

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

January 25, 2012
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Turner, Commissioners Carlson, Ferris, Hamlin, Laing, Sheffels

COMMISSIONERS ABSENT: Commissioner Tebelius

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland, Liz Stead, Michael Paine, David Pyle, Development Services Division

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:44 p.m. by Chair Turner who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Tebelius who was excused.

3. PUBLIC COMMENT

Mr. Bill Rahr, 16509 SE 18th Street, voiced concerns about flooding on Phantom Lake. Fifty years ago there were only a few days per year when water ran off of the I-90 Business Park into Phantom Lake, and that water exited through the greenbelt into Larson Lake. Things have changed, however, and the problem of how to get rid of the runoff that finds its way into the lake is very real. In 1992 a dike was constructed between the lake and the greenbelt to preserve agricultural activities, but the result has been an increase in the water table. Surface water is making its way into Phantom Lake at unprecedented rates, while at the same time the outflow is restricted. The result is an increase in the lake level and the loss of native growth on the shoreline.

Commissioner Sheffels asked Mr. Rahr if he agreed with the suggestion made previously by Brian Parks that the weir should be lowered. Mr. Rahr said the weir has been a perennial problem. The ditch was dug in 1897 and it took about four years. The ditch carried the outflow from Phantom Lake until the 1930s when a coffer dam was constructed at about where the weir is currently; at that time the creek ditch was cleaned out all the way down to Lake Sammamish, and the dam was removed, which flooded out a property downstream, the owner of which threatens to sue the city every time anything is done to increase the flow out of Phantom Lake. He said if he had control of the weir he would put a four by six in the bottom but not allow it to be any higher than that. The weir should not be removed completely.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, suggested that if the Commission continues to

discuss non-residential issues relating to the Shoreline Master Program update, it will be necessary to address the formal comments made by Meydenbauer Bay Neighborhood Association. It might have been easier to retain marina/civic for the park because of the special concerns. The way the Shoreline Master Program was organized owing to influence from the Department of Ecology, the master plan is violated by a process that will allow the city to go around it. The Meydenbauer Bay Yacht Club does not want to allow public access.

Mr. Jerry Laken, 4847 Lakehurst Lane, spoke representing the Meydenbauer Bay Yacht Club. He agreed with the notion of separating the non-residential issues from the residential issues. On May 11, 2011, the Club submitted a letter to the city summarizing its comments on the Shoreline Master Program. He said since that time the Club has been working closely with city planners toward creating a separate yacht club designation, which would be different from a commercial marina. The Club supported elimination of the critical buffer area, which was in the 2006 critical areas ordinance. The written comments include opinions on public access, accessory structures located in the shoreline district, parking, and aquatic weed control.

Mr. Daniel Himebaugh, 1944 Pacific Avenue, Tacoma, said he could not tell from the agenda memo exactly what is meant by addressing the non-residential portions of the Shoreline Master Program. He encouraged the Commission not to abandon the approach that was negotiated at the annual retreat, which was the idea of working through the document issue by issue. The October 20 staff memo outlines the consensus reached at the retreat.

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

Commissioner Hamlin said that along with Co-Chair Larrivee and staff he presented the City Council with an overview of the Eastgate/I-90 CAC plan on January 17. The Council indicated general support for the plan but raised ten specific questions. The Council asked about the proposed FAR of 2.0 for most of the area, which is significantly higher than what most of the corridor currently enjoys; the auto dealerships and how they fit into the long-term vision; funding for transportation projects; access to and from I-90; Bellevue College in general and the need to partner with them to bring about residential uses for college students; the issues of runoff into Phantom Lake; the public benefit to be gained by allowing density in the area to be increased; the transportation improvements and their phasing relative to development; existing concomitant agreements between developers and the city; and the need to increase the amount of open space and green space in the corridor to offset the additional density.

Commissioner Hamlin said the CAC is slated to meet again in February to review the Council's comments, and for the final time in March to finalize its recommendation and forward it to the Council.

Commissioner Carlson asked what type of housing Bellevue College is envisioning. Commissioner Hamlin said the idea is that as the college grows they will need to provide housing for students, and the form it would take likely would be similar to dormitories. The college's current plan sees residential growth on the north end of the campus, but the CAC's plan would allow for housing on the south end, either in place of or in addition to housing on the

north end. The college representative who served as a member of the CAC approved the south-end housing vision, particularly in that it could easily be tied to the transit hub.

Comprehensive Planning Manager Paul Inghram noted that Bellevue College has purchased a number of properties adjacent to its campus on the north side. Their officially adopted campus plan does not call for any housing at all, but the college has indicated an interest in including housing on the northern side the next time they update their plan. The CAC stressed how easy it would be to integrate housing with the adjacent neighborhood on the south side, but it remains to be seen the degree to which the CAC's vision will influence the college. As an entity of the state, land use regulations apply differently to Bellevue College.

7. STAFF REPORTS

Mr. Inghram allowed that there continues to be a lot of public interest in Phantom Lake and in the stormwater management issues that affect the lake. In addition to bringing the issues before the Planning Commission, the issues have been raised with the Eastgate/I-90 CAC as well as with the City Council. The Council asked the Environmental Services Commission and the Department of Utilities to look into the stormwater issues related to the lake. The Environmental Services Commission has a study session scheduled for February 9.

