

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 27, 2011
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Carlson, Ferris

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:32 p.m. by Chair Turner who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioners Carlson and Ferris, both of whom were excused.

3. PUBLIC COMMENT

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said the request of the public relative to the FEMA code changes was made clear in a June 16 email from legal planner Catherine Drews in which she said staff agreed to contact FEMA to ask if the agency considers the weirs on Lake Sammamish and Phantom Lake to provide the same level of control as the locks on Lake Washington, and if so, should the two lakes also not have designated flood plains. The public did not ask for a flood elevation study. What is desired is an analysis of how to get the lake levels back down to where they need to be. Until that is done, shoreline property owners should not be regulated in some fashion that would take advantage of the fact that water levels are higher than they should be, resulting in more property impacted by the setback from the artificially elevated ordinary high water mark.

Commissioner Tebelius asked if the county is looking at removing debris and making the Lake Sammamish channel wider. Dr. Nizlek said their long-term project includes the reintroduction of curvilinear bends in the river. Prior to September, the county will cut back the vegetation in the channel and remove some but not all of the vegetation from the center of the channel. The accumulated debris will not be removed even though it is serving as a dam above the weir, increasing the lake water level. The county has agreed to annually keep the vegetation growth at bay.

Chair Turner reported that the Council has asked the Commission to return to them in September to provide more clarity around the issues.

Land Use Director Carol Helland said the questions articulated in the Commission's transmittal memo were presented to the Council. If staff inaccurately recorded the questions, the transmittal can be updated and resubmitted to the Council. The FEMA consistency amendments are set to be finalized on August 1, but the Council concluded it did not have enough information to fully understand the stated requests and will be provided with clarification in September.

Mr. Brian Parks, 16011 SE 16th Street, spoke as president of the Phantom Lake Homeowners Association. He said he and other Phantom Lake residents have been meeting with utilities staff about the outlet cleaning proposal for Phantom Lake. Staff have claimed that the 24-inch downstream culvert is the primary problem, but the culvert only comes into play at peak flow volumes. The lakefront properties are flooded about half of each year, the primary cause of which is the height of the weir. The interim director has stated in no uncertain terms that the outlet cleaning is not dependent on the formation of a lake management district, but has on other occasions stated just the opposite. He shared with the Commission a report from consultants Kramer Chin Mayo (KCM) graphing their proposed weir that was created in 1991. The document suggests the weir should be operated at 260.6 NAVD, which would be no more than one board in place at a time. Currently, however, all three timbers are in place. Utilities is operating the weir at least six inches higher than KCM recommended. The Commission should craft a policy aimed at maintaining Phantom Lake below 261.1 NAVD.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, suggested that the Commission and the public should receive electronically the progress notes made by staff, ideally prior to the next meeting. That would allow the public and the Commission to use the bullet-point notes in planning for the next meeting. The draft Shoreline Master Program is clearly preferred by the staff and the Department of Ecology, but the Washington Sensible Shorelines Association comments reflect a focused approach to the public comments that came from the public hearing. The Commission needs to move ahead with making the document Bellevue-appropriate and balanced. The misperception the staff have given the Commission that the Shoreline Master Program must provide protection at least equal to the critical areas ordinance needs to be corrected. The code was amended in 2004 and simply says that the Shoreline Master Program should provide a level of protection to critical areas within the shoreline that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. That means even wetlands in frequently flooded areas along the shoreline need only meet the standard of no net loss and need not be equivalent to the critical areas ordinance requirements.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. COMMITTEE REPORTS – None

7. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram introduced new Department of Planning and Community Development director Chris Salomone. Mr. Salomone said he looks forward to working with the Commission. He said he has in the past worked as community development director for three different cities: Carlsbad and Chula Vista, California, and Tempe, Arizona. He said his responsibilities in those cities included oversight of planning, economic development,

housing and neighborhoods.

