Lake is a private lake and the city already owns more than 25 percent of the abutting acreage. Local residents oppose increased city ownership and would like to maintain the residential nature of the Phantom Lake shorelands. The conservation designation will greatly increase regulation limitations for residents and would not be consistent with the residential nature of the Phantom Lake shorelands. The increased presence of predators, such as coyotes that often travel in packs around the greenbelt, would be inappropriately encouraged into private yards. PL-7 should read "Restore the slope depth to the 1930 tile culvert baseline, install bank erosion control, replant the channel shoulders with native vegetation, and remove the weir hardening which impedes flow and reduces overall erosion and sedimentation." The staff have been hindered from doing that due to existing policies. A signature-gathering program for a petition indicating support for the proposed PL-7 language is in the process of being circulated among Phantom Lake residents.

Mr. Rory Crispin, PO 40443, referred to WAC chapter 173.26 and noted that it is made up of four parts, only the first three of which apply to shorelines in Bellevue. Part 1 covers the requirements of local Shoreline Master Programs, and Part 2 covers procedural matters such as amendments and approvals. Part 3 is titled "guidelines." The title of the section makes it clear what the content is. WAC 173.26-010 says that Part 3 comprises the guidelines and provides guidance for developing the content of Shoreline Master Programs. The Department of Ecology representative has also referred to the guidelines as guidelines. As directed by the legislature to provide guidance in implementing the Shoreline Management Act, the Department of Ecology has in essence codified the instruction manual. The guidelines are written broadly enough to apply to all kinds of situations statewide. The language of any specific guideline, however, is

not in and of itself a goal or a policy or regulation; it is only a guideline. The draft references WAC 173.26-211(5)(f), but the language it uses is not the same or even close. Policy SH-29 reads as if it contains portions of several other existing policies. The subdividing of property, which is a non-development action, should not even need the policy. Of the seven special policy goals under WAC 173.26-181, the fifth one calls for increasing public access to publicly owned areas of the shoreline. In accord with WAC 173.26-221(4)(c), local governments can use a planning process to address public access, and the process should be integrated with other Comprehensive Plan elements, especially transportation and recreation, and the process should comply with all relevant constitutional and other legal limitations that protect private property rights. However, when it comes to subdivisions, under WAC 173.26-221(4)(d), the recommendation is to not apply public access where a local government provides a more effective public access through a public access planning process.

Mr. Norman Bollinger, 16226 SE 24<sup>th</sup> Street, said he would prefer to see the cumulative impacts analysis prior to the draft being made the subject of an open house or public hearing. The residents need to know what the impacts on their properties will be. The document is very large and the Commission should not push forward the schedule for the sake of the schedule; the Commission should take all the time needed to fully review the document which has taken several years to write. The prudent thing would be to have two open houses and two public hearings. The document is more than 350 pages long and there is little justification for that; in many ways it appears to be overreaching what the state requires. The document needs to be made smaller, more streamlined and more flexible.

Mr. Tom Schaffer, a resident on West Lake Sammamish Parkway, said he has read through the document but did not understand most of what he read. He questioned whether or not the Commission would be able to understand everything in the document and be able to say for sure that all of the dots connect. There simply is not enough time for the Commission to get through it all on the proposed timeline. The ramifications of the document are very difficult to understand, which is bothersome for property owners. He said a friend of his who is confined to a wheelchair worked with the state and federal agencies to obtain a permit to construct a dock on his property, and the result was a monstrosity under which a boat can be driven at high water. The rules developed for Bellevue should be appropriate; the regulations must meet the needs. In many areas, the regulations appear to outperform the need. The process of developing the document was supposed to be collaborative, but it has largely been combative where some of the staff are concerned; too often it has been staff versus the people, which is just wrong. He noted that at the first open house two years ago staff stated that the intent was to make only minor changes to the major work done in 2005, and that the changes would not have great impact on homeowners and properties. That statement, however, is not truthful.

