

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

June 22, 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, Nicholas Matz, Department of Planning and Community Development; Carol Helland, 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 6:34 p.m. by Chair Ferris who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present.

3. PUBLIC COMMENT

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, noted that an email had been sent earlier in the day to the Commission from Charlie Klinge. She said the lack of straightforwardness on the part of staff represents a new low. The comments put together by Mr. Klinge on behalf of the Washington Sensible Shorelines Association and on behalf of the Meydenbauer Bay Neighborhood Association serve as an excellent blueprint for the Commission to follow. Any proposals by staff to talk about docks and vegetation as subjects will get the Commission no closer to its final goal.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. COMMITTEE REPORTS – None

Commissioner Hamlin reported that the Eastgate/I-90 met on June 16 to discuss the comments made by the public at the two open house events and via the online survey. The CAC also reviewed and made no changes to the no action alternative and the three action alternatives. The alternatives will be analyzed over the summer months by staff and the consultants. The CAC will meet next in September and will begin the process of merging the ideas from each

alternative into a single preferred alternative.

Answering a question asked by Commissioner Tebelius, Commissioner Hamlin said the Phantom Lake runoff issue has been presented to the CAC and has been taken into consideration.

Commissioner Sheffels said she is serving on the committee put together by the Department of Transportation to study NE 5th Street between 120th Avenue NE and 124th Avenue NE and the impacts that will result from punching through NE 4th Street. A survey was sent out to local residents and it received almost a 25 percent response. The survey offered four options: making the street accessible to locals only; allowing access only to and from the west; creating a narrow single-lane restriction that would permit only one car at a time to travel on the roadway; and total and free access from both directions. The responses were pretty evenly divided between free access from both directions and the narrow single-lane restriction. The group concluded that a temporary pilot program should be implemented to see how well the single-lane restriction would work.

Commissioner Carlson asked Commissioner Sheffels if any businesses or establishments will be impacted. She answered that the school bus barn and maintenance facility has its access from Ne 5th Street, so they will be impacted. They have been very clear in outlining their preference for having access from both directions. There is also an apartment complex that has its only ingress and egress via NE 5th Street. The focus is on trying to limit or discourage cut-through traffic to the extent possible in order to protect the local residents.

7. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram informed the Commission that the city has been moving forward with annexation of the communities in the Eastgate area to the south of I-90. On June 20 the City Council accepted an initial set of petitions for the Eastgate and Tamara Hills neighborhoods. There has been some response from the Hilltop and Horizon View neighborhoods. In the next stage it will be necessary to collect petitions from 50 percent of the properties in the neighborhoods before the end of the year in order to complete the annexation. The city would prefer from an efficiency standpoint to see all four neighborhoods come in at once, but technically each can come in on their own.

Mr. Inghram said the Council on June 20 also discussed the Enatai tree preservation issue. The Council concurred with the recommendation of the Commission to move ahead with voluntary measures and education rather than a regulatory approach.

Mr. Inghram invited the Commissioners to attend the Goff Creek/130th Avenue NE light rail station open house on June 28 and 30 at City Hall.

8. PUBLIC HEARING

A. 2011 Comprehensive Plan Amendment Threshold Review – Ren-Fu

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

Senior Planner Nicholas Matz explained that threshold review is the first of two steps in the Comprehensive Plan amendment process. He said at the threshold review stage, the Commission considers whether a proposal should or should not be placed on the Comprehensive Plan amendment work program. The recommendation of the Commission will be forwarded to the

Council for action. If the action is to advance the proposed amendment, the issue will come back to the Commission for final review and a public hearing on the merits of the application, following which the Commission will make a recommendation for the Council to review and act on.

The Ren-Fu site is located on Bellevue Way SE in the Southwest Bellevue subarea. The application was initially proposed as a three-parcel half-acre site and involved a request to change from Single Family High to Multifamily Medium. During the May threshold review public hearing the applicant proposed consideration of additional properties based on the desire of some of the property owners to enter into a unified development proposal. The Commission directed staff to publish notice for a second threshold review hearing to consider the additional sites.

Mr. Matz said the recommendation of staff was not to advance the application to the 2011 work program because it does not address the criterion of significantly changed conditions and would be found inconsistent with the current general policies relating to infill development.

There are two townhouse lots located to the north of the Ren-Fu shared driveway. The fourplexes are on properties designated as Multifamily Medium. There are a total of eight access points along Bellevue Way, and all of the lots under consideration for the Comprehensive Plan amendment in the expanded area share private driveways and have access out onto Bellevue Way. There is a topographic rise that helps to separate the developments along Bellevue Way from the single family neighborhoods to the east, all of which gain their access exclusively from 108th Avenue SE. To the north and east of the Ren-Fu site, the platting patterns are distinctly different from those along Bellevue Way.

Mr. Matz said to date no proposal for consideration of a unifying new designation has not been seen. It is likely that a Multifamily Low could be considered. The 4.02-acres in the expanded area are home to a total of 19 dwelling units. Under a Multifamily Low designation, the area could have between 40 and 43 dwelling units if developed under a unified proposal.