8. STUDY SESSION

A. Neighborhood Business Code Amendment

Mr. Inghram reminded the Commission that it held a public hearing on a potential code amendment in December 2011, and the hearing generated some very good comments. He said staff are continuing to talk with the community, the property owner, the broker who provided testimony at the hearing, as well as the Stodd's property, which is located across the street from the Newport Hills Shopping Center. The focus is on attempting to identify potential uses for the building, how big they might be, how they would use in the building in the interim, and what might happen in the long term. The uses identified as appropriate for the space will need to be maintained with the code structure.

Mr. Inghram said from the start the staff envisioned the process to have two parts involving small changes first to try to get the space occupied, followed by a more comprehensive review. The continuing discussions with the property owners and the neighborhood are also focusing on landscaping improvements, art installations, and park planning in the area.

Urban Design Planning Manager Liz Stead said additional information is needed before embarking on a clearly thought out code amendment.

Chair Turner asked if staff had had any contact with the property since the permit for Walmart was approved for Factoria. Mr. Inghram said the property owner was contacted following the Walmart announcements and they did not see the move as anything dramatic affecting their leasing. They indicated a grocery store may be a potential tenant for the space, something everyone would like and which would require no code amendments at all.

Commissioner Ferris agreed with the testimony of Eric Hansen who suggested that if there is uncertainty as to whether code changes and redevelopment will occur, tenants may be unwilling to sign long-term leases and property owners will be hesitant to make investments in their buildings. He questioned whether or not the two-part process would be wise. It would be better to make changes just once.

Commissioner Carlson called attention to page 94 of the packet and noted that the December 14 minutes raises an interesting issue, namely that after a lot of study and input from the community and the property owner a series of changes that only marginally would change the zoning for the area were tentatively proposed. The leasing agent who offered testimony at the public hearing blew the doors off the entire discussion by saying the proposed approach would make the city feel good but would not actually accomplish much good, and went on to say that the notion of being able to lease the grocery store space to four different tenants is ludicrous, and that leasing out the drugstore space to a 5000 square foot tenant and boarding up the rest of the space would make no sense at all. Mr. Inghram said staff sat down and talked extensively with the leasing agent, Jerry Forell. He clarified that the 5000-square-foot limit referenced by Mr. Forell is in fact the limit set by the current code, and staff agrees with that point. Clearly Mr. Forell would like the ability to lease the space to anyone who comes along. Any interim action to address the code issues would have to be done within the confines of the Neighborhood Business zone. Going beyond the zoning limits is possible but would require actually changing the zoning or creating a whole new zone. The intent of the two-phase approach was to first effect a quick change that would make it possible for a ready-and-waiting tenant to fill the empty space.

Mr. Inghram said the intention is for staff to continue talking with the community and the property owners and to explore all options.

Commissioner Laing said he has seen similar neighborhood commercial issues in communities throughout the Puget Sound region. In most cases the issue has been the size restrictions. He said one question the Commission should seek to answer is what would happen if all such size restrictions were simply removed. There still is a fitness chain that has an interest in the site, though it is not known if the community would welcome such a use; the fact is there are uses other than grocery and daycare that might want to look at the site. Mr. Inghram said those are certainly a good questions for the community to address. It would be appropriate to go back to the neighborhood and talk to them about the types of uses the market might deliver, and what size limits, if any, they would like to see.

Commissioner Laing pointed out that most of the Neighborhood Business zone sites are developed and occupied to some degree. If the anticipation is that all of a sudden there would be a bunch of speculative development in which the various sites would be scraped clean and replaced with the equivalent of a Walmart super store on every site, the community may object. But there probably are tools out there to avoid that.

Land Use Director Carol Helland said the modest change proposed in the amendment was aimed at alignment with the vision of the community. Neighborhood Business has a very specific role in Bellevue, though admittedly the role may need some updating. The two-part approach was intended to provide for some interim flexibility before revisiting the whole zone. Historically, residents have felt protected by having size limits in place. What is needed is a broader conversation about what drives the economics and what uses might work and be able to survive. The reality is that ultimately housing will need to be introduced in order to create the critical mass necessary. The zone needs to be rethought, and a mere 10,000-square-foot limit will not change that.

Commissioner Carlson noted that the public testifying about the Northtowne Shopping Center voiced concerns about any code changes that would affect that site. He asked if a client wanting 20,000 square feet were to be found, and the neighborhood were to be amendable to allowing the use, could be granted a waiver from the code restrictions. Ms. Helland said there are tools that would allow for that, including interim development regulations. The Council does not have the

ability to simply waive a code requirement. Unfortunately, under state law public hearings must be held at regular intervals to keep the interim zoning in place. Concomitant agreements have been used in the past to allow for an upzone while clamping it back down. The legal department has been engaged to look for a way to get there without amending the code.

B. Shoreline Master Program Update

The Commissioners and staff reviewed the process for reviewing and revising the draft document. Ms. Helland noted that the table of contents included on page 7 of the packet materials had been highlighted to indicate which sections apply residential properties.

Commissioner Sheffels pointed out that much of what is in the document is justification for the city's actions. It will be sent to the Department of Ecology but it will not all end up in the Land Use Code. She said it would be helpful for staff to say why it is even necessary to include maps, background data, and information that will not ultimately be included in the Land Use Code. Ms. Helland said paragraph B in section 20.25E.010 lists all of the elements of the Shoreline Master Program; those elements are defined by the Department of Ecology, and there is content that must be provided to them, including the policies that will ultimately reside in the Comprehensive Plan. The overlay district, part 20.25E, represents the bulk of the shoreline regulation and is the part between the authority section and the maps. She reminded the Commission that early in the update process the Commission was given the choice of taking the minimalist approach, with references out to the appropriate WAC citations for procedures and provisions, or to include as much as possible to create a one-stop shop. The Commission chose the latter approach which, naturally, increased the overall number of pages substantially.