Mr. John Strong, 1604 West Lake Sammamish Parkway NE, agreed with the suggestion of Commissioner Sheffels to have the Commissioners present at the open house and willing to sit down and talk at length about what is in the document. He said he was distrustful of the staff and had far more faith in the Commissioners. The process of gathering data will go better if the Commissioners are involved.

Ms. Kit Paulson, staff for the Environmental Services Commission for the shoreline update review, referred to policy SH-56 and requested a language change. She noted that the policy revisions made on March 9 included in the concept of no net loss, which in wetlands and shorelines generally equates to assuring no degradation of current conditions. The term “no further degradation” should meet the intent of no net loss and be more consistent with water quality terminology. Using the term could also help to reduce confusion. The city’s water quality programs meet the level and more. The stated application of the policies is for

development, redevelopment and uses in the shoreline jurisdiction. Water quality regulations apply across the entire city, not only for development and redevelopment but also for ongoing maintenance and pollution prevention for all existing properties. There are currently requirements for water quality treatment for development and redevelopment. Most construction activity in the city is redevelopment. Utilities actively inspects over 1400 existing businesses, multifamily, residential plats and city facilities at least every two years; under the new regulations, those inspections will be made annually. The combination of regulations, inspection, education and enforcement is part of the state and federal obligations. The Environmental Services Commission recommended, and Council adopted, compliance at a higher than minimum standard for both water quality and detention for city properties of all types, both private and public. The Environmental Services Commission understands and shares the frustrations of shoreline property owners about legacy pollution and flows from previous developments. Both regulatory and non-regulatory programs have been initiated to address those situations, and over time improvements will be made, not just maintenance done. She proposed rewording policy SH-56 to read “Continue to development and update citywide surface water quality programs and regulations as needed to meet federal and state requirements to reduce the discharge of pollutants in order to prevent further degradation of water quality and impacts to shoreline ecological processes and functions.”

Commissioner Himebaugh asked what substantive difference the proposed policy language would yield. Ms. Paulson said the term “no net loss” is used for shorelines and wetlands. It is not commonly used in the Clean Water Act. There are therefore carryover connotations associated with the term “no net loss,” even though the concepts are not substantively different.

Ms. Elfi Rahr, 16509 SE 18<sup>th</sup> Street, informed the Commission that the state of Wisconsin went through a similar process to development their shoreline management program; they took seven years to complete the plan. She said too many important points are being overlooked in the rush to get a plan in place for Bellevue. For instance, the document does not indicate what kind of plants can withstand continuous and extended flooding. If a lake is highly eutrophic, as Phantom Lake is, deciduous trees should not be planted along the shoreline; the leaves that fall into the water only add nutrients to the system. In Europe, deciduous trees are routinely removed from the shores of highly eutrophic lakes. Wind brakes are also removed to allow wind to stir up the waters in order to increase the levels of dissolved oxygen. The document does not address artificial night lighting. There are extensive studies done in Puget Sound that show salmon become blinded when moving from a lit area into the dark; as they emerge from the dark area they remain blind for up to 60 minutes, during which time they are prey for their predators. Far more homework is needed before the document can be finalized.

Mr. Rolf Brandall spoke on behalf of Jeff Kirby, a resident of 67 Skagit Key in Newport Shores. He suggested the city should not attempt to treat the canal as it does a regular waterfront. He noted that there are 38 homes along the canal. Five of the homes appear to be within the 50-foot setback, and twelve of the homes appear to be within the 25-foot setback. In all, 68.4 percent are within the 20- to 35-foot setback. Newport Shores as a development has not been around for all that long, but clearly development near the bulkhead has been allowed to go forward with no apparent detriment.

