

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

June 8, 2011  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Department of Planning & Community Development; Catherine Drews, Development Services Department; Brian Ward, Department of Utilities

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 Carlson who arrived at 6:34 p.m.

Chair Ferris introduced and welcomed new Commissioners Diane Tebelius and John Carlson.

3. PUBLIC COMMENT

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, spoke on behalf of the Phantom Lake Homeowners Association. He reported that on June 6 the City Council approved pursuing an outlet restoration program for Phantom Lake utilizing a state grant and parks department money. He thanked the Commission and staff for helping to make that possible. More than 90 percent of the Phantom Lake shoreline residents and those property owners along the outlet signed a petition in favor of encouraging the transfer of funds for inlet restoration, which is really the outlet for the old landfill in Eastgate. The residents oppose the idea of beautifying the outfall from Pond A; the water is polluted and it would make no sense to do that. The water tests high for heavy metals, especially zinc. Water from Pond A should be diverted to somewhere other than Phantom Lake. Recently it was discovered that the weir is not as deep as it was designed to be; it needs to be lowered to at least 260.0 in order to keep up with the cubic feet per second flow.

Commissioner Tebelius asked what would need to be done in order to lower the weir. Mr. Parks said the first weir had a V notch in it. When the weir was revised at a later date the work was supposed to include cutting the V deeper and wider, but that did not actually occur. The weir needs to be cut deeper or have part of it torn out.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS,  
BOARDS AND COMMISSIONS

Councilmember Wallace welcomed the new Commissioners. He said he is excited about the Commission's makeup and the wide range of skills and talents each Commissioner brings to the table. The Commission serves as an extension of the Council and the body that mines the depths of issues and forwards to the Council informed recommendations.

Chair Ferris noted that while the Commissioners do indeed bring a wide range of technical expertise to the table, none of the Commissioners have a background in the ecological sciences, which is precisely what is needed in working to develop the Shoreline Master Program update. He suggested that at some point it could become necessary to submit the work of the Commission to an independent technical expert and he asked if the Council would support doing that by allocating the required resources. Councilmember Wallace stressed the importance of getting the plan right. He suggested that if there is a need for independent review or assistance, the Council would certainly take the issue seriously.

Commissioner Turner said he has been frustrated with the science presented to date. While it may be the best available science, it has not been shown to pass muster. What has been lacking is science that relates specifically to Bellevue.

6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram noted that the staff report on the Ren-Fu Comprehensive Plan amendment had been included in the Commission packet in advance of the June 22 public hearing.

Mr. Inghram said he attended the Kirkland City Council meeting on June 7 where the issue of the South Kirkland park and ride was discussed. The site evenly straddles the boundary line between the cities of Bellevue and Kirkland, bisecting the property diagonally. King County has a proposal to redevelop the site with a mixed use and multifamily development, and expand the number of spaces available for park and ride users. The Kirkland City Council adopted zoning changes that will support redevelopment on the Kirkland portion of the site.

Chair Ferris said it is unfortunate that Bellevue has done nothing to study the zoning issues for the side of the park and ride that lies within Bellevue. It would have been better to have the two cities study the issues concurrently. He asked if there are any plans for Bellevue to begin looking at the issues so redevelopment of the site will be less disjointed. Mr. Inghram said redevelopment of the site is dependent on federal grant funding, and the timing of redevelopment will be predicated on when those funds are available. Redevelopment on the Kirkland side will mean changes to the Bellevue side, notably reconfiguring the parking and transit facility as well as other site improvements. It is also likely that some of the street mitigation will occur on the Bellevue side. The issue of initiating a zoning study for the Bellevue side was before the Bellevue City Council two years ago and they declined to move it ahead as a work program item at that time.

7. PUBLIC HEARING

A. FEMA-Related Land Use Code Amendment

Motion to open the public hearing was made by Commissioner Sheffels. Second was by Commissioner Turner and the motion carried unanimously.

Legal Planner Catherine Drews informed the Commission that Development Services oversees the floodplain management regulations through the critical areas ordinance, but Utilities actually works with the Federal Emergency Management Agency (FEMA) in developing the maps and flood elevation certificates. She reminded the Commissioners that the proposed Land Use Code amendment was initially before the Commission in study session on April 14, 2010; the public hearing occurred on May 26, 2010, following which the Commission unanimously approved a recommendation to the Council to move forward with the amendment.

Following the Commission's recommendation, FEMA conducted a community assistance visit which entailed having the Department of Ecology review the city's flood management regulations. Ecology identified three code deficiencies that required amendment to ensure consistency with federal and state floodplain management requirements. The Ecology-directed amendments identified at the Community Assistance Visit were presented to the Council at its June 24, 2010, study session. Council directed staff to present the additional code amendments to the Commission.

Ms. Drews explained that flood insurance policies are aimed at protecting investments from loss and damage related to flooding. The flood insurance rate maps (FIRMs) are developed by FEMA, and the actuarial rates for flood insurance are based on the maps. The maps are coarse in their scale and are used for different purposes by lenders, insurers and regulators. Because they are coarse, there is a process called a Letter of Map Amendment (LOMA) that provides site-specific off-ramps for property owners who feel their structures are not within a floodplain. The city has maps in place that are used as the starting point for determining if a structure is in a floodplain. If a structure is deemed to be in a floodplain, there can be an appropriate allocation of regulations to ensure continued participation in the flood insurance program. Lenders and insurers use the maps to quantify the risks to a structure and to establish rates for flood insurance policies.

The National Flood Insurance Program (NFIP) is administered by FEMA. It is a voluntary program in which communities choose to participate. It provides reasonably priced flood insurance, and in return the communities regulate floodplains consistent with FEMA and state floodplain regulations. The Community Rating System (CRS) is a feature of the NFIP; it benefits communities whose floodplain management activities go beyond minimum NFIP requirements and results in lower insurance rates. Bellevue has a CRS rating of 5, which is in the top three percent in the nation, and results in a 25 percent discount on flood insurance policy rates.