Ms. Helland explained the process of administering the code. She said land use and other staff are readily available to help anyone who comes to the counter wanting to do a project. The counter staff have at their fingertips the ability to print off a map of the subject property that shows the zoning designation and all manner of additional information. Those maps do not have to be in the document in order to assist the staff; they were included for reference purposes. Having everything in one location helps to streamline the permitting process.

Chair Turner suggested the Commission should choose to follow the feasible approach that will get the issue to the finish line as quickly as possible. He allowed that over the past few years there has been a lot of feedback about the document, the merits of the science, and the potential objectives, but the Commission has not made the progress it should have made.

Ms. Helland told Chair Turner the staff had heard him more than once express his concerns over a lack of feedback or supporting documentation. She said it was not the intention of staff to provide the information iteratively and allowed that there may have been a disconnect relative to expectations in that regard. The intention of staff has been to receive all of the feedback on the issue-based review, compile it, and at that point in time note where there might be inconsistencies or conflicts in the direction given by the Commission, and then to engage in a holistic rewriting exercise. Iterative re-writing is very difficult for staff and in the end is more time consuming. She noted that her department had lost two planners in the last two weeks to budget reductions and was facing serious pressures to retain primary focus on permit services rather than code drafting.

Commissioner Carlson asked what members of the community are being shown when they ask for information about the draft Shoreline Master Program, the streamlined version or the full draft version. Ms. Helland said every attempt is made to answer questions from the public regarding the sections of the document of most interest to them. Most are focused on the

residential provisions, the vast majority of which are contained in section 20.25.065, which is 33 pages long. The exception is that the shoreline stabilization provisions are housed in a different section. Commissioner Carlson asked if it would have been better from the start to have just presented the streamlined document and to include the balance in an attachment. Ms. Helland said the feedback received loud and clear from the start indicated a general distrust in government, a suspicion about what the staff were doing, a level of misunderstanding with regard to how the code would be applied, and that the discretion of the staff was too broad. That has driven a different result than an open conversation based on trust. Rightly or wrongly, staff took the approach of providing everything, not wanting anyone to jump up with the argument that the Commission and the public was not being given the whole story.

Commissioner Laing thanked the staff for the time they put in bringing him up to speed. He noted that even before his appointment to the Commission he was reading the materials, tracking the process, and attending the public hearings. He held up a printout of the Shoreline Management Act as it pertains to Shoreline Master Programs, as well as a printout of the WAC guidelines and provisions pertinent to Shoreline Master Program updates, which he noted provides detail with regard to what the Department of Ecology expects to see in each plan. The Washington state supreme court held in one shoreline case that administrative rules may not amend or change enactments of the legislature. In other words, any provisions in any Shoreline Master Program update that contain provisions that can be shown to be inconsistent with the Shoreline Management Act simply will not apply. Over the past 40 years since the Shoreline Management Act was first adopted, the Department of Ecology has taken the time to create what amounts to a template for all jurisdictions to use in creating individual Shoreline Master Programs. They have even gone so far as to write narratives about the different environments. Of course, each jurisdiction must also show that their shoreline designations and uses are consistent with their comprehensive plans. The draft is not far off in the sense of what the Department of Ecology wants to see; their checklist has been followed. There is also a truncated checklist in the actual Shoreline Management Act which is largely consistent with the Department of Ecology checklist. When it comes to regulation language, the Department of Ecology has written much of it as well, including the types of things that are exempt from a shoreline substantial development permit, and the criteria for variances and conditional uses.

Continuing, Commissioner Laing said with all of that in mind, the guiding principle in going forward with drafting a document for Bellevue should be that to the extent there is a departure from what the Department of Ecology or the state legislature has set forth, there must be supporting documentation. He suggested that having everything in one place is actually a good idea. He agreed that much of the bulk of the draft document will in fact have no regulatory effect and is included only because the Department of Ecology wants it. It should be made clear to the public that they do not even need to look at those sections. Ultimately, it is unlikely the final document will not be any thinner than the WAC guidelines, which for better or worse became quite thick in 2006 and 2007.

Ms. Helland responded by saying staff has annotated the draft and has tried to make it relatively easy for the Commission to see where language has been lifted directly from the WAC or RCW, and where a Bellevue-specific approach has been taken based on feedback received from the public or the Commission. The annotations will go away in the final draft, though an annotated copy could easily be retained as a legislative document to be used by land use planners.

Commissioner Laing said many jurisdictions will actually cite the appropriate state legislation in their regulations so the public can make the connection.

Ms. Helland reminded the Commissioners that in knitting code together one of the biggest

challenges is making it read like the Land Use Code. She reviewed the paragraphs under 20.25E.010, beginning with the authority section which she explained it provides the basis for the document. She noted that the shoreline master program elements are those required by the state. The scope is also a general provision with respect to provisions normally found in the Land Use Code and is specific in explaining where the code applies and its relation to other policies. She pointed out that the submittal checklist required by the Department of Ecology is 21 pages long; the city must show where each of the specifics is covered in the Shoreline Master Program. The specific shoreline environment designations are not included in the current Shoreline Master Program; in their place is an adopted map indicating that all shorelines are designated as shorelines.

Ms. Helland pointed out that the state requires each environment designation to have a purpose statement, classification criteria and management policies. The individual designations were drafted using the state template. She highlighted the fact that shoreline residential, shoreline residential – canal, and recreational boating are all Bellevue-specific constructs aimed at dealing with unique characteristics. Once the residential policies are completed, it may be necessary to revisit the three Bellevue-specific environments to make sure they are aligned.