Answering a question asked by Commissioner Sheffels, Mr. Salomone allowed that he has not been associated with cities that have comprehensive plans or a state that has a growth management requirement. However, Carlsbad was the first city in the state of California to adopt a growth management plan, and he said that was done on his watch.

Chair Turner said he looked forward to working with Mr. Salomone.

8. STUDY SESSION

A. Shoreline Master Program Update

Land Use Director Carol Helland briefly reviewed the changes requested by the Commission at its previous meeting, which included deleting Footnote 3 from the chart, and deleting the standard disturbance in shoreline structure setbacks. The issues reserved for future discussion included Phantom Lake standards, the usefulness of the dimensional requirements chart, and whether or not Section 20.25E.050 should be retained. She noted that the parking lot items had been added to a flip chart and said it would be brought to each Commission meeting for reference purposes.

With regard to paragraph C of section 050, Commissioner Tebelius proposed changing the language of the first sentence of paragraph 1 from "...shall not be considered nonconforming..." to "...shall be considered conforming..." Ms. Helland said the term traditionally used is "nonconforming" but said she would make the change if directed to do so by the Commission.

Commissioner Sheffels argued in favor of using the word "nonconforming," which is used throughout the code. There was agreement not to change the language of paragraph 1.

Commissioner Sheffels called attention to paragraph 2 and asked if a property owner seeking to reduce the amount of impervious surface would still need to submit a report to the city. Ms. Helland said they would not. She agreed the term "modification" should clearly refer to additions, not reductions.

Ms. Helland clarified for Commissioner Himebaugh that the definitions included in the Shoreline Master Program are additive to those in 20.50, the definitions section of the Land Use Code, and in 20.20, the general provisions of the Land Use Code. The definitions in the general Land Use Code apply unless specifically stated that they do not.

Commissioner Tebelius questioned including language that is included in another part of the code. Ms. Helland said at the start of the update process it was concluded that as much as possible would be included in the code to cut down on the amount of cross referencing needed. Simple references could be utilized instead.

Commissioner Sheffels said she would prefer to err on the side of having everything in one place. Commissioner Hamlin concurred and suggested it would be helpful to have the definition of impervious surface in the glossary that will accompany the Shoreline Master Program.

Commissioner Tebelius said she favored cleaning up the code and including references. She suggested that readers of the code are going to have to look up the references anyway, so it would be better to include a brief descriptive sentence and a link to the actual code definition.

Commissioner Himebaugh agreed that impervious surface is a defined term, but said he wondered about the desirability of regulating anything that might fall under the definition versus regulating something that seems to be more pertinent to ecological protection, such as a roadway or a driveway. Ms. Helland said a modest allowance is included for the location of impervious surfaces; it is intended to address things like fire pits and paths to docks. To remove the reference to impervious surfaces in the context of existing and modifications would have a ripple effect through the code in other locations, and that would have to be tracked.

Environmental Planning Manager Michael Paine said the issue of pervious versus impervious is the amount of actual percolation into the soil that occurs. Where the percolation is de minimis, there is an impervious surface. With gravel driveways, the level of compaction can be such that water either takes a long time to percolate into the soil or simply runs off, so in the city and elsewhere they are treated as impervious surfaces. Gravel walkways are not always treated the same, however.

Commissioner Hamlin said he was open to the notion of including some short clarifying sentences along with references to actual code language.

Answering a question asked by Chair Turner, Ms. Helland explained that building height in the Shoreline Management Act is articulated as a view issue. Accordingly, the maximum building height is regulated to the highest point of the roof. Absent inclusion of the provisions of paragraph D, building height would default to the building height requirements in the underlying zoning district, which would be inconsistent with the way building height is required to be measured in the shoreline. The state imposes 35 feet as an absolute height for buildings in the shoreline, whereas Bellevue calculates height based on the midpoint of the roof. The work done relative to neighborhood character, however, makes measuring building height the same throughout the city. Height in the shoreline, as in the rest of the city, is measured from existing grade, not finished grade.

