

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

February 22, 2012
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:36 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 Carlson, who arrived at 6:50 p.m.

3. PUBLIC COMMENT

Mr. Martin Nizlek, 312 West Lake Sammamish Parkway, suggested the Phantom Lake issue should be on the Planning Commission's plate and not be shunted over to the Environmental Services Commission. There are a number of provisions in the WAC that are pertinent to that. The wetlands are at least in part artificially created due to high water conditions. Consideration of lake basins is within the Commission's purview under the WAC guidelines. In the latest staff memo it is stated that the staff will not defend the Commission's positions to the Department of Ecology. In the memo it says the 25-foot setback will lessen shoreline functions, even though the staff cannot explain why they took their position despite multiple opportunities to do otherwise. The staff hold that without strict vegetation rules in the 25 feet approval by the Department of Ecology will be at risk. The memo indicates the staff will continue to point out conflicts, but nowhere does it state that staff will provide the facts and information to defend the Commission's position, such as employing the information provided by the Washington Sensible Shorelines Association (WSSA) as an alternative. The memo ends with the threat that a SEPA review may be required. The clear message is that the staff do not support the Commission's position. The staff clearly are not working to find rational rationale to support the Commission's recommendations. WSSA has for the last three years attempted to be constructive; the organization has provided continuous citizen input; has pointed out misinterpretation and misuse of science, errors in the inventory, mischaracterization of the shorelines; and has provided independent legal advice on what the Shoreline Management Act and the guidelines actually allow. The Sensible Plan provides a topic-by-topic input from the citizens who are impacted. The staff have refused to consider the plan and have acted to limit the ability of the Commission

to do so. WSSA's line item review of the draft Shoreline Master Program code showing the latitude that exists in the Shoreline Management Act has been omitted. In short the staff are not helping the Commission in an effective review and a timely generation of a balanced Shoreline Master Program. It is clear that the staff are setting up the Commission, if not the city, to fail. WSSA is not going to go away, so the Commission should look for ways to assure consideration of the input from the organization.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, noted that she would be out of town and therefore unable to attend the March 14 Commission meeting and requested that all comments regarding the Meydenbauer Bay Neighborhood Association (MBNA) be delayed to a subsequent meeting. She commented that she is the most knowledgeable person on the park/Shoreline Master Program overlap issues. Referring to the staff memo, she pointed out some errors. She noted that there were not multiple meetings at which public comments were discussed; the Commission was twice given a matrix showing some of the public comments. The Commission has not provided detailed comments on section three of the code; the Commission only got through 14 pages of that section. The restoration plan has not been updated to reflect past comments; especially needed is the deletion that private development could trigger restoration through redevelopment proposals. The Commission has not determined that certain specified topics in the memo will be relegated to mere recommendations to the Council. She read into the record part of a letter emailed earlier in the day to all Commissioners in which she said everyone has given thought as to how to get through the Shoreline Master Program. Since the public hearing three different approaches have been tried. During the Bel-Red corridor study, stakeholders submitted detailed comments and that their positions helped the Commission a great deal in getting through the process. It was assumed that public comments by major Shoreline Master Program stakeholders would likewise be addressed by the Commission. The majority of stakeholder issues should be addressed. The WSSA and MBNA comments were prepared by a very competent land use attorney who made sure the comments were in keeping with the guidelines and the law. While the topic-by-topic approach most recently undertaken by the Commission has been the most productive, it ultimately has left big holes in defining what stays in the regulations and how regulations are worded. The Commission must find a way to consider the specific written stakeholder comments since they provide important direction on needed changes to the draft code. The Commission should also direct staff to prepare alternative code language reflecting the public concerns on particular portions of the code for further review and consideration.

Mr. Charlie Klinge, 11100 NE 8th Street, spoke representing the MBNA. He commented that the Association formed around the need to work together to find solutions regarding the Meydenbauer Bay Park, and the result was that ultimately the Council adopted important implementation principles for the park. The park plan is very conceptual requiring detailed planning to determine the specifics. The decisions of the Council relative to the implementation principles need to be consistent with the Shoreline Master Program; a restaurant cannot be listed as a potential use for the park when the park plan specifically excludes restaurants. The footnote highlighting the need for consistency with the park master plan does not apply universally to all uses, only to certain listed uses; it does not apply to the restaurant use. A specific permit process is needed for the park; the conditional use permit process allows for adding conditions to make sure a project is compatible with the neighborhood. The criteria for approving a conditional use permit should in part be the implementation principles.

Chair Turner allowed Ms. Sandra Rice, 312 West Lake Sammamish Parkway NE, to yield her time to Charlie Klinge.

Mr. Klinge said Shoreline Master Program proposal regarding shoreline stabilization includes a

minor and major definition that simply is not needed. The problem is that if deemed a major replacement, a geotechnical report is required, which is far too complicated and which is not required by the Department of Ecology. What the Department of Ecology needs is what the WAC calls for, which is a demonstrated need showing that protection is needed; the fact is that on both Lake Washington and Lake Sammamish high wave action occurs, causes erosion and threatens homes. New or enlarged bulkheads must meet a higher standard, including a geotechnical report, but the same is not true for a replacement bulkhead. The nonconforming use proposals in the staff draft are way too strict. The new statute approved by the legislature authorizes much more forgiving existing development rules for residential uses. The city of Sammamish utilizes existing development rules that are very forgiving, and the Department of Ecology approved the plan. The Sensible Plan includes workable solutions relative to docks.