Commissioner Laing called attention to paragraph G in the authority section and highlighted the statement made in paragraph G that says “This document shall not be considered to contain regulations but shall be used as a guideline.” He suggested that having a similar statement for each section of the document that does not contain regulations would be beneficial for the consumers. Ms. Helland concurred.

There were no additional comments with regard to 20.25E.010, authority.

Commissioner Ferris commented that since the public hearing the Commission has talked about sections 20.25E.020 and 20.25E.040, though the draft does not reflect those comments. Ms. Helland said the comments and suggestions will be incorporated into the revised draft.

Ms. Helland pointed out that the uses section, 20.25E.020 address both residential and non-residential issues. She said it is the same type of use chart housed in other parts of the code. Single family residential is allowed in all of the residential land use districts, so the residential use charts are less relevant to property owners. For the sake of consistency, however, the residential use charts are included in the section. Most consumers will be interested in the general use charts to see what activities are allowed and not allowed.

There was agreement to continue working through the non-residential issues and to return to review the use charts at a later time.

Ms. Helland explained that 20.25E.040, which addresses nonconforming shoreline conditions, is exclusively non-residential. She explained that the WAC specifically states that where jurisdictions do not adopt nonconforming use provisions, the nonconforming use provisions of state law will apply. The Commission gave direction to be consistent with the approach taken citywide relative to the nonconforming use provisions, including the approach taken with the Bel-Red overlay. The community also wanted better direction relative to the documentation needed to show that uses were legally established, so that information is included. There is also a specific section applicable to Bellfield that includes a reconstruction allowance for reconfiguring the site in a less impactful way.

Chair Turner asked if the section is consistent with state law regarding nonconforming uses on the shorelines, SB-5451. Ms. Helland allowed that it is, as is the residential section. The bill

comes close to legitimizing the footprint exception that was written into the city's code language.

Commissioner Laing said the provision was adopted in 2011 and can be found in WAC 90.58.620. Ms. Helland clarified that even under the bill, uses must first be shown to have been legally established.

Ms. Helland reminded the Commissioners that a page-by-page analysis of section 20.25E.050 was previously completed by the Commission. The section contains a blend of residential and non-residential provisions. The elements will be revised as necessary to align with the Commission's direction relative to the residential provisions once they are in hand.

Ms. Helland noted that the general requirements of 20.25E.060 also apply to residential and non-residential alike. The provisions apply to all shoreline development and uses, and the Commission reviewed them and provided direction in the last quarter of 2011.

The residential shoreline regulations are contained in 20.25E.065 and is the section the Commission previously began working through with the issue-based review.

Commissioner Ferris commented that the direction given by the Commission to the staff was to put together a matrix showing how other jurisdictions have chosen to address specific issues, both approved and submitted for review by the Department of Ecology. Commissioner Carlson suggested it might be helpful to include in the matrix provisions from Bellevue's original Shoreline Master Program. Ms. Helland said the document is woefully inadequate, but including the dimensional requirements would be educational.

Ms. Helland told the Commission that section 20.25E.070 contains specific use regulations. She said the content is required. Because the utilities and transportation departments are regulated under the section, their feedback was sought. They indicated a preference for not laying out stringently what the outcomes will be; they were less fearful of discretion and more fearful of inflexibility that specificity creates. She said if so directed, staff would look to removing some of the specificity in the residential sections.

Commissioner Ferris pointed out that the draft was written with specificity because the Commission had heard from residential stakeholders that they wanted to know exactly what would be allowed and what would not be allowed. The Commission discussed going so far as to have plug and play options from which to choose, though the drawings for the most part did not end up in the draft. Ms. Helland said the so-called safe harbor approach is used in the critical areas code; it gives both a safe harbor approach and the ability to depart from it where there are unique circumstances. She said the intention of staff is to include the drawings in the code.

Commissioner Laing asked how the provisions of paragraph E relative to new and expanded marinas, yacht clubs and community clubs response to the feedback from those types of stakeholders. Ms. Helland said most of the provisions contained in the section were included as an attempt to provide flexibility to the marinas and yacht clubs and to separate them out from public parks and public marinas. She said staff has been working with the Meydenbauer Bay Yacht Club on parking and accessory buildings. The issue relative to public access will be more difficult to address given that the state requires public access.

Senior Planner David Pyle pointed out that there are different levels of public access, and various ways to achieve it. The director has the authority to deviate from the bar set in the code. For one thing, view access can be provided in lieu of physical access. The policies SH-43 to SH-46 address the public access issue.

Commissioner Laing commented that RCW 90.58.020 gives preference to uses in a specific order. Of the seven preferences, the fifth calls for increasing public access to publicly owned areas of the shoreline. Subsection 100 uses similar language relative to public access to publicly owned areas. The concept of providing public access via privately owned properties has been the source of a lot of work for land use attorneys, but the state law does not require it. He added that it is fairly common as a form of mitigation to allow for such things as a public viewing area.

Ms. Helland noted that the Commission previously discussed the public access issue and provided staff with direction to redline some of the language in the provisions. In the context of subdivisions over a certain size threshold, state law absolutely requires public access. No Shoreline Master Program from any jurisdiction has yet been adopted without provisions that require public access associated with subdivisions consisting of ten or more dwelling units. The interesting thing is that in Bellevue there is no undeveloped land large enough to support a subdivision of ten or more dwelling units; the only two potential properties are Vasa Park on Lake Sammamish and the Sisters of St. Joseph Peace on Lake Washington.