Citizens both inside and outside of floodplains benefit from flood insurance because it provides coverage for water damage related to surface water flooding, which includes all water entering a structure from outside the structure. Flood insurance is necessary for federally backed loans to construct or purchase structures in a floodplain, and it is a prerequisite for federal disaster aid.

Commissioner Himebaugh asked if there is a healthy private market for flood insurance or if property owners are limited to purchasing federal policies. Brian Ward with Utilities said he has administered the NFIP for the city for the past ten years. He said there have been a few occasions where private property owners came forward asking what they could do about their flood insurance given that they were negatively impacted by increased rates owing to the 9-1-1 terrorist attacks. In one example, he said condominium homeowners were all switched over to the NFIP resulting in a significant reduction in premiums. Recently a property owner in Bridle

Trails wanting to obtain a loan against his property discovered that his property is near a floodplain; his lender required a flood insurance policy for which he was quoted a price of close to \$3000. The average annual rate for the NFIP is around \$300. There is a healthy private insurance market, but it is expensive.

Commissioner Tebelius asked where the floodplain exists for Lake Sammamish. Mr. Ward said the flooding elevation for Lake Sammamish was established in 1978 based on the highest recorded lake elevation that occurred on February 11, 1951. When FEMA established the NFIP, they used that highest recorded level and established it as the floodplain for Lake Sammamish at 36.3 feet NAVD88.

Ms. Drews said Bellevue has been participating in the NFIP since 1978. Since that date, 247 flood insurance policies have been issued with a total value exceeding \$56.4 million. There are 88 policies for structures in a floodplain and 159 policies for structures outside a floodplain. Single family residences account for 234 of the policies, for which the average annual premium is \$345.

The Commissioners were informed that federal and state law requires consistency in order for local jurisdictions to maintain participation in the NFIP. The Community Assistance Visit addressed certain code deficiencies. The proposed code amendments are aimed at ensuring continued participation in the NFIP. The deadline for the consistency update is July 2011. Originally, the decision was made to combine the amendments with the Shoreline Master Program update work because the city's floodplain management standards are a component of the critical areas ordinance. However, because the Shoreline Master Program update is taking longer than expected, in order to meet the July 2011 deadline, the FEMA Consistency Land Use Code amendments were separated from the SMP Update process..

The proposed Land Use Code amendment updates and amends cross references and definitions, and adds definitions to support the substantive regulations having to do with encroachment, floodplain, regulatory floodway, and substantial damage.

Ms. Drews said the 100-year floodplain is a designated critical area in the Land Use Code. It is defined as the area where the chance of inundation is one percent or greater. The floodway is a smaller area within the 100-year floodplain and is defined as the area where flooding and the potential for damage to structures and life is the greatest. To date, Kelsey Creek is the only area in the city that has a mapped floodway. The shoreline jurisdiction and the floodway regulation only coincide near the fire station on SE 8<sup>th</sup> Street. The floodway extends through Kelsey Creek and in the upper reaches is conterminous with the floodplain; the floodway is only mapped, however, to NE 6<sup>th</sup> Street and 148<sup>th</sup> Avenue NE.

Answering a question asked by Commissioner Himebaugh, Ms. Drews allowed that there is an overlap between the Shoreline Master Program and the floodplain with regard to Lake Sammamish.

Ms. Drews said the substantive provision of the proposed amendments relates to the regulatory floodway. She stated that the floodway regulations were originally in Ordinance 2645 when the city joined the NFIP; for unknown reasons it was removed from the code, likely because the city did not have floodways mapped. The city now has the floodways mapped and has been directed by FEMA to include the regulations in the code. The proposed regulations are consistent with the floodplain regulations the city already has because the proposed regulations do not allow a rise in base flood elevation and prohibit development in floodplain areas.

The floodway regulations allow for homes within a floodway to be repaired, improved and reconstructed up to 50 percent of market value. The footprint can be enlarged, and any work required to meet health, sanitary or safety codes are not included in the 50 percent threshold. There is an off-ramp provided to work with the Department of Ecology to repair or reconstruct when damage exceeds the 50 percent threshold.

Mr. Inghram asked if any homes have been identified as being located in the floodway. Ms. Drews said she did not have the information but would provide it for the Commission.

Commissioner Carlson asked if the city has a history of flooding in the floodway. Mr. Ward explained that because the floodway is contained within the floodplain, rising water that engages lands within the floodplain by definition is inundating the floodway. Commissioner Carlson asked if flood claims have been made by residents under the program. He was informed by Mr. Ward that claims have on occasion been filed, though he added that he did not have an exact number.

Commissioner Tebelius said it was her understanding that the term "floodway" is associated only with rivers and streams. Ms. Drews confirmed that point.

Chair Ferris commented that while most of the language of the proposed amendment refers to structures as buildings, he pointed out that on the first page of the regulations development is defined as a building or other structure. He asked if under that construct a bulkhead could be deemed to be a structure located within the floodplain. Ms. Drews said the key point is that improvements of that kind are allowed under the critical areas ordinance provided that they do not cause a rise in the base flood elevation. The replacement allowance only applies to structures in the floodway, not the floodplain. Lakes will not be mapped with floodways.

Commissioner Tebelius asked if there could be an easier way for citizens to determine if the regulations apply to their properties or not. Ms. Drews pointed out that the opening provisions of the regulations direct property owners to look first to the flood insurance rate maps. Additional questions can be answered by the staff at the land use information desk.

Commissioner Tebelius asked if the proposed amendment is based on FEMA's model ordinance, which many in the area have called inconsistent and inappropriate. Ms. Drews said the model ordinance that has drawn criticism from many has to do with a different FEMA topic, namely compliance with the biological opinion issued by the National Marine Fisheries Service regarding endangered Chinook salmon. That model ordinance has no relevance to the proposed amendment relating to the city's floodplain management regulations.