Commissioner Tebelius asked Mr. Klinge if the language utilized in the Sammamish plan should be incorporated into the Bellevue Shoreline Master Program given that it has already been approved by the Department of Ecology. Mr. Klinge said that was his opinion but stressed that the language in his memo was not an exact copy of the language in the Sammamish provision. The Sammamish language is "...existing single family homes, other structures, existing uses and appurtenances that were established prior to the effective date of this Shoreline Master Program are considered to be conforming to the Shoreline Master Program. Additions, expansions or complete reconstruction must meet these provisions..." He said the positions outlined in the letter to the Commission from Lori Lyford are consistent with the positions taken relative to replacement of bulkheads. The Department of Ecology approved Kirkland's plan which included only a requirement for a demonstrated need for a replacement bulkhead, though a professional must make the showing of a demonstrated need. Where the shorelines of Lake Washington and Lake Sammamish are involved, however, the demonstrated high wave action argues against the need to have a professional make the case.

Commissioner Ferris pointed out that the language of most adopted Shoreline Master Programs reference legally established structures, whereas the wording proposed by Mr. Klinge referenced only structures in existence as of the date of adoption of the plan. That language would mean structures illegally established prior to the adoption of the Shoreline Master Program should be grandfathered in. Mr. Klinge said he had not intended to make that point. He said there is a difference between being conforming and being illegal; conforming relates to structures which were legally established under a set of rules that subsequently were changed and thus are grandfathered in. Proving that a structure was constructed illegally can, however, be difficult.

Commissioner Laing called attention to RCW 90.58.620, adopted by the legislature in 2011 and which refers to residential structures and appurtenant structures that were legally established and used for a conforming use, and suggested the language should simply be adopted into city code verbatim. Mr. Klinge concurred but suggested there could be benefit to looking into the matter in more detail and including clarifying statements with regard to what the language means. In Sammamish the general rule is that everything is conforming and that there can be allowances beyond just recognizing what is existing.

Commissioner Laing asked Mr. Klinge if his concerns would be addressed if there were language affirmatively placing the burden of proof on the city to first come forward with evidence to establish that a use is nonconforming. Mr. Klinge said he could support taking that approach.

Mr. James Mackey, 1408 West Lake Sammamish Parkway SE, voiced concern regarding the language of the staff memo, particularly the suggestion that the Commission's direction could place approval of the draft Shoreline Master Program by the Department of Ecology at risk. The

Department of Ecology has the view that the environment should be protected, but that view is not necessarily balanced. The creation of a document having no risk of disapproval by the Department of Ecology would be a greater concern in terms of balance. The draft document is long and complex. Such a document will not be understood easily and will require sections to be interpreted by experts, especially where there appear to be conflicts. The document could in fact lead people to act without a permit. The Commission should move toward adopting a document that will be simple and easy to understand. The continued dragging out the process will only have negative consequences.

Ms. Loretta Pieretti, Vice Commodore of the Meydenbauer Bay Yacht Club, 9927 Meydenbauer Bay Way SE, said the Club has been a good neighborhood to Bellevue for the past 65 years. She thanked the Commission for making the Shoreline Master Program update a public process. City planners met with Club representatives to clarify policies and discuss issues on numerous occasions. The Club submitted formal input on the draft Shoreline Master Program in May 2011. It is the understanding of the Club that the Commission is essentially starting over on the Shoreline Master Program update, and input from the Club was resubmitted in February 2012 with comments on the status of various issues. The Club supports moving quickly in assuring that all of its concerns and issues are addressed.

4. APPROVAL OF AGENDA

There was agreement to move item 10, Public Comment, to precede item 9, Approval of the Minutes.

Motion to approve the agenda as revised was made by Commissioner Ferris. Second was by Commissioner Sheffels and the motion carried unanimously.

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

6. STAFF REPORTS

A. 2012 Comprehensive Plan Amendments Applications

Comprehensive Planning Manager Paul Inghram noted that the Commission desk packet included a memo about the Comprehensive Plan amendment applications received by the city. He noted that four applications had been received and that they would be reviewed in detail in a study session on March 14.

Mr. Inghram also noted that the desk packet included a memo from the Environmental Services Commission outlining their development and review of the draft Storm and Surface Water System Plan.

The Commissioners were informed that the schedule calls for the Commission taking up the issues referred to by Ms. Skoog-Neil relating to Meydenbauer Bay and the park on March 28.

Commissioner Ferris commented that while he served on the steering committee for the Meydenbauer Bay park, the rest of the Commission had very little exposure to the planning process, other than a couple of briefings. He added that the Commission has had no exposure whatsoever to the implementation principles. That fact will make it very difficult for the Commission to respond to the questions that have been raised.

Commissioner Laing said the stakeholders negotiated the implementation principles and the process has been finished. It would be inappropriate for the Commission to revisit the principles. The proper move going forward will be to honor those principles. One thing that would go a long way toward addressing the concerns of the stakeholders would be to simply take the implementation principles and listing them as actual criteria in a section of the Shoreline Master Program instead of housing them in an index somewhere.

Commissioner Tebelius said she would need to review the principles to make sure it would be appropriate to include them as criteria. She said she certainly would not want to do anything to make the document any larger than it already is.

Commissioner Carlson suggested the issues relating to the Meydenbauer Bay park should be under the bailiwick of the Parks and Community Services Board. While it is a shoreline park, it is in fact a park.

Commissioner Laing commented that all city boards and commissions provide input and report to the Planning Commission on all matters related to the Comprehensive Plan.

Mr. Inghram commented that the issue clearly will need to be discussed further. He agreed the Commission could benefit from some background information regarding the plan adopted by the Council for Meydenbauer Bay Park. The Commission may request to have a member of the Parks and Community Services Board come and provide comments on the park plan.