Mr. Pyle commented that policy SH-52 addresses the use of herbicide for aquatic vegetation removal. The language allows for the use of Department of Ecology-approved herbicides in the absence of an effective mechanical means of removal. The code section that relates to the removal of aquatic weeds, 20.25E.060.K, could be improved. There are, however, complications involved where wetlands are involved.

Regarding the marina elements, Mr. Pyle said staff has worked very closely with the Meydenbauer Bay Yacht Club, with the parks department because they have land holdings on Meydenbauer Bay, with the Newport Yacht Basin Association, the Newport Shores Community Club, and the Seattle Boat ownership. The focus has been on allowing flexibility with a certain level of certainty. Should someone want to completely rebuild their facility, a whole set of new rules will apply, but every attempt has been made to draft rules that will allow for making minor improvements. The current code has a great deal of inflexibility. The draft reflects many of the suggestions from marina owners and operators, but not those that would not meet the bar of no net loss.

Commissioner Carlson asked Ms. Helland to define the parameters of aquaculture. Ms. Helland noted that there is no definition in the section or in the Land Use Code and agreed one should be added. Commissioner Hamlin pointed out that WAC 220-76-015 has a definition for what is termed an aquatic farm; the definition says the term refers to any facility or tract of land used for the private, commercial culture of aquatic products.

Commissioner Sheffels noted that she had previously asked to have the section written so as to not allow aquaculture but was told that could not be done because the tribes want it allowed.

Commissioner Laing asked how the recreational regulations that apply to public property compare to the regulations that apply to private property. Mr. Pyle said everything is driven by use. If the city wanted to develop a marina, it would have to first be in compliance of the Meydenbauer Bay Park master plan. Second, the requirements under the recreation section of 070 would have to be met, and third all requirements specific to marinas would have to be met. For each use allowed in a park there are different requirements.

Environmental Planning Manager Michael Paine said there is not much difference in the way the regulations are applied with respect to building public marinas and private marinas. The use charts are the big difference, as are the requirements of a park master plan.

Commissioner Ferris asked which would govern if the regulations in the code are more restrictive than the regulations in the master plan. Ms. Helland said the most restrictive regulations, whether in the code or the master plan, would govern.

Ms. Helland said the primary difference in how the regulations apply to public or private properties is in the process to be followed. The process is contained in the use charts.

Commissioner Laing referred to 20.25E.070.G and noted that there are provisions in the state regulations that talk about regional light rail alignments, bridges, stations and associated structures to be determined. He asked if the city is looking to deviate from the state regulations in any way. Ms. Helland explained that under the terms of the Memorandum of Understanding that was adopted by the City Council a code package specific to light rail will be developed. In that regard, the Department of Ecology and Sound Transit have agreed to collaborate, and there may be some deviations that result. Any code amendments necessary as a result of the light rail alignment approved by Sound Transit will be handled directly by the City Council and will not be on the Commission's plate. The Council's direction will then need to be reinserted in paragraph G.

Ms. Helland said section 20.25E.080 could potentially affect residential property owners and as such would be reviewed later. She noted that the balance of the provisions included the process provisions, permits, and administrative enforcement. Currently those provisions are integrated into the Land Use Code and are somewhat hard to follow in that they are add-ons. Shoreline-specific processes have been integrated with the non-shoreline land use processes and added to the section. The intent was to add clarity, make it easier to administer, and simplify the process. The section was difficult to draft in that it was necessary to integrate how the city's Land Use Code works, how the Local Project Review Act works, and the layers required by the Shoreline Management Act.

Commissioner Carlson asked if any of the provisions of the section depart from the status quo. Ms. Helland said only insofar as the draft makes things simpler. The process provisions materials were submitted to the Department of Ecology for approval. The technique will keep the Department of Ecology narrowly focused on the provisions of the code over which they have authority. The Department of Ecology has final decision authority regarding certain types of permits, including conditional use permits, thus any appeal to one of their decisions would be before the Shoreline Hearings Board.

Commissioner Laing said he saw nothing about application vesting in the procedures section. Ms. Helland said that could be found in the administration section of the Land Use Code. In the draft, vesting provisions are included in the administration/enforcement section.

Commissioner Laing said the courts have held that local governments cannot use their critical areas ordinances to regulate the shorelines because of the joint jurisdiction with the Department of Ecology. The legislature concluded that jurisdictions can keep their critical areas ordinances in place until their Shoreline Master Program updates are approved. He asked if about simply referencing the critical areas ordinance in the procedures section. Ms. Helland said changes were made to the critical areas ordinance that are applicable in the shorelines. Once the Shoreline Master Program update is adopted, staff will begin the work of drafting the consistency regulations. At that time, all shoreline references in the critical areas ordinance will be deleted. Critical areas within the shoreline jurisdiction will continue to be referenced out in the final document. By referencing the critical areas ordinance in the Shoreline Master Program, it becomes part of the Shoreline Master Program.

Commissioner Laing called attention to subsection C.3, the general provisions applicable to all shoreline project decisions, and noted that the last sentence of the submittal requirements indicates that the director may require additional materials such as maps or studies when the director determines such material is needed to adequately assess a proposed project. He voiced concern about the phrasing in that it could be used to call for materials not included on the original checklist. Ms. Helland said the sentence in question is meant to capture those taking a site-specific approach that does not rely on the general regulations; in such cases additional information is invariably required. She noted that in the Local Project Review Act there is language to the effect that determining an application to be complete does prohibit the director from requesting additional information; she agreed similar language could be added to the subsection in question. Commissioner Laing concurred.