Commissioner Tebelius suggested the proposed regulations will give the Department of Ecology almost regulatory control in that they would have the right to review all projects that fall under the guidelines. Ms. Drews said that is not correct. With respect to single family residences built in the floodway, where substantial damage occurs, which is defined as more than 50 percent of the market value of the structure, the Department of Ecology wants to conduct a site-specific evaluation of the floodway and the property to see if it would make sense to allow the home to be reconstructed in the same place. Their approval would be required before the city could allow reconstruction. The evaluation by the Department of Ecology would have to be scientifically based.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said he had personally had to go through the LOMA process and suggested that the staff do not know what they are talking about. He urged the Commission not to approve anything without asking more questions and getting to

the truth. He identified his two properties on the LOMA map taken from the websites of the city and FEMA. He noted that the 100-year floodplain cuts his properties almost in half. He said in 2007 he received a call from his mortgage company which said because his home is located in a floodplain flood insurance was mandatory. He said he disagreed, ignored the notice, and subsequently was charged \$6500 for a FEMA flood insurance policy. If that amount represents a 45 percent discount, the policy would have been \$10,000. He said he had the property surveyed to determine exactly where the 32.5 foot mark is that was considered by NAVD29 to be the 100-year floodplain line; the survey determined his home to be located at approximately 40 feet. The mortgage company was going by the FEMA map, which meant that a LOMA letter had to be obtained. If the lake level were to rise to 40 feet and inundate the house, Redmond Towne Center would be under about ten feet of water; that is an indication of how ridiculous the FEMA map is. A large number of Lake Sammamish shoreline property owners have had to spend large sums of money proving that they are in fact beyond the 100-year flood mark.

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, said shoreline property owners have concerns when they hear different elevations used to describe the 100-year flood line. He noted that 32.5 feet NAVD29 is used by FEMA, but staff said the when FEMA established the NFIP, they used established 36.3 feet NAVD88 as the floodplain for Lake Sammamish. The language in the FEMA documents seems to reflect that FEMA understands that stormwater receiving waters without outlet controls, which Lake Sammamish is, are not supposed to be flood prone and will not be flooded if properly managed. The Department of Ecology takes the approach in its stormwater manual that for at least Lake Sammamish and Lake Washington unlimited waters may be dumped into them because there are not supposed to be any flood hazards. Yet, there is a fundamental contradiction relative to Lake Sammamish because the FEMA map currently lists the lake as flood prone, while at the same time their rules allow an unlimited amount of water to be dumped into the lake. The solution is to remove Lake Sammamish from the floodplain list. Phantom Lake deserves the same solution because the flood issues there can be resolved with proper city management. The recommendation of the Washington Sensible Shorelines Association is to find out whether Lake Sammamish and Phantom Lake are required to have floodplain regulations at all. FEMA needs to explain how Lake Sammamish can be considered a floodplain when the state considers the lake not flood prone and allows unlimited water to be discharged there. If FEMA has some reason that requires floodplain regulations on Lake Sammamish, the city should find out what steps are needed to take Lake Sammamish and Phantom Lake off the list. The floodway on the Sammamish River is impeded due to poor maintenance. That raises the question of whether correction of the issue, which the county has agreed to, might reduce the 100-year flood level. The city should seek to find out if the current level of 37 feet shown on the FEMA map could be reduced with proper maintenance. The Shoreline Management Act at RCW 90.58.030 states that regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained under license from the federal government, state or political subdivision of the state. Bellevue already has a strong stormwater code that requires flood storage, flow control, retention and detention ponds to avoid downstream flooding impacts. The flood hazard rules are an extra layer of regulation. FEMA might have accepted a lot less, namely tweaks to the stormwater code or pertinent shoreline rules. Instead, the city already took the approach of adopting the critical areas ordinance flood hazard rules, so the staff are tweaking those instead. WSSA is logically interested in whether the critical area approach was necessary. WSSA has a series of questions and concerns that warrant Commission attention and awareness.

Mr. Charlie Klinge, 11100 NE 8<sup>th</sup> Street, spoke representing the Washington Sensible Shorelines Association. He called attention to Attachment A of the Commission packet and noted that 20.25H.175.A.2 talked about the 2005 map but also references the flood maps. The code itself,

however, in defining the FIRM still references the 1976 map, so that reference needs to be updated. Referring to the definitions section 20.25H.177, he noted that the definition for "development" references the regulatory floodplain, and that the definition of "regulatory floodway" references the floodway delineated on the FIRM, rather than the floodplain. The FIRM has information that is very broad, and the reference to the map is confusing. It would appear that the mapping by the city is based on the FIRM map, while at the same time the FIRM map indicates a 37-foot elevation. The definition contradictions need to be resolved. If in fact the term "floodway" is intended to apply only to rivers, residents like Mr. Evans should not have had the insurance issue he faced. It appears the rules are being applied to the floodplain.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, yielded his time to Mr. Klinge.