Mr. Berkley Biddle, 3422 West Lake Sammamish Parkway SE, noted that his property on the west shore of Lake Sammamish is directly in the path of the winds that flow down from the mountains. Over the years, residents of the shoreline have done what they could do to keep their properties intact and the habitat from being destroyed. The work done years ago to dredge the area at the north end of the lake between the outlet of the lake and the Sammamish River resulted in far better drainage. Following storm events which increased the level of the lake, the water

was able to flow out. That kept the lake flushed and the water quality was better. Now milfoil has taken over largely because the lake is getting more and more stagnant. The Corps of Engineers was in charge of clearing and clearing the outlet turned the responsibility over to King County; even though there is an agreement in place, King County has not followed through with maintenance, and no one has ever tried to enforce it. It would not be surprising in the future to see the property owners band together and file a very large class action suit for damage to their properties resulting from the fact that the water cannot exit the lake. While Bellevue is not directly or legally involved in that issue, the city could and should exert some influence on the governmental entities who should be doing something about addressing the problem. The onerous regulations being developed could end up with local property owners in the courts if they act to do what needs to be done in order to protect their properties. He said Vasa Creek runs through his property and flows into the lake. King County requested and was given an easement to permit maintenance and upkeep of the stream, but they have yet to set foot on the property to do anything. Anything that clogs the stream is cleaned out by the local property owners, even though legally they are not supposed to do so. No one has been able to say whatever happened to the easement the county had when the area was annexed into Bellevue.

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

Chair Ferris sought from the Commissioners consensus with regard to how to move forward.

Commissioner Turner reiterated his desire to receive more input from the public. He said much has been heard from staff but not enough from the citizens who are actually going to be impacted. He said he did not want to put a lot of effort put into the draft without first knowing what the ultimate impacts will be.

Commissioner Sheffels agreed that more public input is needed, but said she did not believe the Commission should work through the draft line by line before the public hearing. The document should be accepted on face value and presented to the public at the open house and the public hearing.

Commissioner Himebaugh said the Commission has had two opportunities to review the policy language, but the Commission has not carefully reviewed the uses and development regulations. The Commission should work through all of the regulations before the open house and public hearing, even if that takes a lot of time and requires pushing the public hearing out beyond May. If there must be a public hearing in the spring, the May would be the best choice. He said he was very concerned with reducing the public comment time from five minutes to three after the public hearing. If the Commission has leeway to change that rule, it should do so to get as much public input as possible.

Commissioner Hamlin expressed his desire to see the open house occur sooner rather than later. He said he had some questions about the draft that he would prefer to have answers to before discussing the date for the public hearing.

Commissioner Mathews said he could go either way. He agreed that the schedule will need to be extended as recommended by staff. The input from the open house will be helpful when working through the draft.

Chair Ferris asked the Commissioners to indicate what, if anything, is missing from the draft that should be included, and to ask any clarification questions they might have before deciding how to proceed.

Chair Ferris said the public hearing comments will have a significant influence on what will go into the final draft. He cautioned against getting too deeply into wordsmithing the draft in its current configuration; to do so would be to waste a lot of time.

Commissioner Sheffels commented that the policies and goals are more important to the Commission and staff than to the public. The public likely will not have much to say about the policies. The meat of the program will be in the regulations, and the Commission should hear from the public before trying to come up with a final document.

Commissioner Turner reiterated the need for more public comment. He agreed that the open house should be scheduled sooner rather than later, but the public hearing should not be scheduled until after the open house is held to get a better idea of what might need to be changed in the draft. He said if anything is missing, it is the cumulative impacts analysis. That information will ultimately drive much of the Commission's discussion.

Commissioner Mathews asked if the cumulative impact state will be part of the plan itself. Ms. Helland explained that the cumulative impact analysis is an analysis of the plan itself. It will seek to determine if in fact the plan meets the no net loss test. Because it is known that the draft will be changed before it is finalized, the staff cannot justify spending the money to prepare an analysis and public information materials for the open house or public hearing and then have to do it all over again once the document is finalized.

Commissioner Turner suggested the Commission should be very cautious about putting regulations in place without knowing what the impacts will be. He stressed that the Commission would benefit from having in hand a good assessment of the impacts, even if the assessment is preliminary and limited in scope. If the regulations are going to put property owners into bankruptcy or make it impossible for them to rebuild, then the regulations will need to be written in another way.