Commissioner Ferris suggested the document could benefit from having a definitions section.

With regard to the restoration plan, Ms. Helland noted that under direction previously given by the Commission language was added to the section making it clear that restoration plans are not regulatory in nature. The same type of language could be added to the other applicable sections.

Commissioner Sheffels commented that early on in the update process there was consternation about the maps and the inventory characterization not being exactly right. The fact that the inventory report indicates more shoreline stabilization than there actually is works as an advantage to the property owners from a no net loss standpoint. She proposed the section should be approved as ready to pass on to the Department of Ecology.

Commissioner Ferris agreed but noted that some of the public are quite emotional about the topic. The only other solution would be to re-inventory the shoreline.

Chair Turner said the public is in fact right in their views regarding the inadequacy of the shoreline inventory. The question is what should be done about it. Ms. Helland said it would be helpful for the staff to receive direction from the Commission on that point. She reminded the Commission, however, that the staff had been directed by the City Council to use the information it had available, which was survey-based information about hardening in and near the ordinary high water mark that essentially breaks the migration of upland materials into the lakes. The inventory was never intended to show the bulkheads at the water, nor was it used for that purpose. The advantage to the shoreline property owners, however, is the resulting baseline which asserts that a very high percentage of Bellevue's shoreline is urbanized. A re-survey likely would result in a lowering of the baseline to a more pristine condition.

Chair Turner asked if the inventory information will be acceptable to the Department of Ecology for their purposes. Ms. Helland said that certainly is the hope of staff, but given that the issue has been discussed to the degree it has, the Department of Ecology has a flashlight on it and they are starting to ask about it. Mr. Paine said the argument is being made that the inventory was intended only to show interruptions in the processes that normally create habitat, particularly for threatened Puget Sound chinook. It was done at the time the fish were listed and had nothing to do with the Shoreline Management Act. The survey was accurate to a couple of tenths of a foot and is the best information available. Continuing to debate the issue will result in the conclusion that the city has overstated the level of development along the shoreline. Ms. Helland added that to go in a different direction would require making a proposal to the Council for the extra work.

Asked to sum up his understanding of the progress made during the discussion, Mr. Inghram said

the residential regulations will come back with a matrix analysis of different issues. The authority sections of non-regulatory items will have language added making it explicitly clear about their applicability. The use charts still need to be reviewed, particularly after the residential regulations are discussed. The comments made in the past have been noted and will be incorporated future iterations of the document. A definitions section will be included and made easy to find. Two key residential issues previously identified by the Commission as yet to be discussed are docks and bulkheads; the list of other issues associated with residential includes nonconformities, public access, lake levels and mitigation sequencing.

Commissioner Ferris suggested that once the document is updated, the Commission should go back and look at how it relates to Phantom Lake, and possibly include in the transmittal memo to the Council suggestions for treating Phantom Lake differently.

Commissioner Sheffels noted that a memorandum from by Chair Turner and Commissioners Carlson and Tebelius and Councilmember Wallace had been included in the Commission desk packet. She pointed out that the two-and-a-half-page document makes substantial requests of the staff, all without the concurrence of the full Commission. The memo was submitted to the staff without the full knowledge of all Commissioners, which is anything but transparent.

Commissioner Carlson clarified that in fact the original email was from Chair Turner to him, Commissioner Tebelius, Councilmember Wallace and the staff, and that it outlined a number of key issues.

Commissioner Sheffels questioned why the Chair had not sent the email to all of the Commissioners. Chair Turner said the issues highlighted in the memo were some he had sent to Mr. Inghram, and a few others were on the email thread. No quorum of the Commission was involved. He said he was sure that others have conversations that may not involve a quorum. He agreed it would be good for the Commission to discuss the contents of the email and gain some context. Commissioner Sheffels asked why the issues were not raised in a Commission meeting. Chair Turner responded by saying that in fact he has brought up the issues in a Commission meeting; unfortunately, many of the issues have not been addressed, and he said he was hoping to see them addressed. Commissioner Sheffels suggested the issues may not have been addressed because a majority of Commissioners did not want them addressed. The full Commission should have been asked to give direction to the staff.

Chair Turner said it was not his intent to drag things out but rather to close the issues out and move forward.

Mr. Inghram said in no instance should Commissioners try to send emails to all other Commissioners; that would be a violation of the Open Public Meetings Act. If a Commissioner has a request of staff it is perfectly acceptable to send it to staff, though it would be better not to copy it others. Direction to the staff should come from the whole Commission, and to that end the email was included in the Commission packet for all Commissioners to review and comment on. Staff does not act on requests for research based on individual Commissioner requests. Communications with staff are subsequently provided to the full Commission and made available to the public to maintain a transparent process.

Ms. Helland said the importance of the Open Public Meetings Act cannot be overstated in that not adhering to it can create significant potential liability for the city. Commissioners should get in the habit of sending information directly to Mr. Inghram and letting him distribute it to the full Commission, in the process making it available to the public. Discussion of issues needs to occur openly.

****BREAK****

Commissioner Carlson did not return to the meeting following the break.

Following the break, the Commission continued its discussion of the issues contained in the email to Mr. Inghram from Chair Turner.

Mr. Inghram noted that the email addressed the need to provide assurance to the public. He said it is certainly understandable that the public could get the idea that things are not moving forward, that staff and the Commission have not heard their concerns, given that the Commission is continuing to work from the same draft. They may continue to hold that belief until a new draft is written. The point could be stressed at all Commission meetings, and where feasible in other ways.