Mr. Klinge said the scenario on Lake Washington is very different from Lake Sammamish. The floodplain line shown for Lake Washington at ordinary high water mark is in the lake rather than up on the shore. That is because Lake Washington is controlled by the Ballard Locks. Lake Sammamish also has an outlet control, which is why the Department of Ecology considers the lake to be a control exempt lake. When FEMA or the city does additional mapping, there will be justification for saying the floodplain on Lake Sammamish, the regulatory line, is the ordinary high water mark. FEMA should be asked whether or not the lake should be exempted from being regulated as a floodplain even though it is shown on the FIRM map. If they say it should be exempted, no additional regulations will be needed. If they say it must be regulated, then the city should determine what steps must be taken to get the map changed so the floodplain regulations will not apply to the shoreline properties.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, suggested that the FEMA amendment should be dealt with as a study session item in that it has not been properly vetted to be at the public hearing stage. The Commission had only one study session on the topic, following which it went straight to public hearing a year ago. Despite reservations about the implications on the part of the public, the staff memo clearly says the FEMA provisions are components of the critical areas overlay, which will ultimately be amended as part of the Shoreline Master Program. The public asked the Commission to delay acting on the amendments until the Shoreline Master Program update work was done. Between the first Commission public hearing and the City Council meeting on June 14, 2010, the Department of Ecology provided input to staff on the FEMA amendment; the amendments they proposed were presented to the Council. It is notable that the staff memo mentions that the Department of Ecology found the city's proposed program in many instances to be significantly improved, which means it exceeded the FEMA amendment standards. At the June 14, 2010 Council session the public asked again to delay action on the amendments until the Shoreline Master Program update work was done. The Council sent the package back to the Commission for a review of the changes proposed by the Department of Ecology. The Commission has certainly been busy with the Shoreline Master Program, but it has dealt with other issues over the past year. The FEMA amendment was not among those items. The Shoreline Master Program discussions have educated the Commission and the public so that the FEMA amendment is somewhat more understandable than it previously was. More importantly, during the Shoreline Master Program process WSSA has pointed out numerous times that each of the three lakes has outlet control devices and systems that are designed to avoid flooding on the private properties on lake shorelines. The Army Corps of Engineers controls and manages the outlet for Lake Washington; the Army Corps of Engineers controls and King County manages the outlet for Lake Sammamish; the city controls and manages the outlet for Phantom Lake under the easement granted to the city for that purpose. Each of the jurisdictions is directly responsible for any flood-caused damage to shoreline properties owing to their control over the outlet devices. Each jurisdiction therefore has the duty to avoid flooding. The floodways of the three lakes are therefore not part of the shoreline jurisdiction. Floodplain

is defined in the Shoreline Management Act as the area contiguous to the floodway. Absent a floodway, there is no floodplain. The staff has indicated the FEMA deadline is July 2011, though the issue has not been directed addressed during the past year. It will be possible to work through the issues surrounding the proposed amendment, but not by the end of July 2011. From the FEMA website, it appears their deadline is actually September 22, 2011. There are some staff recommendations that may be overreaching the FEMA requirements, including the claim that "development" mean any man-made changes; the claim that "encroachment" means any alteration that would result in an increase in flood levels; and the claim that "substantial damage" means from any origin. Additionally, restoration/alteration/repair is limited to 50 percent of market value, which was reduced from replacement value without a justification given. The staff appear to have mistakenly interchanged "floodway" and "floodplain." The geographical intent of their language is unclear. Potential deferral to the Department of Ecology on decisions of repair and replacement is tantamount to the proverbial fox guarding the henhouse. Like regulatory nonconformity under the Shoreline Master Program, the regulatory floodway provision is simply a mechanism to ensure disrepair and degradation of private property. The Commission should instruct the staff to go back to FEMA and the Department of Ecology and determine the minimum regulations required to qualify Bellevue for FEMA flood insurance.

Motion to close the public hearing was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

## 8. STUDY SESSION

### A. FEMA-Related Land Use Code Amendment

With respect to timelines, Land Use Director Carol Helland said every attempt was made to marry the FEMA amendments to the Shoreline Master Program update; staff believes that ultimately there will need to be consistency amendments with the critical areas code. The Shoreline Master Program process has taken longer than expected and there is a looming deadline of July 2011. The September 22, 2011 FEMA deadline relates to the BiOp and a different set of regulations having to do with Chinook protection that have nothing to do with the proposal on the table. The housekeeping amendments are being addressed at the direction of FEMA and the Department of Ecology. The directive they provided to the city was to ensure having the minimum regulations in place. It is not just the regulations that allow Bellevue citizens to get a good rating under the NFIP; the stormwater, mapping, public information and other utility programs that are in place also figure into the mix.

Mr. Ward added that the Community Rating System evaluates and ranks all of the flood management programs. Where the criteria are met, points are earned, and the cumulative points translate into insurance discounts. The NFIP has minimum standards against which all programs are compared and evaluated.

Ms. Helland pointed out that the city does not control or do the mapping work. That work is all done by FEMA. She pointed out that the city is supportive when individuals seek Letters of Map Amendments.

Ms. Helland acknowledged that different layers of regulation are being dealt with. Under the critical areas code, the Growth Management Act required designating Areas of Special Flood Hazards as critical area areas. Prior to that time the city had floodplain regulations in its Sensitive Areas Code, which was first adopted in 1986. Those regulations were updated periodically, so the floodplain is something the city has been regulating to for a long period of time. The amendments on the table are needed to bring the regulatory slice of the overall

program into consistency with what the Department of Ecology and FEMA have said must be done in order to protect the program for the benefit of the citizens of Bellevue.

Commissioner Sheffels said the concern appears to be about the Bellevue-specific aspects. She asked if the city could adopt a generic Letter of Map Amendment that would qualify for all addresses along the lakeshores. Mr. Ward said that would entail the city conducting an overall calculation of the floodplain to benefit property owners. In the engineering world, such an action would be referred to as a Letter of Map Revision. The Letter of Map Amendment is a parcel-scale off-ramp. The city recently supported the owner of the Kelsey Creek Shopping Center site when he sought a Letter of Map Amendment, and in fact expanded the scope to include a much larger area of Kelsey Creek. That was followed up with another study for the remainder of Kelsey Creek from the K-Mart center to the mouth at I-405. The resulting Letter of Map Revision benefited several property owners. The situation on Lake Sammamish is different. The land area that drains into Lake Sammamish includes the cities of Redmond, Bellevue, Issaquah and Sammamish, as well as the entire watershed of the East Fork of Issaquah Creek and Issaquah Creek. In order to achieve a Letter of Map Revision for the entirety of Lake Sammamish, a very large-scale study would have to be undertaken. Bellevue simply does not have jurisdiction over the entirety of the drainage that flows into Lake Sammamish. The portion of land area that drains into the lake and is within the city limits of Bellevue is very small compared to the total area that drains into the lake. A multijurisdictional effort teamed with FEMA would be required to recalculate the flooding elevation of the lake. When calculating flooding elevations, the standard engineering practices, and the methods of calculation are approved by FEMA. The city's storm and surface water utility codes match those methods. What FEMA did in drawing its maps was to use the highest water mark observed as measured in 1951 and then established it to be the 100-year flood elevation.