Commissioner Mathews said he was willing to conduct the open house and public hearing before working through the document line by line. Commissioner Hamlin concurred.

Ms. Helland reminded the Commissioners that the direction handed down from the City Council when the update process kicked off was to make the critical areas code requirements that were adopted in 2006 more usable for shoreline property owners. The voluminous materials have resulted from trying to correct things in the critical areas code. In every way, shape and form there has been a stepping back from the setbacks that currently apply citywide to critical areas. The process has highlighted the fact that shorelines and critical areas have different purposes. The lake shores are considered habitats and as such need some protections. Throughout Washington state, all Shoreline Master Programs have about the same content. It would be wonderful to be able to put together a plan that is only a few pages long, but there are none like that. The Bellevue draft may be too long but it is not missing anything. The procedural sections can be removed to shorten the plan, but that does not mean the public will not have to comply with state procedures in the RCW. If integrated into the city's code, the code will be longer. The current draft has 28 pages of policies, which is in line with other major elements of the Comprehensive Plan; 51 pages of procedures, permits and administration which are intended to save users the trouble of having to refer out to the state's shoreline substantial development permit requirements, the variance requirements, and other requirements; and 121 pages of development regulations, only 30 pages of which apply to single family areas and which were consolidated to make the document more user friendly. Under state law, just about any use can be permitted on shorelines under a conditional use permit; clearly the public will not want to see the doors thrown open, so the regulations must make that clear in the use charts. The overall

number of pages should not serve as a litmus test for the quality of the work done or the intent of what is trying to be accomplished.

Chair Ferris asked the Commissioners to identify things missing from the draft.

Commissioner Mathews said he was not aware of anything not in the document that should be.

Commissioner Hamlin said he did not see anything in the policies regarding non-residential moorage. He said the text on page 28 appears to lean toward residential but allowed it could be intended to apply to both. Ms. Helland said the policies group both residential and non-residential categories together.

Commissioner Hamlin noted that the policies talk about services and wholesale/resale in the specific use section, but said he did not see anything in the specific use regulations. Ms. Helland said wholesale/resale uses are always subordinate and associated with a permitted principle use and as such are embedded in the principle use requirements. For instance, marina is an allowed use, and retail uses are only allowed accessory to the marina use. The marina regulations address specifically the allowance for retail. Stand-alone retail uses are not allowed anywhere.

With regard to the shoreline modifications regulations, Commissioner Hamlin said he did not see anything about fill, piers and docks, and shoreline restoration, all of which are covered in the policies. Ms. Helland said clearing and grading and fill in the shoreline are covered on the second page of section 080. The residential and non-residential piers and docks regulations are grouped together. She said the policies were written to be all-inclusive, but the regulations are very compartmentalized relative to the uses, the general requirements and the dimensional requirements. She said staff thought it would be too confusing to spread everything throughout the residential section. Commissioner Hamlin said it would be helpful to include references.

Commissioner Hamlin asked if the shoreline restoration regulations are also included in the residential section. Ms. Helland said there is a subset of shoreline restoration in a couple of places in the document. Some is associated with stabilization and some is associated with exemptions that allow for green shorelines which do not need substantial development permits, and those are defined in the permitting section.

Commissioner Turner said the content of the draft relative to the policies and regulations are acceptable. What is missing is an analysis that goes through the major portions of the regulations, highlights the state law behind it, indicates what the supporting science is and how it is relevant, and points out any possible financial impacts the regulation might have. The public has voiced concerns about government overreaching and property takings, so the analysis should say something about that. The public has suggested that the state guidelines are only guidelines; if they are, then implementing them might be going too far, and there should be some analysis of that position. The analysis should show the public what the staff believes the impacts of the regulations will be. The public needs a reason to be comfortable with the document. An effort should be put into showing that the regulations have been thoroughly reviewed and that they do in fact hold together.

Chair Ferris commented that the city has in place a critical areas ordinance, and if it did not have a Shoreline Master Program the state's mandated program would apply. No cumulative impact analysis was done for that program.