Ms. Helland offered to post to the website the Commission's running direction matrix and keep it updated.

Chair Turner said the fact that the Commission has reached a conclusion with regard to the shoreline setback is a good indicator of progress made and listening to the public.

Commissioner Sheffels pointed out that while the Commission has given direction to staff regarding the setbacks, no final decision has been made and will not be until the document is finalized. In the end, the minority opinion should be carried forward to the Council in the transmittal memo.

Mr. Inghram said it appeared to him that the broad idea behind the three items in the email related to science is that there are a number of additional issues yet to be reviewed that butt up against different science aspects, including docks and bulkheads. As the items are discussed, the Commission can determine if additional review is warranted and whether or not there should be a request made to the Council regarding the need for additional studies.

Chair Turner commented that in considering no net loss of ecological function, it should be made clear from what point in time the determination is to be made. Ms. Helland said the baseline is predicated on the year the regulation is passed. Commissioner Ferris added that the shoreline inventory establishes the contribution of each category of ecological function. Mr. Paine further added that at the site scale the baseline is determined at the time a permit is filed; for the Shoreline Master Program itself, the inventory is the baseline. The next time the Shoreline Master Program is updated, the inventory will be updated again.

Commissioner Hamlin said he personally was done with discussing the science. Where gaps are identified in reviewing the residential regulations, they should be explored. The fact is the Commission has spent a great deal of time on the science topic and found no magic bullet.

Commissioner Laing said he recently attended a continuing legal education class in which a representative from the Department of Ecology made the point that in talking about no net loss it is necessary to look at the before-snapshot, which is prior to a permit application, and the after-snapshot, which is determined based on the planned action. It is all focused on individual properties. Ms. Helland stated that all of the materials produced by the state on the topic were previously made available to the Commissioners. She said she would be happy to post the links to the website.

Commissioner Laing said the only thing he has a concern about is the repeated reference to the 2006 critical areas ordinance and the apparent thinking that approving setbacks and no-touch zones that match those in the critical areas ordinance, the city can assume the no net loss standard has been met. The fact is the vast majority of the Bellevue shorelines were adopted far in advance of adoption of the 2006 critical areas ordinance; only a small amount of shoreline development has occurred since. In talking about no net loss, it is not possible to compare the potential ecological loss of changing regulations; the focus must be on comparing what exists to what the change is going to be. Ms. Helland said there are two aspect, including a monitoring aspect attached to the regulatory structure which carries with it a no net loss expectation resulting from the regulations. The public has been clear in calling for monitoring to make sure the regulations will achieve their goal. Commissioner Laing commented that in a physical sense, regulations do not change anything unless someone files for a permit. In that sense, the city does not need to justify to the Department of Ecology or anyone else the no net loss concept from a regulatory change perspective. For a shoreline property developed in 1990 with a house, lawn and landscaping, and a concrete bulkhead along its entire frontage, adoption of the 2006 critical areas ordinance made no difference whatsoever, particularly if the property owner never sought a permit to do anything additional with the property following adoption of the critical areas ordinance. Once the critical areas ordinance goes away and new regulations are put in place, the property would be in absolutely no different position from the standpoint of a no net loss analysis than if the critical areas ordinance had never been adopted in the first place.

Ms. Helland responded by saying that for the purposes of the public and how the regulations apply to their properties, there is a tangential and equally important consideration, which is that the Council directed the Commission to use the materials from critical areas. If those materials are not used, the city will face a SEPA problem because an Environmental Impact Statement was done on the critical areas ordinance. If the city substantially changes its approach, it will be necessary to inform the Council at the end of the process of the possible need to supplement the Environmental Impact Statement. The Commission is free to make that proposal to the Council, but the proposal will require the Council to authorize funding for the supplemental work.

Motion to extend the meeting to 10:30 p.m. was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

Mr. Inghram noted that the email raised issues regarding Phantom Lake and the ordinary high water mark. Some of those issues reach beyond the Commission's traditional regulatory authority. Mr. Inghram assured the Commission that the issues will be captured and communicated to the Council. The Council has asked the Environmental Services Commission to look into the Phantom Lake stormwater issues, but nonetheless the issue will be highlighted for the Council in the transmittal memo.

Answering a question asked by Chair Turner regarding the need for clear objectives for the Shoreline Master Program, Ms. Helland noted that the Commission had spent quite a bit of time crafting its own objectives, in addition to those from the Council, which were incorporated into the policies. The Shoreline Management Act lists some very specific objectives as well. Chair Turner suggested the latter are more like goals and allowed that there are some definitional issues involved.

Mr. Inghram commented that the Shoreline Master Program deals with a number of regulatory aspects as opposed to serving primarily as a lake restoration plan. There are details in the draft that do address the topic of restoration, but it is not the only document upon which the city relies to address lake issues. The WRIA-8 program, for instance, has a number of specific objectives for how to restore the salmon population. The idea that the Council should consider through the

restoration plan and other means ways of addressing the ecological objectives could be something the Commission will want to highlight in the transmittal memo.

Commissioner Laing suggested the draft needs to be firmly grounded on section 020 of the Shoreline Management Act. The section includes, among other things, the statement that alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the Department of Ecology. That sentence makes it clear that the Department of Ecology is required to take into consideration the fact that Bellevue's shorelines are highly urbanized environments.