Commissioner Carlson said the program as laid out in the briefing materials and the presentations appears very reasonable. He said the evidence provided by Mr. Evans and Mr. Klinge was jarring and asked staff to comment on the presentations made by them, and on the fact that the FEMA map shows that West Lake Sammamish Parkway itself is in a floodplain. Mr. Ward said Mr. Evans very accurately portrayed the process established by FEMA for individual property owners wanting to demonstrate whether or not a structure is in a floodplain. Mr. Evans referred to a survey he had done, which is indicative that Mr. Evans knows to 1/10<sup>th</sup> of a foot the elevation of his house. He was able to compare that elevation to the elevation that is predicted to be the flood level during the 100-year storm. The elevation certificate Mr. Evans obtained is exactly the kind of document FEMA requires for changing its map lines; such certificates forever quantify the risk of flooding for a specific property. There are limitations in mapping elevations on a plan view; it is understood that the overlay of an elevation on a cartographic produced map is not going to be very accurate. That is why when the city implements its flood regulations, the FIRM is consulted as the first resource. If it appears a structure could possibly be within a floodplain, more detail is sought.

Commissioner Hamlin said it appeared to him that the Commission was going way beyond what was being sought by the proposed amendments. He said it was his understanding that there were only three areas of change: cross reference amendments, a couple of directed amendments, and changes related to the floodway. Ms. Drews said the substantive change in the document is directed to the floodway that the city has mapped for Kelsey Creek. The technical changes involve only housekeeping issues to the flood management regulations that apply to both the floodway and the floodplain.

Commissioner Hamlin said from his perspective much of the discussion was beyond that scope and could be addressed through other venues. Ms. Helland said mapping has been an historic

issue relative to critical areas. It is the point from which the city starts the investigation of whether or not something is in a critical area or a floodplain. The Council made the decision several years ago to map every critical area in the city. As a result, the city has generalized maps that give initial blushes of information, but there is an understanding that individual property owners need to map to verify critical areas on their specific properties. Commissioner Hamlin commented that the proposed amendments do not touch on that issue at all.

Commissioner Turner allowed that while the specific proposed amendments are limited in scope, there are in fact bigger issues, which is what the public has indicated. Ms. Helland said it is perfectly appropriate for the Commission in the context of making a recommendation to the Council to make suggestions for the Council to consider. The Commission does not, however, have the authority to obligate the city undertake a mapping exercise; that would be within the purview of the Council to decide what the cost of such an exercise would be, who it would benefit, who should potentially pay for the work. It would also be up to the Council to determine if the cost of a mapping exercise would outweigh the impacts created on a site-by-site basis when a property owner seeks a development permit or must explore the insurance rating issue. The issue was raised during the work to update the critical areas ordinance; during that time the Council and the Commission both weighed in. Estimates were created with respect to what a specific mapping exercise would cost, and the Council elected to go with the generalized mapping approach. Even so, the Commission can in its transmittal choose to ask the Council to explore the issue further.

Commissioner Turner said the problem could lie in the fact that the generalized maps are in fact too general. Additionally, Lake Washington, Lake Sammamish and Phantom Lake all have outlet control devices which if operated properly can control flooding. Accordingly, none of the lakes should be part of the exercise. Ms. Helland said in considering whether or not to develop more specific maps, the Council would need to weigh the individual costs of property owners having to have surveys made of their properties, which is often required with respect to redevelopment to identify where the base flood elevation is on their properties, against the cost of a citywide floodplain map revision, or amendments in segments of some sort. The magnitude of the Lake Sammamish issue has been a barrier to addressing the issue owing to interjurisdictional complications. The Council has in the past determined that the site-by-site cost of surveys is more fair and economical. The same is true for properties in wetlands and riparian corridors. Commissioner Turner said the primary issue continues to be the fact that all three lakes have outlet controls.

Commissioner Himebaugh commented that the substantive amendments appear to apply primarily to the floodway, while some of the other amendments apply to the floodplain as well. Adding to the confusion is the discrepancy pointed out by Mr. Klinge relative to use of the term "regulatory floodplain" and the definition of "development." He pointed out that on page 5 under paragraph (b) residential structures it states that a residential structure located partially within the regulatory floodway will be considered as totally within the regulated floodplain and must comply with paragraph C-5, which are the performance standards for development in the floodway. Ms. Helland explained that the proposed revisions are very targeted changes to the critical areas code and apply only to areas of special flood hazard, which is the floodplain. The floodway is the actual river channel which is largely subsumed within the floodplain. The floodplain regulations do have some targeted changes, and Mr. Klinge was correct in pointing out the oversight of staff in neglecting to reference the correct year of the maps, and that change will be made. The specific changes, however, are applicable to the floodplain. The change specific to the floodway involves a term that used to be in the city's code but which was for some reason removed, probably because at the time the city did not have mapped floodways. FEMA has indicated that because the city now has the floodways mapped for Kelsey Creek, the

definition must be put back in the code. The accompanying substantive regulation is the one about the 50 percent replacement threshold. She clarified that the only structures to which that regulation would apply would be those located in the floodway, which by definition would be in the actual river channel. Under the provision, should a structure located within the floodway be destroyed to a threshold that exceeds 50 percent of its market value, it would not be allowed to be rebuilt in the floodway; in redeveloping the structure outside of the floodway, all applicable regulations relative to development in the floodplain would need to be met. The property owner would under the approach be permitted to request a deviation from the Department of Ecology; the deviation is an off-ramp allowing for reconsideration of the prohibition against redevelopment in the floodway.

Commissioner Himebaugh asked why floodplain consistency amendments have not been brought to the Commission for consideration. Ms. Helland said those amendments were before the Commission a year ago. The Community Assistance Visit by the Department of Ecology occurred after the Commission had reviewed the issues and made a recommendation to the Council. The Council directed staff to share the necessary changes with the Commission, and the decision was made to marry the issue to the Shoreline Master Program update work. The fact that a deadline is looming is the reason the proposed amendments have been pulled out for separate consideration. All of the issues previously considered by the Commission are included in the document under consideration.