Ms. Helland said in preparation for the open house and the public hearing staff will write a staff report. The Comprehensive Plan gives guidance relative to the decision criteria to be used before

adopting regulations. The purpose of the annotations in the draft was to indicate the state law justification for each regulation. The science basis for the regulations to a certain extent is the state law science that created the regulations to begin with that the city is required to adopt. The city has never conducted a financial impacts analysis for any regulation, but Ms. Helland said she would talk the issue over with the Department of Planning and Community Development's strategic planning team.

Continuing, Associate Planner Heidi Bedwell said at the open house there will be graphic displays depicting real-life situations. Accompanying fact sheets will be available for the public to take home with them. The topics will include what can be done with existing residences, how they can be expanded and maintained, the standards that apply to bulkheads, and the standards that apply to docks and piers. Focus will be given to what can be done, not just what cannot be done. The issue of ordinary high water mark will be explained and clarified as well. Ms. Helland added that there will also be a comparison of Bellevue's proposed regulations with those of other jurisdictions.

Commissioner Sheffels allowed that the focus of the regulations is on shorelines of statewide significance. One of the first policies gives preference to, among other things, protecting the statewide interests over local interests. The state dictates which shorelines are of interest to the state, but they do not do anything to recognize them as such. The ordinary high water mark on Lake Sammamish is not under the control of the city; the state could in fact control it, but it has not. It should be recognized that the state has a responsibility beyond just dictating that local jurisdictions must protect the states interests over local interests. No net loss is calculated from the present ordinary high water mark. If the mark were to be adjusted downward by correcting the conditions that have caused lake levels to fluctuate, the mark could be returned to its historic level. That would result not only in no net loss but a net gain. She suggested that if nothing else the philosophy she outlined should be included in the transmittal memo.

Ms. Helland said the issue could certainly be raised with the Department of Ecology. She allowed that the city does not have control over the outlet to Lake Sammamish, but King County does, and it is embarking on a study of the outflow, the conclusions of which will hopefully be ready about the time the Shoreline Master Program work is done. The available data cannot necessarily be reconciled. Property owners have come forward saying the lake level is higher than it has been in the past, but there is also evidence that historic flooding conditions were even higher in the 1930s and 1940s, which does not support the claim that development has contributed completely to the lake level issues. There is also some evidence showing that as development happens the lake levels do not necessarily reflect a long-term change but do rise faster during storm events, though it may be taking longer for the water levels to drop again. The Council-endorsed study done in 2003 did determine a lake level that people can rely on for purposes of submitting permits, and that has been included in the draft document for predictability purposes.

Commissioner Himebaugh called attention to section 20.25.040(G)(3)(c)(i) and noted the language allows structures to be replaced only to accommodate a shoreline use allowed under the use chart. What appears to be missing is office or office buildings as allowed uses in the use chart. He asked how an office building can be replaced if it is in fact not allowed in the use chart. Ms. Helland explained that the section is not applicable to residential uses; the residential nonconformity standards are embedded in the residential section, 20.25.065. The section in question is intended to address primarily the Bellefield site where the underlying zoning in the land use district is Office, but where the environmental designation does not provide for office as an appropriate use in the shoreline designation. In order to address the issue, there are very flexible nonconforming use standards that allow for alterations, repairs and maintenance which

will allow the current office buildings in their existing configurations to be maintained. Should the property owner want to raze the buildings and redevelopment the site, the resulting use would need to be one that is allowed, which would be residential. If the Bellefield office buildings were to be damaged up to 100 percent, they could be replaced with an in-kind office use. Commissioner Himebaugh suggested that the language of the provision could be written somewhat clearer.