In order for staff to make a recommendation to initiate an application, all of the decision criteria must be met. Mr. Matz said in the opinion of the staff, the significantly changed condition criteria is not met. There is a distinct physical relationship among the properties in the expanded scope: they all gain their access from Bellevue Way, and they are distinctly different from the platting actions that have occurred to the east of the topographic rise. The applicant has suggested the site is suitable to serve the land use revitalization goals for the Bellevue Way corridor and to manage redevelopment in a fashion that recognized the uses already there as well as those uses designated through the Comprehensive Plan. There are economies of scale associated with including more properties in the scope of the amendment, and there are limits brought about through the distinctive topographic boundary between the single family and multifamily designations. By consolidating access points, efficient transportation connections could be obtained. While those characteristics are desirable, the staff continue to believe that they do not rise to the level of significance sufficient to meet the changed conditions criteria. In order to meet the changed conditions criteria, new conditions must have been unanticipated by the current plan.

Mr. Matz said the Southwest Bellevue subarea plan anticipates redevelopment in the area of the application properties. It identifies the circumstances under which redevelopment is expected to occur, but it does not support changes to more intense land uses simply due to convenience, location or quality attribute.

Mr. Matz pointed out on the map the location of the 2003 Botch Comprehensive Plan amendment. He reminded the Commission that that application was subject to similar discussions relative to significantly changed circumstances. The original proposal sought a change from Single Family High to Single Family-Urban Residential. The Botch site is also on the Bellevue Way corridor. The Southwest Bellevue subarea plan treats the east and west sides of Bellevue Way differently for purposes of redevelopment. It recognizes that there are more bounded and significantly consistent single family properties on the west side of the corridor, while the east side of the corridor tends to focus more on 108th Avenue SE.

The Commissioners were informed that in 2006 the city changed the Land Use Code requirements for defining what a significantly changed circumstance is. The Botch amendment was reviewed under the language "Circumstances related to the suggestion have changed significantly since the last time the relevant Comprehensive Plan map or text was amended." After the 2006 Land Use Code amendment, the language was changed to read "The proposed amendment addresses significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. Significantly changed conditions are defined as: demonstrating evidence of change such as unanticipated consequences of an adopted policy, or changed conditions on the subject property or its surrounding area, or changes related to the pertinent Plan map or text; where such change has implications of a magnitude that need to be addressed for the Comprehensive Plan to function as an integrated whole."

Mr. Matz noted that the Commission voted 4-3 not to recommend initiating the Botch proposal into the Comprehensive Plan amendment process. The conclusion reached was that significantly changed circumstances were not present to warrant the change on the west side of Bellevue Way. At the time, the Commission was concerned about micromanaging the outcome of the site by setting conditions that addressed significantly changed conditions. The staff review suggested there were no significantly changed circumstances that would justify the proposal at a multifamily or attached level of density; their recommendation was for a unit size limitation and a Single Family-Urban Residential maximum density. The Commission did not agree with the staff and concluded that the proposal should not be advanced.

At the Council stage, the Comprehensive Plan amendment was adopted on the strength of a 4-2 vote. They concluded that the proposal at the higher single family density represented a good compromise and meshed with what the subarea plan was trying to accomplish.

Chair Ferris opened the floor to public comments.

Mr. Evan Dust with HDJ Design Group, 300 West 15th Street, Vancouver, Washington, spoke representing the applicant. He indicated his support for most of the staff's findings relative to the decision criteria, but not with their conclusions relative to criteria E, changed conditions, and criteria G, plan consistency. Under the city's code, significantly changed conditions is a multipart definition. Significantly changed conditions can be met where there are unintended consequences, or if there are changed conditions in the surrounding area, or through a number of plan map or text changes that have occurred. The application meets the definition of both unanticipated consequences and changed conditions. Unanticipated consequences can simply mean that the plan is not meeting the expectations the Commission, the Council and the

community had when adopting the plan. The plan with respect to the subject parcels is not meeting the expectations of the plan in terms of access consolidation, density, redevelopment and the issue of landscape buffering of single family access. If the application were allowed to proceed, the eventual outcome could be a development with the potential for consolidating the seven or eight access points to two or even one. If every parcel were to develop to their maximum under the current zoning, the subject properties could yield a maximum of 31 dwelling units, which would be an effective density of 7.7 units per acre. If the application is allowed to proceed and is successful, and if the parcels are redesignated to Multifamily Low, and if the designation is implemented with an R-10 zoning, a maximum of 40 dwelling units could be constructed. Going to Multifamily Medium and implementing it with R-15, the maximum number of dwelling units would be 60. The subarea plan is looking for redevelopment. Some redevelopment has already occurred, including the Brownstone development immediately to the south of the subject properties. The Brownstone site has a parcel size that is twice the largest individual parcel in the subject area, and it has depth in that it extends from its frontage on Bellevue Way to its back property line. If all of the subject parcels were consolidated, however, their depth would match those of the Brownstone development. If the application is not allowed to proceed and there is no subsequent redesignation of the parcels, it is unlikely that any redevelopment of the individual properties will ever occur. Policy S-SW-10 states that where there is single family access through a multifamily designated area, the multifamily is responsible for buffering the access. The parcels on the east side of the application area are currently designated single family and they all have access through the multifamily area. If redevelopment occurs while the single family parcels still exist, the building envelope and site design will have to accommodate continuation of the access points, thus reducing the overall building envelope and losing the opportunity to maximize the consolidation of access, which is one of the goals of the plan. The subarea plan looks for certain things that cannot be attained without redesignation, and that is an unanticipated consequence of the plan. When the plan was adopted, the single family properties should have been given a multifamily designation because they have their access from Bellevue Way. Prior to 2009 one of the three parcels in the original application could have gained access to the north and as such it would not have made sense to give it a multifamily designation; the construction of a house in 2009 makes that option untenable. The three parcels now have no possible legal access other than from Bellevue Way, and that is a changed condition. If the application is allowed to move forward, it will open the door to working with staff on a complete consistency consideration. There are some clear policy implementation benefits: the consolidation of access, the redevelopment to multifamily, and addressing the impacts associated with having multifamily adjacent to single family. Policy S-SW-9 talks about maintaining a buffer of mature trees, but it only applies to parcels to the north of the application site; there is the potential for enhancing that policy should the subject properties go to multifamily. Decision criteria A through F have been met. There are sufficiently changed conditions due to unintended consequences of the plan, and changed conditions on adjacent parcels. The action is likely to be found fully consistent with the plan and as such the Commission should recommend moving inclusion of the amendment in the 2011 Comprehensive Plan amendment work program.