Commissioner Himebaugh called attention to the language of paragraph D.2 and suggested the reference to obstructing the view of a substantial number of residences on areas adjoining the shoreline is too vague, especially with regard to what constitutes a substantial number. Ms. Helland said the language is taken directly from the WAC provision on building height.

Mr. Inghram pointed out that the provision is specific to the criteria for a variance. Applicants seeking a variance must show how they meet the various criteria. If the code is written specific to the number of residences that constitutes a substantial number, the applicant will have to show that their project will not block the views of that precise number. Leaving the language a bit more vague actually gives some flexibility for each applicant to make their case as they see fit.

There was agreement to place the issue in the parking lot pending further clarification of how to define what is meant by "substantial."

The Commission turned its attention next to reviewing Section 20.25E.060. Ms. Helland explained that many of the provisions in the section are intended to address specifics the Shoreline Management Act says must be included in the Shoreline Master Program. Ensuring no net loss of existing ecological function, not restoration to pre-development conditions, is one objective. Another is to have consistent standards for public and private projects. The policy that speaks to community access flows directly from the Shoreline Management Act requirements. Another policy seeks to preserve and enhance the shoreline while allowing for appropriate development. The draft regulations are modeled after the Land Use Code. They establish a no net loss standard, provide certainty and a regulatory safe harbor, reference out to

the critical areas ordinance, address parking standards, preserves public access, includes water quality protections, and includes the vegetation conservation standards that align with citywide requirements.

Commissioner Himebaugh referred to paragraph B.1 and the issue of no net loss of ecological function and noted that according to the best available science water temperature is the most important factor for the fish. The problem is that the science also says it is the one thing government has the least amount of control over. The consultant Herrera in 2005 wrote that in large stratified lakes such as Lake Washington and Lake Sammamish water temperature moderation is unlikely to be driven by the riparian vegetation when analyzed at the whole lake scale. The report goes on to say that the overall thermal conditions of the lakes is regulated more by air temperature and the temperature of tributaries than by microclimatic controls provided by surrounding riparian forests. He questioned whether water temperature maintenance should be referenced as something to protect given the science, and whether or not vegetation conservation effective for doing so. A similar question could be raised as to the desirability of protecting processes like erosion, which appear to be destructive; large woody debris recruitment, which seems to have some beneficial effect on fish but which is also the preferred hiding place for the predator species bass. The identified functions and processes are not that well known or cannot, nor is there much that can be done to protect them.

Chair Turner agreed that the listed functions are important. Little has been said about how each of the functions is valued or impacts the environment, and little has been said about how the functions might be impacted by property rights, safety and other issues that are important in an urban environment. Little has been said about how the various functions interact with each other.

Commissioner Himebaugh said one option might be to be less specific about exactly the kinds of things that should be protected.

Ms. Helland said paragraph B.1 was drafted specifically to be explanatory. If it appears to be too restrictive, the second and third sentences could be deleted. If that were done, the piece that would inform the readers would be the definition of ecological functions in the administration section.

Commissioner Himebaugh agree the second and third sentences should be removed. Commissioner Tebelius concurred but suggested the wording of the first sentence poses a problem; she proposed the sentence should read "Shoreline uses and development shall be located and designed to ensure no net loss of ecological functions and processes."

Chair Turner called attention to the fact that much of the regulations are predicated on the notion of no net loss, yet there is no baseline defined to serve as a starting point. Commissioner Himebaugh said one way to address that issue is the rebuttable presumption provision in paragraph B.2. Instead of being specific with regard to exactly what no net loss includes or does not include, B.2 includes the notion that following the Shoreline Master Program as written presumes the no net loss benchmark will be met. Chair Turner countered that while that might be the case, the draft does not establish a baseline against which to do any meaningful measuring.