7. STUDY SESSION

A. Shoreline Master Program – Summary of Direction and Discussion of Nonconformities, Docks, Stabilization and Public Access

Land Use Director Carol Helland briefly described the materials included in the Commission packets and particularly highlighted the comparative jurisdictional matrix. She clarified that in the Commission direction column the references to “to be determined” should actually read “not applicable.”

Ms. Helland noted that at the February 8 Commission meeting the public indicated their preference for hearing any concerns the staff may have sooner rather than later. She said to that end the staff memo indicated the concerns expressed by Department of Ecology staff regarding the vegetation section. The concerns registered may serve as potential hurdles down the road and trigger the need to develop additional information and possibly do additional studies which if needed would require authorization from the Council.

Commissioner Ferris complimented the staff for their work in developing the matrix. He said it is easy to follow and informative. He agreed that the Commission had previously asked the staff to highlight positions taken that are more aggressive than those previously approved by the Department of Ecology for other jurisdictions, and that at the end of the day if additional research is needed to support the aggressive positions the Commission will ask the staff to do it. He urged the staff to continue in that vein as the study moves forward.

Commissioner Sheffels asked when the Mercer Island plan might be acted on by the Department of Ecology. Environmental Planning Manager Michael Paine said Mercer Island staff have received some initial guidance from the Department of Ecology on their submittal of a draft plan. They are waiting for feedback from the state before moving ahead with the actual submittal. There is no word on when the Mercer Island plan will ultimately be adopted or sent back for

revisions. Commissioner Sheffels commented that because the Lake Washington shoreline in Mercer Island mirrors conditions on Bellevue's Lake Washington shorelines, the state's position regarding Mercer Island's plan should be closely examined with respect to how Bellevue's draft plan is worded. Ms. Helland said the staff's evaluation will include risk analysis predicated on where Bellevue's plan deviates significantly from the plans of other jurisdictions. There are some fog lines that are clearly starting to emerge with respect to the adoption of plans, including consistencies with regard to minimum public access requirements, overwater dock coverage requirements, and walkway connections between shoreline and dock platforms. Commissioner Sheffels pointed out that Lake Washington, which is all Mercer Island has to concern itself with, has a consistent water level, something Lake Sammamish does not have. If the Commission drafts code language that really only deals with conditions on Lake Washington, it will be doing its citizens a disservice. Ms. Helland allowed that Bellevue's plan will certainly have to take into account lake-specific characteristics.

Mr. Paine said the word that has been repeatedly received from the Department of Ecology is that jurisdictions must show their work. In other words, if the argument is made that there is no reason for vegetation conservation, the reasons behind the argument will need to be made very clearly.

Commissioner Laing suggested that if there are communications ongoing between the city and the Department of Ecology, the communications should be in writing and shared openly. If the Department of Ecology has concerns about the direction the city is going in drafting its Shoreline Master Program, it should put those concerns in writing and provide a basis for those concerns. Any such basis should be grounded in state law. The idea that any jurisdiction needs to show its work as to why it should not have to adopt a vegetation conservation area or any other provision is actually reversing the presumption. If the Department of Ecology wants jurisdictions to adopt regulations that are more restrictive than the black-letter law, they should explain, in writing, their basis for their requirement. It would be very helpful for the Commission to see the communications from the Department of Ecology to the city of Mercer Island. Ms. Helland offered to share with the Commission the information submitted by the Department of Ecology for each of the master programs compared in the matrix. Commissioner Laing said he would be particularly interested in the comments from the state to other jurisdictions pertinent to issues Bellevue is grappling with most, such as setbacks, vegetation, protective bulkheads, docks and nonconformities.

Commissioner Tebelius commented that each jurisdiction is unique and as such has a right to make recommendations on what their Shoreline Master Program ought to cover. Instead it would appear that Bellevue is constantly going to the Department of Ecology staff ahead of time and asking them what they like and what they do not like. Their response often is that they do not like what they are seeing, but they are basing their comments on a gold-plated model that is simply not needed in Bellevue and which is not required by state law. The Commission should take positions that are justifiable, approve the document and pass it on to the Council, which will in turn review it and send it on to the Department of Ecology. For their part, Ecology will have the right to approve or disapprove. What Ecology wants or does not want is less of a concern than getting out a plan that is both rational and reasonable, and which has a basis in law. The Commission will not get anywhere unless it starts making its own decisions. No one knows Bellevue's shorelines better than those who live on them. There has been good testimony regarding every issue, some of which may not be liked by everyone. In a democracy, the majority carries the day. The Commission should direct staff to write the draft and to provide the necessary justification without constantly running to the Department of Ecology to get their opinion. The public is frustrated with the current approach.

Chair Turner allowed Mr. Klinge to address the Commission.

Mr. Klinge called attention to the section 173.26.221(5) of the WAC and noted that the vegetation conservation standards do not apply retroactively to existing uses and structures. Much of the worry and concern about what the Department of Ecology is going to do relative to vegetation conservation really does not matter given how clearly the WAC is worded. With regard to the comment made by staff relative to showing the work to substantiate the city's position, he said the fact is the work is already in hand in the form of testimony and documents. The staff are worrying about not being able to please the Department of Ecology but they are not saying anything about relying on the information provided by Dr. Pauley and others. The Department of Ecology has not shown itself willing to work in a cooperative fashion with jurisdictions; their approach is simply to make demands. The only thing that can be done is to decide what is best for the city based on the information in hand and the testimony offered and to make the case accordingly.