Answering a question asked by Mr. Inghram about policy S-SW-9, Mr. Dust said in the final review stage the applicant would work with the staff on how the policy should be amended.

Ms. Erin Powell, 1015 106th Avenue SE, spoke representing the Belcrest Neighborhood Association, a development on 108th Avenue SE that has 105 families. She voiced opposition to the proposed amendment. The existing zoning is adequate, as are the existing policies. Tree preservation is always important, and building 40 dwellings on the properties will not save any trees. People in the neighborhood purchased their homes in part based on their understanding of the existing zoning and it should not be changed.

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

9. STUDY SESSION

A. 2011 Comprehensive Plan Amendment Threshold Review – Ren-Fu

Answering a question asked by Commissioner Turner, Mr. Matz said the recommendation of staff relative to the original two-lot half-acre site was to not move it forward. When the notion of expanding the number of parcels was posited, staff said doing so would warrant another round of review and a new public hearing. At the direction of the Commission, staff rewrote the staff report to include the expanded scope. In reviewing the expanded application as a stand-alone site, the staff concluded that significantly changed conditions do not exist.

Commissioner Turner asked if there have been any changes in transportation policy, especially with regard to light rail, since the Comprehensive Plan was last updated. Mr. Inghram said there have been a number of light rail policies adopted in recent years, though none of them are directly relevant to the subject parcels. No policies have been adopted that are aimed at increasing the population density along Bellevue Way or along the light rail corridor. The policies that have been adopted are focused on successfully integrating light rail into the Bellevue community from a design perspective. The adoption of new policies related to light rail have not, however, overridden the current vision for the area to the south of the downtown. The only Comprehensive Plan amendments adopted recently to accommodate more density are those related to the Bel-Red corridor.

Commissioner Turner noted that the various parcels in the expanded scope have different zoning and asked if there is any policy related to having consistent zoning. Mr. Inghram said the subarea plan includes vision statements and policy language that talks about redevelopment along Bellevue Way. It would be a judgment call to determine whether or not the existing Multifamily Low zoning that is in place is consistent with the vision. He said he was not aware of any policies that call for consolidating lots or creating larger parcels as a means to supporting redevelopment.

Answering a question asked by Commissioner Hamlin, Mr. Matz explained that the Brownstone project was developed in accord with the zoning that was in place on the property.

Commissioner Himebaugh commented that according to the staff report, at least six and possibly

of the eight decision criteria are met by the proposal. The only criterion listed by staff as not met is in fact a close call. He said it was his opinion that the applicant had submitted sufficient evidence of both unanticipated consequences and a change in circumstance that would warrant at the very least recommending that the proposal be put on the work program, where it will be subject to further study. It is a given that the Commission must adhere to and follow the established criteria, but it would seem unusual to deny the application based on how a single criterion is interpreted, especially when redevelopment of the parcels would be desirable.

Commissioner Himebaugh asked staff to clarify the finding relative to criterion G. Mr. Matz said the Southwest Bellevue subarea policies support redevelopment, though they are not specific with regard to what kind or how much. He said the reference to "highly selective areas" means within the boundaries of the existing plan designations. The pattern of multifamily development along the Bellevue Way corridor from the fire station south to the Triangle Pool area has occurred consistently within the existing designations. In order to step beyond those bounds, staff believes it would be necessary to find that something happened that was not anticipated.

Mr. Inghram clarified that the policies that support redevelopment in the corridor do not point to increasing the overall densities in the corridor.

Commissioner Himebaugh suggested that based on that interpretation, any request for a change in the Comprehensive Plan would be looked at unfavorably, especially where a change in the plan is sought in order to support redevelopment. Mr. Matz said the 2006 change made it more difficult to prove changed circumstances. The change does not, however, mean that all amendments will be looked on unfavorably.

Commissioner Sheffels pointed out that the subject parcels would yield a maximum of 30 units under Single Family-Urban Residential. She noted that there are eight single family-zoned properties that border the subject parcels that could potentially be impacted. Even so, a Single Family-Urban Residential designation would allow for infill redevelopment but at a lesser density, which might be more palatable to the single family property owners. She asked if the applicant had considered that designation. Mr. Matz said the discussions that have ensued to date have all be around the notion of multifamily densities; there have not been any conversations about Single Family-Urban Residential, which is between the traditional single family densities and Multifamily Low. The Single Family-Urban Residential density would also allow for a planned unit development.

Mr. Inghram reminded the Commissioners that the Ren-Fu application is for Multifamily Medium. He said the recommendation of the Commission to the Council could suggest that the work program consider a range of zoning categories in addition to what has been requested.