Ms. Drews said she believed the reference in paragraph (b) on page 5 to residential structures located partially in the regulatory floodway being considered as totally within the regulatory floodplain could be an error. She agreed to conduct further research but said it was her understanding the reference to the floodplain should in fact be to the regulatory floodway. She said if a change is needed, she would make it.

Commissioner Himebaugh pointed out that in the definition of base flood elevation in the definitions section refers to the utility code, whereas in paragraph A.1 the reference to the utility code was changed to the Bellevue Storm and Surface Water Engineering Standards. Ms. Drews agreed that reference should be changed.

Commissioner Himebaugh asked if the city has asked FEMA if Lake Sammamish should be exempted from the floodplain regulations. Mr. Ward said to his knowledge FEMA has never acted to remove a base flooding elevation once a floodplain has been calculated and established. Exempting Lake Sammamish from floodplain regulations is not likely, given that FEMA is in the business of trying to mitigate or reduce federal outlays of federal hazard mitigation funds. Commissioner Himebaugh argued that FEMA has no concerns about Lake Washington because it is controlled. The same argument could be made of Lake Sammamish given that it is also supposed to be controlled. Mr. Ward suggested the Letter of Map Amendment off-ramp is the best available tool for exempting properties from floodplain regulations. The off-ramp is a proven tool that accomplishes appropriately calculated insurance rates predicated on risk, helps establish risk for lenders, and because the floodplain is designated a critical area by the Growth Management Act the off-ramp helps the city stay in conformance with state law.

Ms. Helland agreed to ask FEMA if they view the control of the locks on Lake Washington the same or differently as the control of the weir on Lake Sammamish. The exemption is related to control of the outflow. FEMA clearly acknowledges Lake Washington as a controlled water body; it is very possible they do not view Lake Sammamish as being the same. She agreed to put the question to FEMA for a response.

Chair Ferris said he previously worked for the Corps of Engineers mapping to establish

floodplains and floodways. He said the work was always done on a broad scale through photogrammetry. From the air, every creek, every lake and every body of water was photographed and 3D imagery was used to establish elevations on a contour map. Those maps were used to establish the basins in which the waters flow. Calculations were then made based on historical storms and high tides, and those calculations were used to establish floodplains and floodways. The preliminary maps were then handed to persons who were tasked with walking the boundaries to see if they made sense prior to final adoption of the maps. It would be very complicated to undertake a remapping exercise. Property owners with structures shown on the maps to be located within the 100-year flood plain were eligible to purchase federal floodplain insurance even when no other insurance carrier would even offer a policy. There will always be a floodplain along both Lake Washington and Lake Sammamish, but it could be much narrower and closer to the ordinary high water mark. The level of Lake Sammamish goes up and down more than the water level in Lake Washington, and its ordinary high water mark at least would have to be within the floodplain; it likely would extend beyond that assuming a 100-year storm that would have all untoward conditions coming together.

Commissioner Himebaugh said he would not support engaging in a huge mapping exercise, but would like to hear an answer from FEMA regarding whether or not Lake Sammamish could be treated the same as Lake Washington.

Answering a question asked by Commissioner Tebelius, Ms. Helland clarified that the prior technical amendments the Commission previously made a recommendation on is the ordinance itself. She said the staff report summarizes the three changes requested by the Department of Ecology, but the ordinance itself is what the Commission will need to recommend or not to the Council. The staff will verify the exemption status for Lake Sammamish and Phantom Lake, and in the absence of an exemption call the question with regard to mapping.

Commissioner Tebelius referred to the third page of the May 17, 2011, staff memo and the specific directives received from the Department of Ecology. She said she needed no clarification with regard to including a reference to 44 C.F.R 60.3(b)(5)(iii) for record inspection, but asked what is meant by the direction to amend the specific performance standards for new construction. Ms. Drews said the direction refers to 20.25H.180, specifically paragraph 7(a)(iii) on page 7 of Attachment A. Commissioner Tebelius asked under what statutory authority the Department of Ecology has to direct the city to make the proposed change. Ms. Drews said the change is needed in order to bring about consistency under the program for which the Department of Ecology is the regulator under Chapter 86.16 RCW.

Commissioner Tebelius clarified that the third directive from the Department of Ecology to include federal and state requirements for the regulatory floodway applies only to Kelsey Creek. Ms. Drews said the directive is addressed in the changes made to 20.25H.180(C)(5). The 50 percent issue is addressed in subparagraph (b)(ii).

Commissioner Himebaugh called attention to the issue of approval by the Department of Ecology. He said as he read the text, no repair or replacement of a substantially damaged residential structure located in the regulatory floodway is allowed without a recommendation from the Department of Ecology. He said that language would seem to indicate that the Department of Ecology has the final word. He asked what would happen if the city were to say no to the change, which was part of the recommendation from the Department of Ecology. Ms. Drews said the consequence is that the NFIP could be placed at risk. Under the NFIP and the CFRs, jurisdictions must meet the minimum requirements of the federal and state programs. The language is taken directly from the Department of Ecology's regulations passed as part of the flood management strategy under the authority granted by the director in the state statute.

Commissioner Himebaugh asked if the issue of final approval by the Department of Ecology is a part their minimum requirements or something on their wish list. Ms. Helland said staff believes the language of the amendments as drafted are a representation of the Department of Ecology's minimum requirements needed to remain in the flood management program. The regulations do not constitute the only thing the city must do in order to be certified and remain in the program. The city has for many years chosen to be part of the program specifically to benefit its citizens. The city could choose not to be a part of the program by choosing not to adhere to the minimum requirements set forth by the Department of Ecology, but that would put the city at some risk.

Mr. Ward said the NFIP is administered through the federal CFRs. Commissioner Tebelius argued that the minimum standards are not established by the CFRs but in fact by the Department of Ecology.