Commissioner Laing said the interactions with the Department of Ecology feel very much like a negotiation, and that is why getting their statements in writing is so important. Without documenting their demands, the state can simply play hide the ball. The legislature put together shoreline regulations, and the Department of Ecology was supposed to come up with implementing guidelines. In some instances, the implementation guidelines go well beyond what the Shoreline Management Act expressly requires. He said he had spent the last few weeks reviewing what the Commission has developed, reading the public comments, and reviewing the regulations. The document submitted by Mr. Klinge purports to clarify what the Shoreline Management Act actually says and proposes that the city's Shoreline Master Program should reflect it. He said he would be willing to address all of the comments in Mr. Klinge's submittal, as well as all of the other stakeholder comments, and put together a draft based on them. If the staff have particular concerns about what they perceive to be clearly contrary to what the WAC or Shoreline Management Act says, they should raise them.

Commissioner Carlson agreed that all comments from the Department of Ecology should be submitted in writing so the Commission can deal with their specific objections.

Ms. Helland pointed out that submittal made by Mr. Klinge is in the bound comments notebook. She added that the letter from the Department of Ecology is also in the comment notebook and does not say anything they have not said to every other jurisdiction working on a Shoreline Master Program.

Commissioner Tebelius said the Department of Ecology staff do not function in the role of God. She said Dr. Pauley does not agree with the Department of Ecology staff and said she agrees with Dr. Pauley. The Commission wants to get something done and the Department of Ecology is being used as a way to block the Commission from getting it done.

Ms. Helland reiterated the fact that at a previous Commission meeting, one not attended by Commissioner Tebelius, the public asked the staff to raise issues as they arise and not to wait until the end to bring it up. She apologized for making reference to comments from the Department of Ecology and said she would not do it again.

Ms. Helland called attention to page 6 of the matrix and the issue of nonconformity. She noted that the Commission had previously given direction, and that direction had been provided by WSSA and others about how the code should be written. The result is that the draft nonconforming provisions in the shoreline are more lenient than anywhere else in the city. That creates a disparity between shoreline and non-shoreline property owners, and that is a concern to

the staff. The original drafting was consistent with SB-5451 and allowed legal nonconforming structures to be conforming by putting the footprint exemption around the edge of the structure. The same approach was used in the critical areas ordinance for slope, wetland and riparian corridor critical areas.

Commissioner Ferris commented that in the context of looking at what has been adopted in other jurisdictions, the nonconforming provisions as originally drafted by staff are good. However, the approach approved for Sammamish appears to be less restrictive than what is in the draft and proposed utilizing the Sammamish approach instead, which essentially says an existing structure can be rebuilt on its existing footprint. With respect to maintenance, the language about 50 percent of the value in the public hearing draft represents a significant departure from what the rest of the city is required to do and would give waterfront landowners an exception that is not available to anyone else in the city. The post public hearing draft is far better language.

Commissioner Hamlin concurred with Commissioner Ferris and said he had no argument with the language in the post public hearing draft. Commissioners Carlson, Sheffels and Laing agreed as well.

Commissioner Laing added that he was not concerned about having fewer restrictions in the shoreline area than in other parts of the city. He said his preference would be to amend the code to make things less equally less restrictive in all areas.

Commissioner Ferris pointed out that the I-90 Business Park was developed under less restrictive environmental regulations, and the result has been the destruction of Phantom Lake by stormwater runoff. Allowing that property to maintain and replace those buildings would never allow the city to seek improvements to the existing built conditions. Commissioner Laing said rebuilding should trigger compliance with the current stormwater manual, but where they can rebuild in relation to their existing footprint is a different matter. Where the shorelines are concerned, the vast majority of the development is residential.

Commissioner Tebelius asked what was meant by the statement “shoreline property would be protected from the detrimental effects of illegal structures.” Ms. Helland explained that structures that were not legally developed often were constructed without the benefit of a variance or permits; some include bulkheads that were built into the water and then backfilled behind them, and those kinds of structures should not be legitimized unless they predate the Shoreline Management Act, which was 1972. Even so, enforcement is carried out on a complaint basis only. Proactive enforcement practices are guided by principles established by the Council, with life and safety issues heading the list.

Shifting the focus to the topic of docks, Ms. Helland pointed out that the public hearing draft had lake-specific dock requirements. She said the original dock requirements were close to those established by Kirkland. The section as initially written closely mirrored the requirements in the critical areas ordinance because that was consistent with the Corps of Engineers Regional General Permit, with additional flexibility relative to the orientation of overwater coverage. The latter will require the city to be clear with applicants about other jurisdictions that have approval authority in that following the Bellevue standards and taking advantage of the flexibility may run afoul of additional process requirements with the Corps of Engineers.

Commissioner Laing suggested that on some level the city would not need to adopt any prescriptive regulations dealing with docks because the Corps of Engineers will ultimately have a say. In said in talking with a planner in Mercer Island the planner took the position that there is no need for the city to establish rules and regulations in that the Corps has final approval

authority. Essentially, the tack taken by Mercer Island is if a dock is approved by the Corps, it can be allowed in their city. He suggested that unless Bellevue has something to specifically add to the Corp's requirements or if Bellevue has a fear that the Corp might approve something the city would not want to see approved, the city's dock standards should be whatever the Corp will approve. Ms. Helland said some of the dock examples that continue to get traction with residents are those the city has not conditioned. The Cole Sherman dock is one that comes up repeatedly. In that instance the city provided reasonable accommodation and did very little permitting; it was the Corp that insisted that the dock be as high as it is.