Chair Turner asked what the current position was regarding Phantom Lake. Ms. Helland said one of the objectives identified early on by the Commission was that a one-size-fits-all approach with regard to regulations will not work. The conclusion reached was that the regulations should be unique in addressing unique circumstances. Phantom Lake is unique in that it is essentially a wetland with standing water. Under the critical areas ordinance the shoreline properties are subject to a 110-foot setback from the edge of the wetland. In almost all cases, the critical areas setback is more significant than any of the shoreline setbacks considered by the Commission. Instead of layering on regulations, the lake was called what it is, a lacustrine wetland, and will be regulated as such for shoreline purposes. However, it is still necessary to go through a shoreline process in that it would take a change in state law to physically remove Phantom Lake from the shoreline jurisdiction. Special dock requirements will apply, however, because it is an open-water wetland used by non-motorized vessels.

Mr. Inghram agreed it would be helpful to include that information on the website.

Chair Turner asked if the Commission could be supplied with the existing Shoreline Master Program, noting that it was his understanding that the update process is intended only to make adjustments to it. Ms. Helland explained that part 20.25E of the pre-critical areas Shoreline Master Program was included in the Commission packet. She stressed, however, that it is the previous Shoreline Master Program and not the current one. She said the full document is very thick in that it includes the submittal over the course of years of use charts resulting from its integration into the Land Use Code. The full document would not be overly useful to the Commission.

Mr. Inghram said the intention of the staff was to include the old regulatory approach in the matrices. Ms. Helland said her staff would supply the matrices section by section to Mr. Inghram as they are completed.

11. PUBLIC COMMENT

Mr. Daniel Himebaugh, 1944 Pacific Avenue, Tacoma, said the framework under which the Commission is working to produce the Shoreline Master Program was very well laid out by Commissioner Laing. While the WAC provides the foundation, and the checklist being used by the city is based on the WAC, the WAC guidelines are at times not always clear, which means jurisdictions do have flexibility for acting within the guidelines. Accordingly, the Department of Ecology essentially considers local jurisdictions to be creating state law, thus the plan from each jurisdiction differs. That is likely also the reason the Department of Ecology looks at the cumulative impact analysis in deciding which plans to approve and which ones not to approve. With regard to public access, he noted that there are specific guidelines in the WAC that refer to the specific types of development which are required to provide public access, but the WAC also says the public access provisions must be subject to property rights concerns and indeed to constitutional law concerns.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, said he had no intent to delay the process of updating the Shoreline Master Program. He noted that during the meeting staff noted that public access can be satisfied by providing visually and suggested that kind of feedback will move the matter forward. He said he was not willing to support delaying until the very end feedback from the staff. It would better for everyone to know up front what is likely to end up in the final document. With regard to the shoreline inventory that determined the degree to which the shorelines are hardened, the Council was not listening and concluded that more of the shoreline is armored than is really the case; in many cases what has been shown as hardened areas are only flower beds that keep things from flowing into the lake. No net loss is a double-edged sword and remains a squishy, nebulous thing that is going to go into the cumulative impacts analysis relatively undefined.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, asked Mr. Inghram to email to each Commissioner the Meydenbauer Bay Neighborhood Association memo. She said there remain some issues in the Shoreline Master Program that are not clear. There is a footnote that implies that public facilities that are not identified in the Council-adopted master plan may otherwise be approved so long as a shoreline conditional use process is followed; that is unacceptable for Meydenbauer Bay Park. It also appears that the city and marina uses a shoreline substantial development permit. It is imperative that the shoreline conditional use permit process be required for Meydenbauer Bay Park. The Shoreline Master Program needs to reference the implementation principles in addition to the master plan in order to give the public maximum input to the process. Footnote 2 is unclear; it says there maybe used permitted as part of the shoreline process for a legally established park, which could be construed to mean additional uses will be allowed after the park is open. As presented, restaurants, food establishments and broadly referenced commercial and retail uses could be developed even in the urban conservancy zone. There are two features that were very much disputed, specifically a sky bridge and a boardwalk, neither of which should be used as leverage points by the city. The requirement for public access to be located as close as possible horizontally and vertically to the shoreline's edge could be used to countermand an overlook in they implementation principles. Support services like fueling docks and pump-outs are an absolute no in Meydenbauer Bay.

Ms. Helland responded that Mr. Klinge's letter to the Commission and all of his information submitted on behalf of the homeowners association is included in the public comments section. Staff has responded to several of the issues, some of which involve a misunderstanding of the code, including the notion that by not prohibiting uses something can be obtained by applying for a conditional use permit. The Shoreline Management Act in fact says that, but city code specifically states that uses not specifically permitted are prohibited. Most of the other issues highlighted by the homeowners association have also been addressed in the code.

10. APPROVAL OF MINUTES

A. July 13, 2011

Motion to approve the minutes as previously amended was made by Commissioner Ferris. Second was by Commissioner Sheffels and the motion carried unanimously.

B. October 26, 2011

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

C. December 14, 2011

Commissioner Ferris called attention to agenda item 4 and noted that it was Commissioner Sheffels who made the motion to amend the agenda and that he has offered the second to the motion. He further noted that Chair Turner had not voted in favor of the motion, thus the motion carried 3-2 with Commissioners Ferris, Hamlin and Sheffels voting in favor, and Chair Turner and Commissioner Tebelius voting against the motion.

Motion to approve the minutes as amended was made by Commissioner Ferris. Second was by Commissioner Hamlin and the motion carried unanimously.

12. NEXT PLANNING COMMISSION MEETING

A. February 8, 2012

13. ADJOURN

Chair Turner adjourned the meeting at 10:36 p.m.



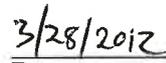
Paul Inghram
Staff to the Planning Commission



Date



Kevin Turner
Chair of the Planning Commission



Date