Commissioner Himebaugh said it was initially his understanding that the Department of Ecology would have input, but the language states that the Department of Ecology will have the final word. He asked if the language as set forth is the language that must be included in the ordinance. Ms. Drews said the language is taken directly from the WAC; the Department of Ecology will in fact have the final say regarding whether a single-family residence should be reconstructed in the floodway.

Ms. Helland clarified that the threshold is 50 percent of market value. Repair and reconstruction that does not exceed the threshold is allowed. The off-ramp allows property owners the option of asking the Department of Ecology to allow reconstruction in the floodway in instances where the threshold is exceeded. The city cannot supplant the authority of the Department of Ecology to make the approvals in that the Department of Ecology is delegated by FEMA to manage the program.

Commissioner Sheffels commented that the NFIP is a program that benefits nearly every property owner that needs flood insurance. She suggested that while some small technical tweaks are needed to the recommendation, the Commission has fully discussed the issue and should act to recommend approval.

Commissioners Himebaugh, Turner and Tebelius indicated they would not vote on the issue at all until the issues are fully resolved.

Chair Ferris noted that the Commission had identified specific changes to the amendments. He proposed that staff should go back and make those changes and take the time to hear the comments of Mr. Klinge, then bring the cleaned up version of the amendment to the Commission for a vote.

Commissioner Himebaugh suggested the issue of whether or not Lake Sammamish and Phantom Lake should be exempted can easily be cleared up. The issue of the Department of Ecology having final say is more problematic; he stressed that he would prefer to see the language changed.

Chair Ferris commented that a substantial portion of the land around Phantom Lake is within the floodplain, though none of it is in the floodway. There could be property owners along the lakeshore that benefit from being in the floodplain in that they are thus eligible for flood insurance; exempting the lake may remove that benefit. Ms. Helland pointed out that there are wetlands associated with almost the entire lake that is either coterminous with the edge of the lake or landward of the lake. There is no setback from the floodplain, but there is a setback from

the wetland, which is bigger. She stated, however, that she would put the question of exempting the lake to the Department of Ecology for a response and to help frame the issue.

## 9. OTHER BUSINESS

### A. Recognition of the Service of Commissioners Doug Mathews and William Lai

Mr. Inghram expressed his deep appreciation for the service of Mr. Mathews and Mr. Lai on the Planning Commission. He noted that Mr. Lai served for four years and worked through issues such as the Shoreline Master Program update, the Bel-Red subarea, the ped-bike plan and electric vehicles. He said the comments of Mr. Lai were always helpful and insightful.

Mr. Inghram said Mr. Mathews began serving his community of Lake Hills many years ago. During his tenure on the Commission he served as a member of the Bel-Red steering committee, a member of the light rail best practices committee, and participated in the major Comprehensive Plan update that was finally adopted in 2006 as well as the Shoreline Master Program update work.

Chair Ferris commented that Mr. Mathews was chair during his first year on the Commission and praised him for always hearing what everyone had to say and then bringing things together. He said Mr. Lai would listen to others talk and then bring forward a bigger vision in his comments and observations. He said both would be missed.

Commissioner Hamlin said he had always enjoyed watching Mr. Mathews quietly listen and then speak with a lot of knowledge and insight. He praised Mr. Lai for his outside-the-box approach to issues that always brought another dimension to the work of the Commission.

Commissioner Sheffels commented that both Mr. Mathews and Mr. Lai always came to the Commission meetings prepared and with suggestions.

Commissioner Himebaugh said he also appreciated Mr. Lai's targeted questions and Mr. Mathew's ability to build consensus. He said he was assured that both would have a lot to say as members of the public.

Commissioner Tebelius allowed that she did not serve with either former Commissioner but said she appreciated their service to the community.

Commissioner Turner said over the past year and a half he grew to appreciate the wisdom and knowledge both former Commissioners evidenced. He said he valued the opportunity to have worked with both and looked forward to additional feedback in the future.

Mr. Mathews said he graduated from the University of Washington with a degree in business in 1978. He said at one time he considered pursuing a career in planning and community development but never found the time to go in that direction once being hired to work for the University of Washington. When the original Lake Hills redevelopment plan fell through, which was thought by many to be a slam dunk, he made the decision to serve on the Lake Hills CAC and then applied for a position on the Planning Commission. He said the past eight years representing the city of Bellevue as a whole have been wonderful. The opportunity to work with excellent Commissioners and excellent staff has in many ways been more of an education than could have been gained by going for a degree in planning and urban development. It is easy to think short term but much harder to keep everyone focused on the future. It takes an open mind, level thinking, and the ability to weigh all comments, both pro and con, in reaching decisions for

what will be best for the city as a whole.

Mr. Lai said he agreed completely with Mr. Mathews about the need to stay focused on the future and keeping the best interest of the citizens of Bellevue in mind in making decisions. He said during his four years on the Commission all different kinds of viewpoints were expressed, all with the common goal of seeking the compromises that made the most sense for the bulk of the city. He said he was proud to have been part of the group that worked on both the Bel-Red corridor and the Shoreline Master Program update. He said he has no background in urban planning or land use, and did not in fact harbor any secret desire to work in that field, but did have a desire to learn more about how the city works and to be a contributing factor. The experience proved to be invaluable. Bellevue is a growing city and more of its citizens should seek to be involved in the decision-making process.