Commissioner Laing suggested that any dock should be allowed to be fully compatible and compliant with the Americans with Disabilities Act (ADA) requirements for accessibility. Ms. Helland argued that there would be a general resistance to a requirement for all docks to be ADA compliant. There is a process in the Land Use Code focused on reasonable accommodation; the city does not charge a fee for the process, which assists individuals with disabilities in getting the permitting they need to accommodate their specific accessibility issues.

Commissioner Tebelius agreed that there is no need for Bellevue to get into the dock regulating business given the authority the Corps of Engineers has. The Corps should be allowed to make all the permitting decisions. Ms. Helland said the city cannot essentially give away its jurisdiction. It could be said that a permit approved by the Corps will be approved by the city, there are still some things the city is mandated to issue, including a shoreline permit for docks. A SEPA review is also required for all overwater structures.

Mr. Paine suggested crafting language for Bellevue's purpose that everyone is satisfied with, including language saying anything the Corps approves can be judged approvable by Bellevue. Kirkland and Mercer Island both take that approach.

Commissioner Ferris pointed out that the Corps of Engineers has jurisdiction over navigable waters. Because Phantom Lake is not a navigable waterway, their jurisdiction does not extend to the lake and city standards will need to be in place for docks on that water body. He agreed with the concept of Bellevue approving whatever the Corps approves, but that governing authority will not have anything to do with Phantom Lake. He commented that according to the matrix indicates quite a bit of consistency on the part of the various cities with regard to docks in terms of new docks and expansions of current docks, though in some particulars the public hearing draft is more lenient relative to length. There is generally consistency with regard to walkway width and grating requirements. He said he did not understand the requirement for translucent boat lift canopies given that when a boat is on a lift, which is most of the time, light will not be penetrating the water, but allowed that most jurisdictions include the requirement. With regard to repair and maintenance of docks, he noted that Redmond allows for such work on existing docks without applying any new regulations, and said the approach would work well in Bellevue. He commented that the public hearing draft requires dock surface grating where dock replacement exceeds 20 square feet and suggested that he would prefer the requirement to kick in only if 50 percent of the decking is replaced.

Commissioner Carlson said his desire is to see the city's rules and regulations be streamlined and simple. If the Corps of Engineers has the final say, their standards should apply. He said it appeared to him that the Commission was in agreement with regard to having simple, clear and coherent standards.

Commissioner Sheffels agreed but pointed out the need to include language addressing the different circumstances facing Phantom Lake. Mr. Paine noted that the draft does include standards for Phantom Lake. He added that they were not reflected on the matrix because no

other jurisdiction has anything comparable.

Ms. Helland agreed that the city could simply adopt the Corps of Engineers standards, but pointed out that their standards are less flexible than those included in the public hearing draft. The public hearing draft language was crafted to allow people maximum flexibility to accomplish the objectives of the Department of Ecology relative to overwater coverage and protection of the shoreline migration zone; those objectives can be approved through the Corps, though it will take more process because the approach will not match their standards exactly.

Mr. Paine commented that over the years the Corps of Engineers has adopted some very specific standards, which the city incorporated into the critical areas ordinance. They also have a departure process for those who do not meet the standards; the process includes a requirement for a biological assessment or evaluation, which is an additional level of effort. It is not unusual for shoreline property owners, particularly on Lake Washington, to build large docks that do not fit under the Regional General Permit standards; the Corps will approve such projects, but only with more mitigation and a much longer process. There are other players that have to accept projects, including NOAA Fisheries and the Washington Department of Fish and Wildlife, but Bellevue's code could be written to say that if all parties accept something the city will accept it too.

Ms. Helland said it would make sense for Bellevue to continue requiring property line setbacks for docks to avoid interfering with navigation between neighbors.

With regard to Phantom Lake, Commissioner Laing noted that the lake is privately owned by the various property owners. He said if there are any restrictive covenants or anything recorded on titles that talk about docks, the city should not adopt anything that conflicts with those rights.

Commissioner Ferris commented that the Commission often hears from property owners wanting regulations placed on their neighbors in order to protect their own properties. In that vein it makes sense to require setbacks from property lines for docks, even if the Corps of Engineers would approve a dock without requiring a setback. He noted that as drafted the side setback is ten feet.

Ms. Helland clarified that the language in the draft regarding translucent materials for docks had been revised to refer to reflective materials rather than light absorbing materials.

There was agreement to continue requiring a side setback of ten feet and to indicate anything approved by the Corps of Engineers would be accepted by the city. There was also agreement to incorporate specific dock standards for Phantom Lake.

Answering a question asked by Commissioner Laing, Ms. Helland explained that the reasonable accommodations provisions are housed in the administrative permitting provisions. Commissioner Laing proposed that since the Shoreline Master Program is jointly administered by the Department of Ecology, there should be some specific reference to the reasonable accommodation provisions. He said his concern was that the Department of Ecology may not honor a provision in the city's administrative code there would provide for accessibility if not called out specifically in the adopted Shoreline Master Program.

With regard to the repair and replacement of docks, Commissioner Tebelius said it was her understanding that shoreline property owners with existing docks who want to replace their entire dock surface are amenable to using grating but are not wanting to end up entangled in a morass of other regulations. Docks need to be repaired over time, and homeowners should be

allowed to do the necessary work without a lot of expensive process. Mr. Paine clarified that the Corps of Engineers has no jurisdiction over repair and maintenance of docks. As things currently stand, there is nothing that would prohibit someone from completely replacing the surface on their dock. There are issues involving reconfigurations and nonconformities, including large platforms in the nearshore. If the city's regulations are taken away, the city will not have any authority to seek the removal of large platforms in the nearshore. The Corps of Engineers would never allow such structures to be built, but those that have been the city would have to allow to remain in place in perpetuity. The preference would be to reconfigure such docks completely, but at the very least they should have grated decking.