Commissioner Tebelius asked what sorts of things can be defined as significant change. Mr. Matz said a change to the Comprehensive Plan, especially the addition of areawide policies for which the consequences on particular sites could not have been anticipated, fit into the definition. Policy changes can affect access issues or something more significant, the impacts of which are

not discovered until a site comes up for redevelopment. Adoption of an entirely new subarea plan certainly would qualify as a significant change.

Commissioner Tebelius asked if there have been any conversations with anyone in the local surrounding communities about whether or not they would be willing to accept a little higher density from what is in place on the subject properties. Mr. Matz said staff has not engaged in such conversations, though written and oral public comments have been received.

Commissioner Carlson asked what the zoning is on the Brownstone and Torello developments to the north and south of the subject site. Mr. Matz said that both developments are zoned R-10 under the Multifamily Low designation. Commissioner Carlson asked why the Ren-Fu site should not be allowed the multifamily designation as well given that Multifamily Low exists to the north and the south. Mr. Inghram clarified that all of the area in between is already zoned Multifamily Low. The properties that are not are those in between the multifamily parcels and the single family neighborhood to the east.

With the permission of the Chair, Commissioner Carlson asked Mr. Dust to answer the question of whether or not Single Family-Urban Residential should be considered for the subject parcels. Mr. Dust said he had not had any such discussions with his clients, nor was he authorized to say whether or not Single Family-Urban Residential would be an acceptable designation for the properties that are currently designated single family. He added, however, that moving the application forward will allow for having the discussions with both the applicant and the city staff. He added that he had nothing but praise for the staff, noting that everyone he has talked to throughout the process has been very professional and very responsive and accommodating.

Commissioner Hamlin said he agreed with the staff that the changed conditions criterion had not been met and as such would not vote to move the application forward.

Commissioner Sheffels expressed the opinion that the matter should be allowed to move forward so the wider range of options can be discussed. She said that in some respects she could reach the conclusion that there have been changed circumstances.

Commissioner Turner concurred. He suggested that a lot of creative design work could be done to bring about higher density while protecting the adjoining single family properties.

Commissioner Carlson said he would support moving the matter forward so it can be studied in greater detail.

Commissioner Tebelius agreed with Commissioner Hamlin relative to the changed circumstances issue and said she would vote against moving the application forward.

Motion to recommend initiation of the Ren-Fu CPA application for the 2011 Annual Comprehensive Plan amendment process, as expanded through geographic scoping, was made by Commissioner Himebaugh. Second was by Commissioner Turner.

Commissioner Sheffels proposed as a friendly amendment revising the language to read "...initiation of the Ren-Fu CPA application for the 2011 Annual Comprehensive Plan amendment process, as expanded through geographic scoping, and to give consideration to a range of designations ranging from Single Family-Urban Residential to Multifamily Medium. The motion maker and seconder agreed to revise the wording of the amendment accordingly.

The motion carried 6-1, with Chair Ferris and Commissioners Carlson, Himebaugh, Sheffels, Tebelius and Turner voting yes, and Commissioner Hamlin voting no.

Mr. Matz said staff would prepare a transmittal memo to be carried forward to the Council on July 11.

B. FEMA-Related Land Use Code Amendment

Land Use Director Carol Helland briefly reviewed with the Commissioners the reasons for the proposed Land Use Code amendment and the process to date. She noted that in response to questions raised by the Commission on June 8 staff went back through the documents to verify that the references to the storm and surface water utility code and the storm and surface water engineering standards are consistently used. The term "regulatory floodplain" in the new definition of "development" was replaced with "areas of special flood hazard" to align the critical areas code with the floodplain requirements. The statutory requirement to comply with language requested by the Department of Ecology was highlighted for the Commission.

Ms. Helland said the revised ordinance as contained in Attachment A had been shown to the Department of Ecology and was found to be satisfactory. She said the recommendation of the staff was for the Commission to recommend the ordinance to the Council for adoption.

Commissioner Himebaugh commented that he had had conversations with staff since the June 8 Commission meeting and that his concerns had been addressed. He added that he had asked staff to ask FEMA about exempting Lake Sammamish and Phantom Lake but had not heard what their response was. Ms. Helland said the city had not been successful in getting an answer from FEMA with respect to controlled lakes and the associated floodplain regulations. She said staff would continue to seek an answer from FEMA. She reminded the Commissioners that the only mapped floodway in the city is located on Kelsey Creek and stated that according to the city's GIS data there are no residential structures located in the mapped floodway; the only two structures that exist in the floodway are owned by the city.

Commissioner Tebelius said she would like to see the Commission go on the record strongly with a statement to FEMA that the floodplain regulations should not be applicable to Lake Sammamish or Phantom Lake and that those lakes should be regulated the same as Lake Washington. That should be made very clear by the Commission, and the Council should be asked to reach the same conclusion; with Council support, the message to FEMA will be even stronger. She pointed out that the Commission has not been asked to look at the FEMA biological opinion (BiOp) which is coming up in the fall; it will be very important because there is language in the critical areas ordinance that clearly will apply under the Shoreline Master

Program unless it is straightened out. The community is concerned and the Commission should ask the Council to direct the staff to have the Commission look at the BiOp. That approach would ensure that the issues related to floodplains, critical areas and the Shoreline Master Program will come up together. Ms. Helland said the appropriate place to make the request to the Council would be in the recommendation from the Commission. She clarified that the overall plan is to get Commission feedback on the shoreline materials and then to review the relationships with the critical areas regulations to ensure consistency. That has been in the program as part of the Shoreline Master Program update from the beginning. Staff has been carefully avoiding drafting materials that might need to be redrafted as the Commission changes the direction. Based on the feedback received to date on the Shoreline Master Program, staff has concluded that the draft will likely not be the final document, so it would be premature to draft any consistency regulations to the critical areas code, though the time to do so will come as the deliberations progress.