Commissioner Himebaugh asked how the policies are going to be applied. He asked if a property owner seeking a permit who meets all of the criteria in the development regulations could still see their permit denied by the city if a determination is made that the project is inconsistent with the policies. Ms. Helland explained that Mercer Island developed a short list of regulations and some very squishy policies; they apply their policies robustly, so the public is not always able to discern up front what they will be getting. In developing the Bellevue program, the feedback to date has been strongly in favor of drafting regulations that will let applicants know up front how the policies are going to be applied. Accordingly, staff has tried to be as specific as possible. As drafted, any applicant who meets the regulations is presumed to have met the standard of no net loss. The policies are more aptly applied when a situation crops up that never could have been envisioned in writing the regulations, and they are usually applied through SEPA. The realm of development that could occur on the shoreline has been greatly narrowed through the language of the draft program, so it is not likely an unforeseen use will turn up, but if one did, the policies would be relied on to determine what should be done. The policies would also be applied in relation to a variance permit application, but those are extremely rare. With so much of the shoreline in residential use, the policies will not even come into play for residential permit reviews; only the regulations will be applied then.

Chair Ferris reiterated his call for the inclusion of graphics depicting visually how the regulations might apply. Ms. Helland said staff has identified places where the inclusion of graphics could make the document more usable. Graphics have in the past, however, been disfavored by the city attorney's office. Graphics will be produced, however, but it remains to be seen if they will be included in the code or in a public information document. Graphics will be included for the public hearing draft.

Chair Ferris called attention to Section 20.25E and the setback reduction menu options and noted that in a previous draft relative contribution toward ecological function was listed in a high, medium and low format. Ms. Helland said the section includes the same menu shown in previous drafts. However, in response to feedback from the Commission that high, medium and low was not specific enough, a reduction distance associated with each of those categories has been attached. Accordingly, high equates to a 25-foot reduction, medium equates to a ten-foot reduction, and low equates to a five-foot reduction. Chair Ferris pointed out that the section as drafted gives property owners trading stock only relative to setback reduction; if they wanted to do something else, other mitigation parameters should be included. Mr. Paine agreed some clarification and elaboration could be added. Ms. Helland pointed out that there are some specific tradeoffs included in the dock standards, some in the stabilization standards, and there is a mitigation sequencing provision. If the prescriptive standards cannot be made to work, there is always the special shorelines report option.

Chair Ferris referred to the reference to the non-shoreline Shoreline Master Program amendments on the second page of the packet and said he hoped the cleanup items would not come across as another iteration of the Shoreline Master Program update. If the items are going to generate a lot of public input, they should be included in the draft for the public hearing. Ms. Helland said staff would not be able to get the cleanup items in the draft prior to the public hearing but would have them in their own document before then. The cleanup work will focus

on removing from the Land Use Code references to the Shoreline Master Program that will no longer be relevant.

There was consensus to modify policy SH-56 as proposed by the Environmental Services Commission.

There was also consensus in favor of the staff's alternative option schedule pushing the open house back to April 20 and the public hearing back to May 25.

With regard to the open house format proposed by Commissioner Sheffels, Commissioner Mathews commented that it would take a large number of stations to devote each station to a specific topic. That would mean the Commissioners and staff would have to float among them to hear all of the comments. Commissioner Sheffels pointed out that there are only about six really meaty issues, and those are the ones that should be given one station each.

Mr. Inghram suggested that a hybrid approach might be devised in which the open house could be open to the public first with information displayed on boards, then from 6:00 p.m. to 8:00 p.m. people could sit down and talk with staff and the Commissioners about the specific issues. He suggested the Commissioners should not be tied to any one specific topic but left free to circulate to hear what is being said on each topic area.

With regard to the transmittal memo, Commissioner Sheffels proposed keeping a running log of issues to be included in order to keep things from falling through the cracks.

Chair Ferris commented that during the public hearing the Commission will benefit from receiving comments specific to policies and regulations. Written comments are always helpful, as are specific suggestions.

Commissioner Hamlin said the Sensible Shoreline Plan submitted by WSSA is readable and should not be too difficult to line up with the policies.

Commissioner Turner suggestion it would be helpful to take some time at a Commission meeting to compare and contrast the WSSA document and the staff draft.