Commissioner Carlson asked why the city should even care if a property owner were to replace 100 percent of their dock pilings. Mr. Paine said the only way to do that is to take the original dock apart, and the result is essentially an entirely new dock. Commissioner Carlson said even so, if the dimensions of the new dock mirror those of the old dock, there would be no net impact. Mr. Paine clarified that there are impacts associated with removing the pilings and as such the no net loss equation becomes difficult to justify. The Department of Ecology regulates new piers and new docks. The Washington Department of Fish and Wildlife also has some jurisdiction and will be part of the repair equation. The concern is that it will be necessary to negotiate with the Washington Department of Fish and Wildlife regarding what their minimum standard is.

Chair Turner asked if replacing one plank a day for a year to where eventually an entire dock is replaced would constitute an entirely new deck. Mr. Paine noted that as drafted homeowners can do whatever they want with their dock decks, provided the pilings are not removed or replaced.

Commissioner Tebelius commented that pilings deteriorate over time and noted that inevitably anyone with a dock will have to replace pilings. Mr. Paine said that is true especially for the portion of the pilings that are above the waterline. The technique most often used involves putting on a new cap and leaving undisturbed the portion of the piling that is below the surface of the water. The draft offers no objections to that approach.

Commissioner Ferris pointed out that the approved plan for Redmond has no percentage threshold that applies to repair and maintenance of existing docks. Under their approach, an existing dock could be replaced in its entirety in its original configuration.

Commissioner Sheffels asked if floating docks are allowed or not allowed, and if not why not. Mr. Paine said they are allowed, though they must meet the requirements established by the Corps of Engineers.

Commissioner Ferris asked if the Corps of Engineers would be involved in enlarging an existing dock. Mr. Paine said they would not and added that absent standards associated with enlargement or reconfiguration the city would have no means of control. Commissioner Ferris suggested that if the Redmond approach were to be adopted, it should be modified to state that enlarging an existing dock would not be allowed. Ms. Helland said an upper size limit could be included.

There was agreement to incorporate the Redmond model with regard to repair and replacement of docks provided limits were placed on expansions and reconfigurations.

****BREAK****

Commissioner Ferris commented that the provisions of the various jurisdictions relative to new

and expanded stabilization were remarkably consistent. Ms. Helland pointed out that the section of the WAC covering stabilization is far more directive, which is why the spectrum of deviation is much smaller.

Commissioner Hamlin said the public hearing draft worked for him.

Commissioner Tebelius asked if the public hearing draft language in any way conflicts with the direction afforded under WAC 173.26.231 that talks about new or enlarged bulkheads. Ms. Helland said the language is consistent with the WAC, which is very prescriptive.

Commissioner Tebelius asked if sloping or revetment bulkheads would be prohibited under the public hearing draft language. Mr. Paine said if the owner of a site that does not have a bulkhead were to apply for a permit for a bulkhead, he or she would first have to demonstrate a need for a bulkhead. Consideration would then have to be given to soft stabilization alternatives and other alternatives. The fact that a site does not have a bulkhead could be deemed evidence enough that a bulkhead is not needed, particularly if the site is developed.

Commissioner Carlson said unless he could be shown something wrong with the public hearing draft, he was prepared to accept it.

Commissioner Sheffels noted her support for the language of the public hearing draft.

Commissioner Laing said he needed assurance that the draft language is consistent with WAC 173.27.040, the exemptions from substantial development permit requirements. Ms. Helland said the exemptions with respect to permitting were essentially lifted directly from the WAC and put into the code. With respect to the substantive criteria, the WAC sequencing was followed.

Commissioner Tebelius asked what process a property owner would have to follow to replace a bulkhead constructed of cement going straight down with a revetment. Mr. Paine said the action would fall under repair and replacement, and much would depend on whether the action is a minor repair or a major repair as defined in the code. Over a certain threshold the action would be considered like a new bulkhead, except that there is no requirement to prove need for some manner of stabilization. If soft stabilization cannot be utilized, then hard stabilization is allowed. If the structure is within ten feet of the water, hard stabilization is automatically allowed. The WAC says when making a change to an existing structure that no longer adequately serves its purpose it is necessary to go through an elaborate process including a geotechnical report showing the structure will exist on its own for three years without stabilization. If it can, then stabilization is not allowed, but if cannot, stabilization can be used. The draft language picks up the main points without requiring the elaborate analysis.

There was consensus in favor of the public hearing draft relative to new and expansion stabilization.

With regard to repair and replacement of stabilization, Ms. Helland allowed that there is some uncertainty about what it means when something gets to the point of replacement rather than repair. Instead of making property owners rely on difficult to understand language and make a case for their action, the public hearing draft language includes a threshold of 50 percent as the line of demarcation between major repair and minor repair.

Commissioner Tebelius suggested the threshold approach goes beyond what the WAC provides, which is why Renton's approach allows existing shoreline stabilization to be repaired, and allows for replacement in the same location, and considers additions or size increases to be new

stabilization major. That is where Bellevue should adopt.

Commissioner Sheffels noted that Renton's plan and the public hearing draft are nearly identical, except that the Bellevue approach allows for memorializing the ordinary high water mark at the time of installation given that soft stabilization measures can cause the ordinary high water mark to shift landward. She indicated her support for including that provision.