Mr. Paine pointed out that the concept of no net loss relative to wetlands and wetland function is well established in law and is used both in Washington and in other states. While admittedly complicated to count up all of the ecological functions associated with a particular non-wetland site, the approach is essentially the same and is likely the reason behind how the state came up

with the no net loss concept for functions. Where wetlands are concerned, mitigation sequencing the next step, and the same thing is proposed for the shorelines. The rebuttal presumption is the approach used. The only time it is necessary to know what the baseline is for an individual property owner is when they want to depart from the standards; in those instances, it is necessary to go out and study the site and make some professional judgments about the baseline so it can be determined whether or not the recommended departure is legitimate. The only other time the no net loss and baseline issues come to the front is in association with a cumulative analysis over an extended period of time.

Commissioner Hamlin said the WAC at 173.26.201(2)(c) is very clear with regard to what no net loss is. The paragraph states: "When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet the standard. The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions."

Mr. Inghram commented that permit applicants coming through the door rely on the rebuttal presumption: regardless of what is meant by no net loss or the guideline definitions, all they want to know is whether or not they meet the standards. The standards that get developed need to be based on a rational judgment of evidence, and once all of the standards are in place they cumulatively should equate with no net loss.

Commissioner Himebaugh agreed with that statement. He suggested that as the Commission works through each provision, a determination should be made as to whether or not the idea of no net loss is satisfied, regardless of how vague or indefinable it might be.

There was consensus to revise the first sentence of paragraph B.1 to read "Shoreline uses and development shall be located and designed to ensure no net loss of ecological functions and processes," and to delete the second and third sentences.

Referring to paragraph B.3, Commissioner Tebelius asked what is meant by "analysis of no net loss of ecological function is required as part of an application." Ms. Helland said the analysis is required only when an applicant seeks to deviate from the standards of the code, and where the Department of Ecology requires a conditional use permit based on their conclusion that the regulations are not satisfactory to meet the program requirements. That is consistent with how wetlands and other critical area reports are treated.

Chair Turner reiterated his concern that no strong foundation on which to construct the regulations has been determined. Ms. Helland agreed that not everything is known about the critical areas or shorelines on specific sites. In order to fully understand the particulars, which would constitute the baseline, the individual site property owners would bear the responsibility for determining the baseline at the time they want to do some development. At the policy level, that conversation has been held with the Council about whether or not everything should be mapped first, or if individual property owners should be required to take on the responsibility.

The level of mapping that would be needed would be very specific, very detailed, and very expensive. Many of the systems are dynamic so much of the mapping work would be accurate only for the point in time the mapping work was done. The Council concluded that the hurdles involved in the mapping work could not be overcome. In its place they established a process that gives applicants a path to follow in coming in to do development that might deviate from the standards.

Chair Turner asked if no net loss as a concept is supposed to be achieved cumulatively citywide or incrementally site by site as changes to properties are proposed. Ms. Helland answered that for the purposes of the code, the focus is on no net loss citywide. At the site-specific level where a property owner claims for one reason or another that the standards do not work for them, a more specific baseline analysis is required.

With regard to the technical feasibility analysis, Chair Turner asked how the Shoreline Master Program and the critical areas ordinance fit together. Ms. Helland said details identifying when one applies versus when the other applies is contained in 25.25E.020, the authority section. She clarified that the technical feasibility analysis is only applicable to those types of uses that are allowed to be located in the shoreline simply because their function requires them to be there. As a part of that, they must show they have no technically feasible alternative. One example would be a sewage pump station which by definition must be at the lowest point in the system, which is often a lake. The use chart would show the use as allowed subject to a technical showing that they cannot be located somewhere else. Section C does not apply to residential uses and that could be cleared stated to avoid confusion.

Commissioner Sheffels asked if the process for siting essential public facilities could take the place of the technical feasibility analysis. Ms. Helland said those facilities are subject to the footnote that requires them to do a technical feasibility study. There are several uses characterized as not being very desirable but which are acknowledged as necessary; the list includes transfer stations, jails, and landfills. The essential public facilities category serves as a catchall for uses not otherwise identified. Electrical infrastructure is a permitted use and as such is not an essential public facility, but it may very well need to go through the technical feasibility analysis in the shoreline area.