Commissioner Himebaugh said the WSSA document does a good job of summarizing their position. It is very specific, which is very helpful.

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

## 10. PUBLIC COMMENT

Mr. Charlie Klinge, 11100 NE 8<sup>th</sup> Street, agreed with Commissioner Turner that a summary analysis of the impacts of the regulations would be very useful. He noted that a bill is before the state legislature to require peer-reviewed science. State regulations always require a economic impact analysis; it would be good to do a similar analysis on the draft document. State law requires local governments to use a process designed to ensure that proposed regulatory or administrative actions do not unconstitutionally infringe on private property rights. The same section of state law states that the planning policies of a master program may be achieved by a number of means, only one of which is the regulation of development. Other means may include, but are not limited to, watershed planning.

Mr. Rory Crispin, PO Box 40443, commented that the WAC gives options for meeting the

requirement for public access. One of the options is a planning process. The guidelines actually recommend against applying the public access to subdivisions where local governments provide more effective public access through a public access planning process. The guidelines hold subdivisions up as potential points of public access, but at the same time they offer reasons not for doing so. The local, regional and state park systems already provide lots of public access opportunities, and the city already has a parks and recreation planning process, so the city should not be looking to take private property for access purposes. Section 065 is long, confusing and repetitive; cross referencing is difficult.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said he was somewhat stuck on the notion of high, medium and low ecological contributions. He noted that in California state law bans all two-stroke engines on jet skis, which reduces the amount of oil and gas getting into the lakes through exhaust systems. That makes sense and is something that can easily be quantified. The amount of science and studies the city has put into the process to try to prove why vegetation zones is astounding, but it is all very subjective and arbitrary, and therefore very difficult to quantify. In 2000, the ordinary high water mark was some 16 inches lower than it is currently; the new ordinary high water mark was determined by the same company that interpreted the 2000 GIS data. That company says the city says to accept a higher ordinary high water mark, but when they did the inventory study they did not for some reason know they were using a lower inventory study. It is hard to figure out how they came up with a 71 percent armoring figure using a lower ordinary high water mark. The Commissioners were encouraged to read the preamble to The Watershed Company report where it specifically indicates how important their study is to establishing a baseline for ecological function and future development. The fact is their inventory report is invalid because they used data that was incorrect.

Mr. Brian Parks, 11611 SE 16<sup>th</sup> Street, suggested that the value of public comment is not so much in being heard but in seeing it reflected in the program. It is frustrating that after almost 18 months of public comment to see none of the comments reflected in the staff documents. The suggestion of staff to dress and clean the inlet to Phantom Lake appears to be for NPDES ulterior motives. The same solution should be applied to the outlet.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, responded to the reference made by staff to lake water levels from the 1930s and 1940s by clarifying that the Corps of Engineers straightened the river and created the weir in the early 1960s. He said the intent was to regulate the level of the lake. The facility is no longer in place due to maintenance reasons. At the open house, it would be great if one of the booths were focused on the process a property owner would have to go through when seeking a permit for a particular project, and what steps would be involved in opting to go another route. Some dollar figures should be included. That would be a very popular station.

8. OTHER BUSINESS – None

9. APPROVAL OF MINUTES

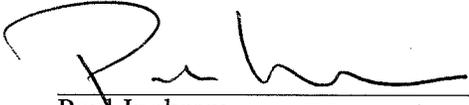
A. January 26, 2011

Commissioner Sheffels called attention to page 41 and the comment made by Mr. Parks. She noted that “260.0 NAVD” should be revised to read “261.0 NAVD.”

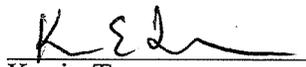
Motion to approve the minutes as amended was made by Commissioner Turner. Second was by Commissioner Mathews and the motion carried without dissent; Commissioner Hamlin abstained from voting.

11. ADJOURN

Chair Ferris adjourned the meeting at 10:01 p.m.

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

7/13/2011  
Date

  
\_\_\_\_\_  
Kevin Turner  
Chair of the Planning Commission

7/13/2011  
Date