Commissioner Tebelius said the problem with including that provision is the fact that because of the weir the lake level of Lake Sammamish has increased. The issue of what the ordinary high water mark is is subject to interpretation and considerable disagreement. Mr. Inghram pointed out that the provision actually is beneficial to property owners in that it memorializes the original ordinary high water mark for purposes of calculating setbacks even as lake conditions change over time. Ms. Helland clarified that the memorialization goes with the land and thus survives the sale of properties.

Ms. Helland said within the WAC there is a very complicated section. The language of it is described clearly in the Sammamish plan and talks about environmental harm, the change in location of a structure, and how things need to be calculated over the course of several years. The intent was to include a threshold of 50 percent in order to provide for some certainty. If the 50 percent threshold provision is removed, the WAC provisions will continue to exist and judgments will have to be made about when an action becomes a replacement. Ms. Helland read the WAC provisions to the Commission and then pointed out that property owners who elect to repair over time, never addressing more than 50 percent at a time, can under the public hearing draft avoid having to apply the confusing WAC section.

Commissioner Laing said the WAC provisions allow property owners to maintain their existing bulkheads as necessary, provided the focus is on keeping a bulkhead as it was originally constructed. He said he wanted to make sure that the public hearing draft language would perpetuate that right.

Commissioner Carlson suggested the Renton approach should be used in conjunction with the fourth paragraph in the public hearing draft regarding soft stabilization.

Ms. Helland clarified that WAC 173.27.040 outlines the permitting requirements. Any action that fits within the exemption category does not need to obtain a permit, but will still need to comply with the standards outlined in WAC 173.26, which is the Department of Ecology substantive test for determining when something is new.

Commissioner Laing said his problem with what the Department of Ecology has done is that they exempt certain actions from having to obtain a shoreline substantial development permit, yet require property owners to jump through all the hoops as if they had to have a shoreline substantial development permit. That makes absolutely no sense.

Mr. Inghram said the shorter language version would be the Renton approach. He suggested the Commission might want to keep an option for an easier process for property owners even if it may require some additional language.

Mr. Paine suggested if the Commission wants to avoid sending property owners down an uncertain pathway to get where they want to go, which is to replace a bulkhead to its original configuration, the language should simply say full replacement of a hard bulkhead with a hard bulkhead is allowed provided certain performance standards are met, namely an angled bulkhead as opposed to a vertical bulkhead. That approach is already in the code for properties that are within ten feet of the shoreline; simply extending the distance to 25 feet could largely end the issue and give people what they need.

Answering a question asked by Commissioner Laing, Mr. Paine clarified that nothing in the code prevents a property owner from repairing cracks and missing chunks from a bulkhead, even if it is a vertical concrete wall that has been in place for a very long time. However, if the bulkhead itself is damaged or worn to the point where the property owner wants to replace the entire structure, the major repair threshold would kick in. It will be in the best interest of property owners to continually repair their bulkheads over time to avoid getting to the place where an entire structure needs replacing. Changes to the language could be made to make it even easier for property owners to get to the result they want.

Commissioner Carlson reiterated his desire to see the Renton standards used along with the fourth paragraph from the public hearing draft that relates to soft stabilization. That would allow for repairing existing shoreline stabilization, replacement in the same location, additions to or increases in the size of shoreline stabilization would be considered a new stabilization measure, and the ordinary high water mark at the time of installation of the stabilization could be memorialized. Ms. Helland commented that Renton uses the word “repair” rather than “replacement,” and in the absence of a threshold their approach will send property owners into the ambiguous process set for by the WAC. She allowed that the Renton approach could be used in conjunction with the threshold language.

There was agreement to revise the language of the fourth paragraph of the public hearing draft to include riprap along with soft stabilization measures.

Turning to the topic of public access, Commissioner Ferris pointed out that the Commission had previously agreed to make the threshold number of dwelling units consistent with the short platting section.

Commissioner Carlson asked if the language of the original Shoreline Master Program relative to public access could be utilized. He noted that it read “When substantial modifications or additions are proposed to substantial developments, the developer should be encouraged but not required to provide for public access to and along the water’s edge if physically feasible.” Ms. Helland said the language cannot be used because the new WAC has different requirements where ten or more dwelling units are involved.

Commissioner Sheffels pointed out that there is a substantial difference between “community access” and “public access.”

Commissioner Laing said the Shoreline Management Act is absolutely clear. It states seven preferences in order, the fifth of which is increase public access to publicly owned areas of the shoreline. The Act does not have any language requiring public access over private property, or even language requiring a developer who is subdividing property along a shoreline to provide physical access to the shoreline for future homeowners that do not directly abut the shoreline. There is a tie to a series of a cases that were litigated to the United States Supreme Court, some on the east coast and some on the west coast, and the public trust doctrine which evokes the idea that navigable waters and shorelines are supposed to be an open as they can be to the public. However, in order to require public access over private property it must be shown that by developing a property public access to the shoreline is in some way limited. Bellevue has the opposite problem, namely that the city owns a lot of shoreline property, though there are not sufficient funds to develop the properties so as to provide for increased public access. The Department of Ecology essentially says public access should be allowed to the extent it does not conflict with other laws, and they are pushing things as far as they can. Bellevue does not need to adopt provisions requiring public access over private property because the public already has sufficient access to the shorelines via publicly owned properties. If it does, it will open itself to a litany of litigation. No private property owner, including commercial property owners, should be required to grant access across their property to either another private property owner or the public.

Mr. Inghram said it could be argued that a marina or other commercial or industrial use located on a shoreline would have an impact on the public’s view of or access to the water. Chair Turner said he concurred with the comments of Commissioner Laing and suggested that even where commercial properties are involved public access should not be required.