Commissioner Himebaugh supported the proposal offered by Commissioner Tebelius. He said one of his concerns is that the Commission is working on the Shoreline Master Program, which incorporates critical areas, which in turn refers to areas of special flood hazards. He said he had concerns about what the city will submit to FEMA in terms of the BiOp. He agreed that the draft Shoreline Master Program is not what will ultimately be adopted, but voiced concern that if something is submitted to FEMA that turns out to be different from what is ultimately adopted as part of the Shoreline Master Program, the Commission may face difficulties during the Shoreline Master Program process changing things in a way that would not comply with what had been submitted to FEMA. Ms. Helland said staff understands the concerns. She said the proposed amendment was intended to only address nitpicky changes handed down as a result of the community assistance visit. The changes were included initially in the shoreline update work, but that effort has taken longer than anticipated and the FEMA deadline is looming. To the extent the city is out of compliance with the FEMA requirements, the city can lose its flood rating. The small changes are needed in order to comply, not to meet the BiOp requirements.

Commissioner Tebelius said she had no arguments against making the proposed changes with respect to the floodways. She said she was glad the various issues had been raised, however, in that they triggered the need to look at the overall issues in greater depth.

Motion to recommend to the Bellevue City Council adoption of the draft FEMA consistency Land Use Code amendments as presented in Attachment A, to include in the transmittal memo a request of the Council to support having FEMA treat Lake Sammamish and Phantom Lake as controlled lakes, and to request the Council to put on the Commission's work agenda coordination of the FEMA BiOp and the Shoreline Master Program to avoid conflicts, was made by Commissioner Tebelius. Second was by Commissioner Hamlin and the motion carried unanimously.

Ms. Helland agreed to circulate the draft transmittal memo to all Commissioners.

C. Prohibition on Helicopter Landing Facilities

Ms. Helland explained that the Council was recently required to resolve an appeal related to the establishment of a helistop proposed by Kemper Development for the roof of the Bank of America building in the downtown. Following resolution of the appeal, the Council discussed their perceived dissatisfaction with the current helicopter regulations contained in the Land Use Code, largely because they felt the regulations are somewhat antiquated. They noted that residential uses have become more prominent in commercial areas and are anticipated to be more prominent in mixed use settings, such as Bel-Red. The Council also concluded that the noise code and helistop performance standards are inadequate to mitigate the impacts associated with landing facilities. The Council provided direction to the staff and the Commission to initiate a targeted code amendment to prohibit all but emergency helicopter landing facilities citywide. The Council directed the staff to have a recommendation from the Commission prior to the August break in lieu of imposing a moratorium.

Ms. Helland said the draft ordinance relies primarily on a series of footnotes prohibiting helicopter landing facilities except those allowed in association with government services or hospitals and used only for emergency purposes. She said because of the rapid pace set in motion by the Council direction staff had scheduled a public hearing for July 13.

Commissioner Hamlin asked what the difference was between the proposed footnotes 11 and 12. Ms. Helland explained that footnote 11 is related to emergency purposes for government helistops, primarily law enforcement and fire protection. Footnote 12 is for government- and hospital-based uses which are allowed in different land use districts. Hospitals are not allowed in every district in which a government facility is allowed.

Commissioner Sheffels commented that according to the World Health Organization helicopters generate 105 decibels of noise, which is 50 percent louder than a jackhammer. She agreed that helistops should be regulated, but suggested that the noise ordinance should prohibit noise from non-emergency helicopter flights from exceeding a set number of decibels. Ms. Helland said noise was one of the issues at the crux of the Council's consideration of the appeal. Under the terms of the noise code as it exists, aircraft in flight are exempt; that approach is consistent with the state standard as well. Noise studies were conducted extensively and at several different locations as part of the appeal process. The findings indicated the helicopters in flight only moderately exceed the noise code standard. While the Council ultimately acted to permit the helistop in the downtown, it also acted to limit the number of operations to five per week Monday through Friday between the hours of 9:00 a.m. and 6:00 p.m., and one flight on Saturday between the hours of 10:00 a.m. and 5:00 p.m. Flights are prohibited entirely from using the downtown helistop on Sundays and legal holidays. In addition, the flight path to and from the facility was limited to the freeway and NE 8th Street, and the type of aircraft allowed to use the facility was limited to light turbine helicopters, which tend to be quieter. The Council required reports on any deviation from the proscribed flight path or from any of the requirements in order to track and monitor compliance with the conditions; if the conditions are not met, the Council can modify them or revoke the conditional use permit under which the facility was allowed.

Answering a question asked by Commissioner Hamlin, Ms. Helland said the only helistop

currently in the city is associated with Overlake Hospital. It is established and operational and is intended to support their trauma unit. The facility on top of the Bank of America building has been used over time as a temporary helistop through the temporary use provisions of the Land Use Code; the appeal process recently acted on by the Council allows for making the facility permanent pursuant to the conditions. The Council's resolution of the appeal has been appealed to superior court, so the Bank of America building facility has yet to be established as a permanent facility.