## 10. PUBLIC COMMENT

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, thanked the Commission for holding off making a decision on the FEMA issue until more information is in hand. He voiced concern over the proposed code language relative to the designation of additional special flood hazard areas designated by the director. The language is just too loose. A 1951 storm was used to designate the flood elevation for Lake Sammamish. In the 1960s the Corps of Engineers put in a device that was supposed to regulate for floods; it was changed in 1998. Due to lack of maintenance, the facility is not operating properly. King County has agreed to implement a maintenance plan, but there are problems owing to what has accumulated in the meantime, and the county has only agreed to look at those problems. The issues may be too big for the city to undertake, but there are certainly things the city can do to encourage cleanup of the weir and the channel, thus eliminating the 37-foot floodplain designation that is affecting properties on the shoreline. It all comes back to the ordinary high water mark and the fact that jurisdictions continue to allow flood waters to flow into the lakes.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, asked the Commission to remove from the proposed FEMA amendment the phrase "...substantial damage from any origin...." Additionally, the change to market value from replacement value makes no sense at all. Those issues may seem trivial but will come back to bite someone.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, suggested that the devil is in the details. The FEMA map was created in 1951 before the weir was constructed. Now the lake is controlled. If the FEMA map for Lake Washington had been created before the locks were constructed, their floodplain would be even higher than what it is, and it would make sense to adjust it to account for the current context. He said the cabin he has on Lake Sammamish was built in 1928 and if the numbers shown on the FEMA map were real the cabin would have been flooded out numerous times. Details matter. When it is known that a better job could be done, a better job should be done. Does FEMA perceive that Bellevue's properties are at greater risk than they actually are? Are there property owners that are subsidizing the rates by being included inside the line? There are so many questions still unanswered. The Commission made the right decision in holding off voting on the amendments until more answers are in hand.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said the water level in Phantom Lake has never reached 263 feet, yet the flood plain is set at 265 feet. The natural topography causes the water to flow towards Larson Lake and the Kelsey Creek drainage system. The FIRM number, however, means land cannot be used for structures. The terms "frequently flooded areas" and "areas of special flood hazard" are not well understood, but the idea of having a special category applicable to Phantom Lake where there is already two feet of elevation to play with is

concerning. The lake only typically fluctuates about two feet, and the maximum high to low is only about three feet. Flooding has only been a problem of record since the 1990 berm dam and the weir was constructed. The weir was constructed with a survey error, and the redesign was not executed to the specified depth. All of that has contributed to the impact on shoreline property owners. The 1978 FIRM established for the NFIP was challenged by residents, yet after the city agreed to look into the matter the ball was dropped and nothing was ever done. The upshot is that Phantom Lake has structures which under the FIRM are nonconforming but which cannot displace water because they lie between the 263- and 265-foot elevation levels. In light of having an outlet control structure, the issue of whether or not Phantom Lake should be under the FIRM should be settled.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said if anyone on the planning staff had ever had to file for a letter of map amendment they would know the information they have shared is wrong. The city could request to have just its part of the shoreline remapped. No one is asking for a change in the 37-foot level; all that needs to be done is for someone to take a look at the topography of the shoreline of Bellevue and put the line on the map where it is supposed to be. FEMA would accept the revision if Bellevue would put forward the effort to do the work and submit it. The citizens were asked a few years ago to trust the city relative to including the shorelines under the critical areas ordinance; that turned out to have been a bad idea. In the Commission minutes for January 28, 2009, Commissioner Orrico asked the staff to put together all of the science relative to the critical areas ordinance, but that was never done. The mistrust of the public toward city staff is well-founded.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, commented that during the meeting the Commission heard about inconsistencies, vagueness and inaccuracies in the language and data presented with regard to the FEMA amendment. The city has no problem in asking homeowners to bear the costs of broad-brush regulations, which raises the question of how that is representing citizens. The city of Centralia is in the process of reassessing its flood maps because they were proved to be inadequate during the 2007 flood. The city should do all it can to find the correct data and not put the burden on the citizens of having to prove their structures are outside the line.

Commissioner Tebelius noted that the Council previously made the decision not to engage in a remapping exercise. She asked Ms. Lyford if she was asking the Commission to make and send forward to the Council a recommendation to do the work. Ms. Lyford pointed out that the city did not use any of its money in creating the existing maps; that work was done by FEMA. The FEMA maps are inaccurate and as such capture more property than they should for flood insurance purposes. The city should ask FEMA to change the maps.

## 11. NEXT PLANNING COMMISSION MEETING

### A. June 22, 2011

Ms. Helland said for the meeting on June 22 staff will provide the Commission with a traditional memo recapping the testimony offered at the public hearing. In addition, the Commissioners will be provided with a bound copy of the public comments received since the draft Shoreline Master Program was released, including all emails and written comments received, all comments made at Commission meetings, the comments made at the open house, the minutes of the oral testimony, and all communications received since the public hearing. Staff is in the process of assigning a discrete number to every comment and adding them to a matrix by topic area; the matrix will be supplied to the Commissioners as well. The staff responses will not be ready for the June 22 meeting but the framework will be in place. The discussion will include how to proceed in addressing the topics based on the volume in the matrix. The matrix will be posted to

the website and will include sort and search functions.

Chair Ferris noted that election of a new chair and vice chair will occur at the June 22 meeting as well.

Mr. Inghram shared with the Commission that after reviewing the record it was discovered that the meeting minutes from January 28, 2009, were never formally approved. He asked the Commission to review the minutes and act to approve them.

Motion to approve the minutes as submitted was made by Commissioner Hamlin. Second was by Commissioner Sheffels and the motion carried without dissent; Chair Ferris and Commissioners Himebaugh, Tebelius and Turner abstained from voting.

Commissioner Tebelius commented that in preparing for the meeting she had spent more time than she wanted to looking up federal, RCW and WAC statutes. She asked if as issues are raised in the future staff could present documentation showing the related statutes. Mr. Inghram said staff attempts to provide the Commission with supporting documentation for every issue brought forward. Decisions are made with regard to which statutes are most relevant to the case at hand. Beyond that, staff names and phone numbers are included on each agenda memo and they are available to answer questions.

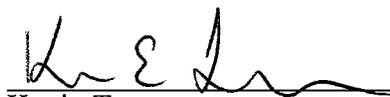
Commissioner Hamlin pointed out that while many have complained about the size of the Shoreline Master Program document, much of it is in fact nothing more than background and supporting material. Staff is often criticized for not providing enough information, but they are also criticized for providing too much.

12. ADJOURN

Chair Ferris adjourned the meeting at 9:42 p.m.

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

1/25/2012  
Date

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

1/25/2012  
Date