Ms. Helland agreed that the Shoreline Management Act does not require public access. She pointed out, however, that the WAC specifically speaks to the public policy and says individual single family residents not part of a development planned for more than four parcels do not have to require public access. It suggests public access requirements for other things. The Bellevue approach calls for community access in the case of a subdivision of ten or more dwelling units. In that instance, the access would not be for the general public but only for the community residents living in the subdivision.

Commissioner Ferris said in any event he would support requiring public access for transportation, utility, and new or replacement recreation projects. The city does not own large numbers of waterfront properties, other than the Meydenbauer Bay park land, for which it does not have funds to develop.

Commissioner Laing said he had no argument against requiring access for the public from publicly owned properties on the shoreline. He said he did not believe the city should require public access to a marina; a private marina will have their invitees and licensees in the ordinary course of operating the marina, and there should not be an obligation to open the marina to those

who are not invitees or licensees, thus turning a private marina into a de facto public facility. Furthermore, if a developer were to have a shoreline property large enough to subdivide, it should be left to the developer to decide whether or not to provide access to the shoreline for everyone in the subdivision. The legislature did not intend that nor did it require it.

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

Commissioner Hamlin agreed to remove the language regarding community access but said he would prefer to retain the language in the first paragraph of the public hearing draft. Commissioner Ferris concurred. Commissioner Sheffels said her preference would be to retain the language regarding community access and to discard the language related to public access.

Ms. Helland said she understood the majority of the Commissioners to be in favor of removing the provisions related to subdividing, both less than and more than ten lots; limiting the public access requirement to publicly owned properties; and retaining the references to transportation, utility, and new and replacement recreation projects.

Ms. Helland briefly reviewed with the Commission the topics to be addressed at future meetings.

Commissioner Tebelius asked what role the Environmental Services Commission is playing with regard to Phantom Lake. Mr. Inghram said many of the comments raised by Phantom Lake property owners before the Commission have been raised with the Environmental Services Commission, and the Council directed the Environmental Services Commission to look into and address the stormwater management inflows to Phantom Lake, and the Phantom Lake water management issues. They have not reached conclusions yet.

Commissioner Ferris suggested it would be helpful to have a representative from the Environmental Services Commission come and provide the Planning Commission with an update.

8. OTHER BUSINESS – None

10. PUBLIC COMMENT

Mr. Russ Belts with the Meydenbauer Bay Yacht Club reminded the Commission that the Club has a unique situation in terms of the services it provides to the city, the boating community, and to the greater Puget Sound region. The Club has specific needs that are different from those faced by private property owners in residential settings. Some minor tweaking of the language is needed to assure that a private marina is exempt from having to provide access for the public. There are issues the Club has been dealing with the city and the Department of Ecology for nearly 20 years, most notably on nuisance and noxious weeds that are required to be removed. The regard to dredging, the agencies responsible for the silt and sediments that are directly impacting the salmon habitat should be responsible for the dredging; the Shoreline Master Program will need to allow for the dredging.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, addressed the issue of memorializing the ordinary high water mark when moving to a soft stabilization approach and noted that the situation with the shifted water levels impacts whatever stabilization is in place. With higher water levels, soft stabilization becomes less and less practical. As water moves up, erosive actions create what is called benching. The issue needs more discussion.

9. APPROVAL OF MINUTES

A. January 11, 2012

Motion to approve the minutes as submitted was made by Commissioner Ferris. Second was by Commissioner Hamlin.

Commissioner Tebelius asked for time in which to submit changes to the language of the minutes.

Commissioner Laing pointed out that his name was misspelled in every instance where it appeared in the minutes. He also called attention to fifth paragraph on page 9 of the minutes and asked that the sentence "Commissioner Laing said the substance of Commissioner Carlson's response and the tone in which it was delivered was the reason he had nominated him for vice chair" be revised to read "Commissioner Laing said the substance of Commissioner Carlson's response and the tone in which it was delivered was illustrative of the reason he had nominated him for vice chair."

The motion failed with Commissioners Sheffels and Commissioner Hamlin voting for, and Chair Turner and Commissioners Ferris, Carlson, Tebelius and Laing voting against.

Motion to table approval of the minutes until such time as corrections are submitted by those who have them was made by Commissioner Ferris. Second was by Commissioner Laing and the motion carried 6-1, with Chair Turner and Commissioners Sheffels, Ferris, Carlson, Tebelius and Laing voting for, and Commissioner Hamlin voting against.

B. January 25, 2012

Commissioner Laing noted that his name was misspelled in the minutes.

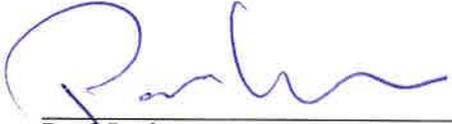
Motion to approve the minutes as amended to correct the spelling of Commissioner Laing's name was made by Commissioner Ferris. Second was by Commissioner Hamlin and the motion carried without dissent; Commissioner Tebelius abstained from voting.

11. NEXT PLANNING COMMISSION MEETING

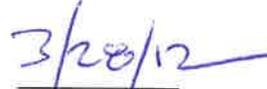
A. March 14, 2012

12. ADJOURNMENT

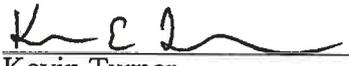
Chair Turner adjourned the meeting at 10:32 p.m.



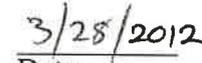
Paul Inghram
Staff to the Planning Commission



Date



Kevin Turner
Chair of the Planning Commission



Date