Chair Ferris asked if anything in the proposed amendment would affect the operation of either the Bank of America facility or the Overlake Hospital facility. Ms. Helland said those facilities will not be impacted in any way as both are already vested.

Commissioner Tebelius asked if there would be any additional study of the issue following approval of the proposed amendment. Ms. Helland said the Council has requested staff to return to them with a work program and information about code amendments over time. They have asked for a variety of different code amendments and would like to know when they could be addressed by the Commission. The Council has been advised that shorelines will continue to take up the bulk of the Commission's time through the end of the year, so it is unlikely anything new will be initiated before then, other than emergency actions and housekeeping items. The Council will need to determine whether or not to allocate the resources needed to take on the code amendments they have requested, including noise code amendments, Land Use Code amendments, and others.

Chair Ferris commented that following adoption of the proposed amendment, Bank of America will have exclusive rights to helicopter takeoffs and landings until such time as the code is changed again or until a noise provision is adopted that would restrict even their use of the existing facility. Ms. Helland said in the work program the Council asked staff to look at a time when the helicopter landing facilities issue could be looked at more broadly along with appropriate performance standards that could ostensibly allow such facilities anywhere in the city. It is likely, however, that no action will be taken until such time as there is interest on the part of some entity to establish a new helistop facility. Chair Ferris said he would like to see the Commission's recommendation go forward with a time limit that would bring the issue up again in not more than five years. He said he had no particular desire to see additional helistop facilities developed in the city, but was concerned about allowing only one non-emergency facility in the city.

Commissioner Carlson asked if there is a request in the pipeline, or an understanding on the part of staff that there will be requests made in the near future, for additional helistop facilities. Ms. Helland said there are none currently and nothing is known about any entity planning to submit an application. That was one of the reasons why the Council chose not to pursue a moratorium.

Commissioner Himebaugh asked if the proposed amendment, if adopted, will make the Bank of America helistop a nonconforming use, provided it survives the appeal process and becomes a permanent facility. Ms. Helland allowed that it would become a nonconforming use but would be allowed to continue so long as it remains consistent with the conditions under which it was

approved.

D. Shoreline Master Program Update

Ms. Helland reviewed for the Commissioners the materials included in the desk packets, noting that the public comments had been divided into roughly 15 categories and tracked on a bar graph intended to show how many comments were made relative to each of the categories. She said the Department of Ecology checklist was also included in the materials and explained that jurisdictions are required to include the checklist with their submittals and to show how each of the requirements have been met.

Commissioner Tebelius said it appeared from the comments received that few if any topics are beyond discussion, which means all of the topics are of interest to the community. She suggested that time will need to be spent reviewing the policies. The issues are complex and the Commission has a lot of work ahead of it.

Commissioner Hamlin said the topics that stood out for him through the testimony were setbacks, buffers, docks, ordinary high water mark and vegetation. He said he would prefer to work through section by section rather than by topic.

Commissioner Carlson concurred that working through it section by section would be the best approach, starting broad and moving down into the details. He noted that the issue of property rights was raised by the public and suggested it would be beneficial to develop a clear statement regarding property rights. Some of the testimony from the public rebutting the work product of the staff has been intriguing; he said staff should be encouraged to answer the rebuttals so the Commission can have a clear idea of who is right, who is incorrect, and where there are mere misunderstandings.

Chair Ferris commented that there has been a great deal of talk about the science or the lack thereof, especially in terms of quantifiable measurement and real connections between regulations and measurable benefits. The comments made by the Department of Ecology to the city of Sammamish regarding their plan included direction to make an extensive number of changes; in some cases they were forced back to square one, especially where they did not have support justifying change. None of the Commissioners have a background in ecological science, and conflicting testimony has been offered by experts in the field. He suggested the draft plan and cumulative impact assessment should be subjected to a third party scientific and technical review, the outcome of which would be a delineation of which elements of the plan are supported by science and which are not. That would give the Commission something to fall back on in determining if the plan as drafted meets the goals of the Shoreline Master Program. The plan forwarded to the Council would be much stronger, and if approved by the Council and sent on to the Department of Ecology the city would benefit of the technical support for any deviations from the standardized approach. Absent taking that approach, it is likely the issue will be sent back by the Department of Ecology.

Commissioner Turner agreed. He said the Commission should do everything it can to make sure

things are done right, not just the way the state says to do it. The Commission has a responsibility to be very clear about what the recommendations are and to make sure there is a solid foundation for each one. Some things are missing, notably an understanding of the science, property rights, cost, and the efforts that will be required both for compliance on the part of the shoreline property owners and enforcement on the part of the city. There has been a lot of talking but not enough listening by the Commission. In the end, the policies and regulations should make sense based on what people are saying, what they have already done, and on good science.

Commissioner Sheffels said in all her years on the Commission she had not seen as comprehensive a process. There have been endless meetings and endless amounts of testimony by experts and by the public. Staff has produced a great deal of documentation with an exhaustive list of citations. She said through it all she has not identified hidden agendas on the part of anyone. She agreed with the suggestion of Chair Ferris to subject the plan to a neutral qualified third party to review the science and the degree to which the plan meets the requirements of the Shoreline Master Program. In the interim, the Commission could take the time to work through the policies and the regulations that are not based on science.