Commissioner Himebaugh agreed that adding language indicating that the section is not related to residential would be helpful.

With regard to section D, Commissioner Tebelius pointed out that the section covers more than just sequencing and as such may need a different title. Mr. Paine said the term was used because it comes up repeatedly in directions from the Department of Ecology, but he allowed that so long as the steps are there the name really does not matter. Ms. Helland suggested "Mitigation Requirements" and Commissioner Tebelius concurred with the proposal.

Mr. Paine explained that the process of mitigation sequencing is triggered when someone desires to vary from the standards. He pointed out, however, that the regulations themselves are part of the mitigation sequencing in that they have avoidance steps and a variety of prescriptive standards. Typically, mitigation sequencing refers to the steps by which the mitigation actions are prioritized and applied.

Answering a question asked by Commissioner Tebelius, Ms. Helland said the intent is to allow for some variation from the regulations without the process of going to the Department of Ecology for approval. An applicant seeking a variance or a conditional use will need to produce a mitigation plan. Throughout the code, however, certain things that do not rise to the level of a

variance are allowed in conjunction with a special shorelines report.

Commissioner Himebaugh said it appeared to him from reading paragraph D.2 that the trigger is impacts to shoreline ecological functions, which is overly broad. He said he would prefer to see the specific trigger point clarified.

Commissioner Tebelius said it was her understanding that where a shoreline property owner does absolutely nothing to change their property, the new rules will not touch them at all. However, if that same property owner becomes convinced that a curved bulkhead would benefit the shoreline, and they wanted to spend the money, the minute that person submits a permit application they will be subject to all manner of new requirements, including landscaping, that far exceeds the scope of the work outlined in the application. Instead of doing work to improve the shoreline, the property owner is more likely than not to do nothing because of the consequences. The regulations should include ways for property owners to do things that will environmentally help the lake without being penalized. Ms. Helland responded that the draft includes reduced levels of process for property owners who want to do something beneficial while complying with the code; that certainly is the intent of the shoreline special report. The city also worked at the legislative level on green shorelines legislation, but the legislation did not make its way through the process. Staff are hoping the shoreline special report process will be accepted by the Department of Ecology.

Ms. Helland clarified that the mitigation sequencing provisions would kick in only where a property owner is requesting a shoreline special report or is seeking a variance or conditional use. She agreed that the language of the section should make that plain.

Commissioner Tebelius asked what response should be made to the comment of Mr. Klinge regarding mitigation sequencing and the claim that there is insufficient information to identify the harm to the actual shoreline functions, and that without the clarity the mitigation plan requirements are flawed. Mr. Paine said the clarity is intended to flow from the site-specific special shoreline report. The city has a long history with the same approach tied to the critical areas ordinance. Generally speaking, there is enough information to make those judgments. Typically, property owners hire experts to do the work; the information is then submitted to the city for review and acceptance.

Chair Turner said in effect the process puts the property owner in the position of having to define their particular no net loss situation without having a starting point from which to work. Mr. Paine said the qualified professional would make that determination for the specific site, and they can rely on the original inventory report.

Ms. Helland allowed that city regulations trigger costs of different levels depending on site-specific characteristics. Homeowners almost always have to have a survey done if they are undertaking new development within a certain distance of their property line to make sure they are meeting the setbacks. There are requirements for sites that have critical areas to have them delineated. Where property owners have reasons for wanting to work outside the confines of the code, there is a roadmap to be followed, though it requires some additional expense.

Commissioner Tebelius suggested that somewhere the section should specify what harm is to be addressed. Ms. Helland said that gets back to calibration of the code. It simply will not be possible to articulate every impact associated with uses that will require conditional use or a variance. The code should be as specific as possible, however, with regard to residential in order to allow homeowners a safe harbor and allow them to do the bulk of what they will want to do, making the special report circumstances the exception rather than the rule.