Commissioner Himebaugh observed that there is a substantial amount of public opposition to the draft as it currently stands. All but two of those who spoke at the public hearing were opposed; of the two who supported it, one represented an environmental non-profit organization and the other was from the Department of Ecology. He said if there had been a groundswell of public support for the draft he would have expected to see it at the hearing. The lack of support should make the Commission cognizant of the fact that the public has real problems with the provisions of the draft. The Washington Sensible Shorelines Association's plan serves as a good outline of what is most important; it highlights the five or six items of most concern to the public. It would be wise in light of the testimony from the public hearing to pay attention to the document. Most of what is causing heartburn among the public appears to be Section 3 of the document, the development regulations section. The policies are supposed to drive the regulations, but it has in fact worked in the opposite direction and the policies will ultimately reflect what is done with the regulations. To start with the policies might not be the best approach to the review. He agreed that there are property rights issues at stake and the Commission should seriously consider whether or not the program will put too much of a burden on private property owners. The WAC guidelines must be kept in mind, but they should not be treated as hard and fast rules because they are not; they allow for deviation. The first order of business should be to make the package as Bellevue-appropriate as possible, not to make it as Department of Ecology-appropriate as possible. The goal of the constitutional convention in 1787 was to amend the Articles of Confederation; the end result was a completely new constitution that was far better and has lasted much longer than any constitution in the history of the world. The Commission's job is similar in that it has the draft to start with, but substantial modifications are needed to make it work.

Commissioner Tebelius agreed with Commissioner Himebaugh. She disagreed with the notion of hiring a third-party expert to review the science and offer comment on it. There is a lot of information out there and more experts are not needed. The job of the Commission is to wade

through what has been presented and to make its own decisions. She agreed that the WAC guidelines are guidelines only, not dictated rules that must be adhered to. If the final product sent to the Department of Ecology is sent back to the city, so be it; the general practice of the Department of Ecology appears to be to send every plan it reviews back for modification.

Chair Ferris noted that the public has for a year been calling for peer-reviewed science. It is not possible for the Commission to pick and choose which offerings relative to science, either from the staff or the public, should be listened to.

Commissioner Tebelius countered that by definition peer-review means others have reviewed the findings and approved it. If the Commission is going to accept any science, it must accept only that science that has been peer reviewed.

Commissioner Turner allowed that some of the science submitted has clearly been peer reviewed. However, not all of the science submitted has been Bellevue-specific or even applicable to the Bellevue shorelines. The Commission simply must get to the point where it can say what is appropriate science upon which regulations can be built.

Commissioner Tebelius agreed that science related to streams cannot be applied to lakes even if it is peer reviewed. That is one concern the community has voiced. No matter how many trees are planted along the shores of Lake Sammamish, the waters will not be cooled as a result according to the testimony offered by Dr. Pauley; planting trees on the banks of a river or a stream will achieve that result according to the peer-reviewed science.

Chair Ferris said some of the science submitted was related to alpine lakes, and in that case at least lake science was applied to lake science, though the conditions vary. Dr. Pauley agreed that a battered wall is better than a straight-up wall, and he agreed that a perforated dock would be better than a solid dock. He admitted to not being an expert with regard to upland science and thus did not express an opinion on anything beyond the bulkheads. The draft establishes a specific setback of 50 feet, though some allowances are made, but there is nothing in the record to say that a 25-foot setback would be just as viable, or that a 75-foot setback would be even better. A technical review could supply some support for the conclusion ultimately reached. There are a large number of gray areas that could be clarified with an independent review. The document sent to the Department of Ecology for review should be as strong as possible so it can be defended.

Commissioner Himebaugh said his argument all along has been that if the city is going to make something more restrictive than it already is, there will need to be supporting science. Much of the science provided to date has been inconclusive, has not been directly related to the issue at hand, or has been inexplicable. If a restriction cannot be proved to be more protective of the environment, it should not be adopted. It can be concluded that the Department of Ecology takes a cautionary approach: where science is inconclusive, instead of viewing it as having no justification for protection, they view it as having justification for extreme protection until it can be proven that such protection is not necessary. He said he was unclear about exactly what would be reviewed by an independent third party, the science or the draft itself.

Chair Ferris suggested the independent review could be crafted in such a way as to be very surgical. For instance, it could be drafted to verify where or not there is a direct connection between the mitigation actions and the desired outcome in terms of ecological function.

Commissioner Hamlin proposed that there is no silver bullet. There are policies that have been drafted, and the Commission will need to determine if they need to be changed. The science needs to be carefully reviewed to determine if more restrictive approaches need to be taken with respect to the ecology of the shorelines. Even if a third party is brought in, it is highly likely that they will not be able to agree on the science and the Commission will have to make the final decision. A third party could, however, identify and bring to the table additional information that might help the Commission make good decisions. Staff and others have been saying all along that there is no perfect approach. The science supports a range of things and the Commission will need to decide what should go into the plan. The Commission has a somewhat acceptable starting point; in some areas the restrictions could possibly be loosened, while in other areas they could be made more restrictive.

Commissioner Himebaugh said the inventory provides a very decent snapshot. He allowed that there are those who would take issue with whether or not it is accurate, but it is good enough to give the Commission a general idea about the health of the shorelines in their current state. The current conditions exist under the regulations that are already in place. If the goal is no net loss, the focus cannot be on restoration and imposing additional restrictions to bring the shorelines back to their original state. To the extent the current regulations are not doing enough to address the health of the shorelines, they should be changed. That is where the science will come into play. He added, however, that he had not seen much in the science presented to date that led him to believe much of what is in the draft is even necessary.

Commissioner Tebelius said she has heard different views with respect to what no net loss even means. It is known that the waters of the lakes have been improved substantially over time, in part because sewage is no longer allowed to flow into them. She agreed that the focus cannot be on reversing time and taking the lakes back to where they were a hundred years ago; that simply cannot be done in a developed urban environment.

Chair Ferris suggested the Commission's review of the draft should begin with the residential regulations. If through the review the Commission finds some areas in need of scientific support or backup that will yield a stronger recommendation, it can ask for it. As the review progresses, the Commission should keep a tally of the issues to be included in the transmittal memo to the Council.

There was agreement to begin the review of the draft with sections 20.25E.050, 20.25E.060 and 25.25E.065.

Commissioner Sheffels pointed out that shoreline residents have attempted to remind the Commissioners that they are supposed to be acting as advocates for them. She agreed but added that the Commission also must act as advocates for good planning and the duties and

responsibilities of the city as a governmental entity. The Commission's responsibilities go beyond just the views of the public.

Ms. Helland commented that while the section of the draft addressing residential accounts for only 32 pages, it is the piece everyone is concerned about. The other pieces are those that are required to be included by the Department of Ecology. There are many good reasons for why the draft got put together the way it is. Some have said the draft is the staff recommendation, but the fact is that the draft was put together following about a year's worth of direction from the Commission. It is not what staff would necessarily recommend, but it does serve as an excellent starting point.

Commissioner Turner reiterated his desire to see the staff encouraged to offer rebuttals to the testimony offered at the public hearing. Ms. Helland said the staff will provide responses and direction back to the document to show what the rationale was for adoption of the document the way it is drafted. The staff reviewed upwards of 50 peer-reviewed documents in developing the draft and brought forward a document that in their professional judgment that could be approvable by the Department of Ecology. It is the job of the Commission going forward to make the policy choices, and staff will support the Commission in that task. It will never be possible to say that one viewpoint is right and another is wrong; peer-reviewed science can reach differing conclusions.

10. OTHER BUSINESS

A. Selection of Chair and Vice-Chair for Next Year

Chair Ferris opened the floor for nominations for the position of Chair.

Motion to nominate Commissioner Sheffels to serve as Chair was made by Commissioner Hamlin.

Motion to nominate Commissioner Turner was made by Commissioner Himebaugh.

Chair Ferris and Commissioners Hamlin and Sheffels voted in favor of Commissioner Sheffels. Commissioners Himebaugh, Turner, Carlson and Tebelius voted in favor of Commissioner Turner.

New Chair Turner opened the floor for nominations for Vice Chair.

Motion to nominate Commissioner Himebaugh was made by Commissioner Carlson.

Motion to nominate Commissioner Hamlin was made by Commissioner Sheffels.

Chair Tuner and Commissioners Himebaugh, , Carlson and Tebelius voted for Commissioner Himebaugh.

Commissioners Ferris, Hamlin and Sheffels voted for Commissioner Hamlin.

Commissioner Carlson thanked Commissioner Ferris for his fair, measured and even-handed during his tenure as Chair of the Commission, and for setting a high bar for his successor.

11. APPROVAL OF MINUTES

A. April 13, 2011

Commissioner Sheffels pointed out a typographical error in the fourth paragraph on page 9, noting that "...perimeter tree w1:28.37as removed..." should read "...perimeter tree was removed...."

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

B. May 11, 2011

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

C. May 25, 2011

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

12. PUBLIC COMMENT

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said his comments at the public hearing were taken out of context and put into the category of science. He said he had complained that the inventory study was done improperly. He said it will be interesting to see how the cumulative impacts study comes out given the bad data in the inventory. He said he asked to have his presentation included in the public record, which was not done. There is no way the staff can even start the task of meeting the checklists given the flawed inventory of existing data and materials. The staff has known that for the past two years that the inventory study is wrong. Clearly there are certain topics the staff do not want to talk about. Some peer review of the data is needed. He asked again that his report be made part of the record.

Commissioner Tebelius asked if it would be appropriate to make a motion to include Mr. Evan's report in the public record. Mr. Inghram responded by saying all submittals made during Commission meetings and during public hearings, both written and oral, become part of the official public record. He said he would make sure the report is included in the Shoreline Master

Program comments posted on the website.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said it appeared to him that everyone is struggling with how to handle the Department of Ecology. It appears that regardless of how well written an Shoreline Master Program plan is, the Department of Ecology is going to have comments; that is just the nature of the beast. The Commission should give priority to what is appropriate for Bellevue and let the Department of Ecology argue their side later. They are pushing jurisdictions increase the 25-foot buffer, but there are questions about whether or not there is any peer-reviewed science in support of doing that, or any way to measure the effectiveness of a wider buffer. The Department of Ecology has the responsibility to establish programs that will evaluate what should be done in the future. The property rights aspect should not be pushed under the precautionary principle. The Department of Ecology should seek to be more helpful instead of just playing judge and jury.

13. NEXT PLANNING COMMISSION MEETING

A. July 13, 2011

14. ADJOURN

Chair Turner adjourned the meeting at 9:57 p.m.



Paul Inghram
Staff to the Planning Commission

1/25/2012
Date



Kevin Turner
Chair of the Planning Commission

1/25/2012
Date