Commissioner Himebaugh said part of the way the Commission can control when mitigation sequencing will and will not apply will be by defining which uses require conditional use and which do not.

There was agreement to rename section D Mitigation Requirements and Sequencing.

Commissioner Tebelius called attention to paragraph D.5.c.d and asked why five years had been chosen. Mr. Paine said five years is typically the minimum standard for such mitigation. The Corps of Engineers imposes a ten-year period for wetland fill permits. When the critical areas ordinance was drafted the conclusion reached was that ten years was too stiff, so five years was chosen, with an option to go to only three years provided certain performance standards are met. The word from Department of Ecology is that five years is insufficient and that it should be ten years. Commissioner Tebelius suggested the critical areas components do not apply and that five years is too long and should be reduced.

Mr. Paine commented that the monitoring is often done by the property owner. In some cases photographs can be taken from the same spot over a period of time and submitted to the city for review. Mitigation plans outline how to deal with failures.

Commissioner Himebaugh said during the discussions regarding shoreline restoration plans, the Commission asked about monitoring to prove effectiveness and the answer given by staff was that that would be too expensive. Mr. Paine said the monitoring that is the subject of paragraph D.5.d is focused on performance to meet the standard and serves as a certification that over time the mitigation installed to offset a harm is surviving.

Commissioner Tebelius said the critical issue is the fact that plants die on the lakeshore and the chances of plantings lasting more than one year are not very high. Lake water level and storms are contributing factors. As drafted, property owners would have to spend money on plants, watch them die, then spend more money on plants. She proposed reducing the monitoring requirement to only one year.

Commissioner Himebaugh said he could support that change. As drafted, the provision allows the city to withhold a certificate of occupancy until the mitigation is complete. The fact is that environmental mitigation can take a long time to come to fruition. Ms. Helland reminded the Commissioners that the mitigation sequencing occurs only when deviating from the standards, which is outside the assumption that no net loss has been achieved. Certificates of occupancy do not apply to single family homes, but they do apply to multifamily; temporary certificates of occupancy can be granted, however. Commissioner Himebaugh pointed out that as written the code would allow the city to revoke a certificate of occupancy, whether temporary or otherwise. Mr. Inghram said because there is a bonding provision involved, the course of action would be to pull the bond and have the city use the funds to replant.

Commissioner Himebaugh asked why the certificate of occupancy should be tied to the mitigation; he said he could see no correlation between allowing someone to occupy their building and monitoring their plantings. Ms. Helland pointed out that the mitigation and monitoring factors only apply when a property owner makes the voluntary choice to deviate from the standard in exchange for promising to provide mitigation to offset the harm. Commissioner Himebaugh suggested the bonding requirement should be sufficient to protect the city.

Commissioner Sheffels pointed out that the mitigation applies to more than just vegetative plantings; it extends to bringing in soil, gravel and other materials that are called for in a

mitigation plan. The city must have some means of recourse where citizens break the rules. The code is written to include flexibility in exchange for following a certain course; where that course is not followed, there should be consequences.

Mr. Paine stated that adherence to the standards assumes the no net loss threshold is met. Voluntary departure from the standards carries with it a promise to guarantee no net loss, which is done through a mitigation plan. The mitigation must be in place for some period of time to guarantee no net loss; without some form of binding guarantee, the special shoreline report approach will have no function. Commissioner Himebaugh said he agreed with all that but differed with staff relative to enforcement mechanisms and the monitoring period.

Commissioner Hamlin asked if staff could accept a one-year monitoring period in place of five years. Mr. Paine said a single year is not a sufficient amount of time to guarantee that the mitigation option is survivable. He said his experience has been that vegetative plantings are typically put in by a professional landscaper and as such are given the best chance of survival. However, a positive outcome cannot be guaranteed, especially if the homeowner neglects the plantings for some reason, thus the mitigation does not effectively occur. Ms. Helland added that owing to comments received from the Department of Ecology five years will likely be the minimum they will approve. She allowed that there is no specific time requirement in the WAC. Commissioner Hamlin said he would not support anything less than five years.

Motion to reduce the performance monitoring standard to no more than one year was made by Commissioner Tebelius. Second was by Commissioner Himebaugh.

Mr. Paine suggested that for single family projects, which typically are smaller, something less than five years might be workable. However, for larger non-residential projects, no net loss could not be guaranteed under a scenario involving less than five years. One option might be to set the standard at five years and include the discretion to reduce it to three years after three years provided there is good performance.

Commissioner Tebelius allowed that the suggestion would be a reasonable approach to take.

Commissioner Tebelius amended her motion to read monitoring of one year for residential projects and monitoring of five years for non-residential projects, provided that monitoring of non-residential projects can be reduced to three years after three years provided there is good performance. The motion carried 4-1, with Commissioner Sheffels voting against.

Commissioner Himebaugh said passage of the motion did not resolve his concern regarding the requirement for all work required in a mitigation plan to be completed prior to issuance of a certificate of occupancy. Mr. Inghram clarified that the work required is the actual planting of the vegetation required by the mitigation plan; mitigation is a different issue altogether. Commissioner Himebaugh said rewording paragraph D.5.c to make that clear would satisfy him. Staff concurred.

Commissioner Tebelius pointed out that a construction project could wrap up at a time of year when planting vegetation is not advisable. Mr. Paine said in those instances the property owner would simply need to bond for the improvements. The mitigation plan typically specifies when the plants need to go in. In the meantime, occupancy is allowed through a temporary occupancy certificate.

Commissioner Himebaugh referred back to paragraph D.3.c.i, off-site mitigation for private projects. He said as drafted off-site mitigation is allowed only through a special shorelines report

and suggested that the option should be available for private projects for any of three circumstances in which mitigation would be triggered: conditional use, variance, and the special shorelines report. Ms. Helland said early on in the update process the public made it clear they did not want to accommodate off-site mitigation; the feedback received was in favor of having mitigation occur onsite. The paragraph is intended to mean that where off-site mitigation is proposed as part of a conditional use, variance or shorelines special report, the shorelines special report must extend to the off-site location.

Mr. Inghram proposed that some meeting time could be saved if the Commissioners during their review of the documents were to forward to staff questions and concerns. Staff could then come to meetings with options to put on the table. He said the process would not negate the ability of the Commission to discuss each and every issue but could help move the process along at a faster pace.

Turning to paragraph D.5.h, Commissioner Tebelius asked what assurance devices are anticipated. Ms. Helland said an assurance device is a mechanism for ensuring that mitigation plans are carried out, including maintenance over time. Bonding is an assurance device and they are generally required to be in the amount of 150 percent of the installation cost. Assurance devices are released once the monitoring requirements are satisfied.

Commissioner Tebelius asked if paragraph D.5.g would apply to Meydenbauer Bay park. Ms. Helland said it would. In addition, the provision would apply to all city-owned parks on a shoreline and to all shoreline property owned by the city that is not currently development as a park.

Commissioner Himebaugh pointed out that according to paragraph D.5.g, the city can count prior park enhancement projects as mitigation for new projects. He said that allowance appears to be a special perk for the city. Ms. Helland said government projects are required to engage in mitigation. The paragraph speaks directly to crediting previous enhancements that do not offset any impacts. She said the staff are looking at a tracking mechanism that would allow private property owners to do the same in the context of vegetation. Mr. Paine noted that if the city were to do a restoration project that it later wanted to count as mitigation, it could no longer be counted as restoration, which would reduce the overall baseline for the city. Ms. Helland added that when the city contemplates master plans for its parks, the focus includes what they would like to see done down the road. As projects come online, elements of the long-range plans are added as money is available, all in line with playing a stewardship role with the public's money. To hold park development to the same standard as everyone else will cost the city more in the long run. Commissioner Himebaugh agreed it would cost more but pointed out that homeowners and multifamily developers have to pay those extra fees and it is unfair to let the city off.

Mr. Inghram said the issue is largely one of timing and could be resolved by including the phrase "in accordance with an adopted master plan" to paragraph D.5.g. If the paragraph were to be deleted in its entirety, the city would not be allowed to phase in master plans over time; all of the mitigation would have to be done at the same time the project causing the impact is brought online.

Mr. Paine said the Meydenbauer Bay park master plan is a good example. The plan appears to include a fairly substantial commitment to shoreline restoration as part of the master plan. On the other hand, over time changes are going to be made to the marina that will have to be mitigated in one way or another. It would be a shame if a portion of the restoration work done as part of the master plan could not be used as a credit against the marina development.

The Commissioners agreed to put the issue in the parking lot to allow staff time to consider how the paragraph could be reworded to better express the concept.

Answering a question asked by Commissioner Tebelius, Mr. Paine explained that D.5.h focuses solely on temporary impacts associated with construction. He said such areas are generally staging areas. Commissioner Tebelius said she would like to see language added to make it clear what the section applies to.

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

8. OTHER BUSINESS

Ms. Helland explained that when she took the FEMA amendments to the Council she restated for them the information that was included in the transmittal memo. She said if the memo was in fact inaccurate, it could be redrafted.

Commissioner Tebelius said she understood that the memo was not intentionally inaccurate but did not exactly convey the Commission's sentiments.

Mr. Inghram said it was his understanding that the focus was supposed to have been on the fact that Phantom Lake and Lake Sammamish essentially have the same level of control as the locks on Lake Washington and as such should not have designated flood plains, but the interpretation was that a new study should be done. Ms. Helland explained that the issue of flood plain control over Phantom Lake and Lake Sammamish was put to FEMA. Their response was not that the weirs operate the same as the locks but rather that a study would have to be done yielding scientific evidence that the flood control measures as they exist for the two lakes currently operates or in the future will operate the same as the locks in Lake Washington. Accordingly, the feedback from FEMA drove staff to advise the Council on how to achieve the objective described in the transmittal.

Mr. Inghram said October 12 had been selected as a preliminary date for the Commission's annual retreat.

9. PUBLIC COMMENT

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, congratulated the Commissioners and the staff for moving the conversation along during the study session.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, offered some questions for the Commission to consider later. She asked if the Commission would deal with the setback modification report when discussing the issue of setbacks. She asked for clarification as to how building height is measured in the city. With regard to off-site mitigation, she noted that if a private party engages in that practice they must record it against their property; she asked the Commission to review that issue. She said if Commissioners put questions to staff in preparation for a study session, the responses of staff should be included in the packets so the public can know what questions have been asked and answered. As the Commission continues its review, the comments made by Charley Klinge on behalf of the Meydenbauer Bay Neighborhood Association should be carefully considered; that organization is adamant that any mitigation for any action taken for Meydenbauer Bay park or the marina be in the park itself.

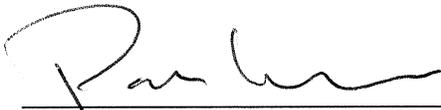
Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, suggested that the study indicated by FEMA for Phantom Lake and Lake Sammamish would have to be done by King County. Both FEMA and the Corps of Engineers uses the county's technical staff to do such studies. The cost of the study, however, would be borne by the city. The county likely would counter that they are considering a new design to address the long-term impacts.

10. NEXT PLANNING COMMISSION MEETING

A. September 14, 2011

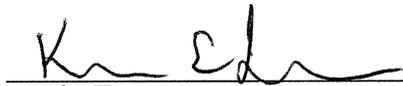
11. ADJOURN

Chair Turner adjourned the meeting at 10:21 p.m.



Paul Inghram
Staff to the Planning Commission

1/25/2012
Date



Kevin Turner
Chair of the Planning Commission

1/25/2012
Date

