CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 25, 2012
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT:	Chairman Carlson, Commissioners Hamlin, Laing, Sheffels, Tebelius,
COMMISSIONERS ABSENT:	Commissioners Ferris, Turner
STAFF PRESENT:	Dan Stroh, Carol Helland, Heidi Bedwell, Michael Paine, Department of Planning and Community Development;
GUEST SPEAKERS:	None
RECORDING SECRETARY:	Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:39 p.m. by Chairman Carlson who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Tebelius, who arrived at 6:44 p.m., and Commissioners Ferris and Turner, both of whom were excused.

3. PUBLIC COMMENT

Mr. Brian Parks, 16011 SE 16th Street, spoke as president of the Phantom Lake Homeowners Association. He said he submitted a Freedom of Information Act request to FEMA asking for the data upon which they based the 1978 flood plain, which was determined to be 261 NGVD, which is equivalent to 264.6 NAVD for Phantom Lake. It took FEMA 59 days to produce a single document that contained a single map without any lake level data; the map did include some scribbling near the outlet. It would appear that the FERM flood plain was arbitrarily determined. In 1978 the Phantom Meadows development with roughly ten lots needed to establish the ordinary high water mark; at the time the Shoreline Management Act was in place and the setback on Phantom Lake was 25 feet. Given that no one knew what the ordinary high water mark was, a debate ensued. A document obtained from Bellevue indicates that once established the flood plain and the ordinary high water mark were to be put on the deeds for the lots and also on the final plat map. However, not a single one of those deeds indicates the ordinary high water mark, and there is no final plat map on file. The conclusion to be reached is that some of the designations are simply arbitrary, yet many of the regulations are built on those shaky foundations.

Commissioner Sheffels pointed out that the final draft of the Shoreline Master Program sets the ordinary high water mark for Phantom Lake, and asked if the elevation chosen is satisfactory. Mr. Parks said his concern is that the elevation in the final draft is only being applied to building setbacks, and in practice that will not benefit the local property owners. The critical areas and the flood plain regulations will likely exceed the 25 feet in most cases. The shoreline overlay district is something the elevation would have an immediate effect on, but the staff has indicated that cannot be done.

Commissioner Laing clarified that the Planning Commission has no authority through the Shoreline Master Program process to set the flood plain elevation. He asked if the elevation data as written up in the final draft acceptable. Mr. Parks allowed that it is.

4. APPROVAL OF AGENDA

Commissioner Hamlin moved to approve the agenda. The motion was seconded by Commissioner Laing and the motion carried unanimously.

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

6. STAFF REPORTS

Planning Director Dan Stroh noted that a public hearing date needs to be set for the Horizon View area, an annexation area that came into the city on July 1. The proposed September 12 public hearing for the Horizon View area will focus on the zoning for the area. The annexation area is set to come into the city on August 1.

Mr. Stroh said the annexation area is relatively small and the total number of households is not large. The designation proposed for the area is one the local residents actually requested, so the anticipation is there will be general support. Staff does not anticipate the public hearing lasting very long.

There was consensus to schedule the public hearing for September 12.

Mr. Stroh reported that at its study session on July 23 the City Council had a brief discussion regarding the Land Use Code work program. Staff brought forward three tiers of potential Land Use Code amendments, and the Council discussed setting priorities. The Council did initiate the downtown livability work program item; the scope of the item will be discussed with the Council in September.

Commissioner Laing said he watched the July 23 Council meeting and noted that some administrative procedural changes relative to the code were contemplated. He said he wanted to know more about that issue. Mr. Stroh said the topic could be covered either at the Commission's retreat or as a separate study session item.

7. STUDY SESSION

A. Shoreline Master Program Update

Chairman Carlson stated that the Washington Sensible Shorelines Association had requested time in which to make a presentation on the Shoreline Master Program. He noted that a motion and majority vote would be required to allow the presentation

Commissioner Sheffels asked how much time the group wanted, and Chairman Carlson indicated he would allow about 40 minutes.

Commissioner Laing moved to suspend the rules to give the Washington Sensible Shorelines Association up to 40 minutes to present materials. The motion was seconded by Commissioner Tebelius and the motion carried unanimously.

Mr. Charlie Klinge, 11100 NE 8th Street, and Mr. Marty Nizlek, 312 West Lake Sammamish

Parkway NE, represented the Washington Sensible Shorelines Association.

Mr. Klinge noted that the residential section, 20.25E.065, has been reduced from 33 pages to 16 pages in the final draft; that is a very good improvement and is evidence of the good work done by the Commission. There are, however, still some concerns. The redraft document continues to be incomplete in that the section on light rail remains marked as to be determined.

Mr. Klinge referred to a letter submitted to the Commission a year ago by the Washington Sensible Shorelines Association and noted that many of the issues remain concerns. It is important to understand that the Commission and the city are allowed to take information from any source and make reasoned decisions about the appropriate regulations. For that purpose it would be helpful to include a justification document that follows along with the Shoreline Master Program and can be referred to by the Department of Ecology.

The rules that apply to existing development as compared to new development have been separated much better in the redraft, but there are still some concerns with that section. Another troublesome area involves incorporating outside materials.

Mr. Klinge called attention to the comments on section 20.25E.065 in the chart in Appendix 2 of his submitted materials. He noted that each comment was graded "S" for satisfactory; "SF" for satisfactory with a wording fix; "U*" and "U" for unsatisfactory. He allowed that many of the satisfactory comments relate to issues that have been deleted, and many of the unsatisfactory comments relate to where no changes have been made. The major issues are critical areas ordinance incorporation, shoreline setback, definition of structure, the new nodes in the chart, docks, boatlifts and canopies, and the issue of nonconformance still being too confusing.

Mr. Klinge commented that the B section of 20.25E.065 contains the general requirements applicable to all residential development. The addition at the bottom of the page says "Bellevue city code provisions of general applicability are not part of the Shoreline Master Program unless specifically adopted by reference." That is a major concern because throughout the section all of the general requirements are mentioned with words such as "...shall comply with...," "...should be designed according to..." and "...shall be regulated under...." It is confusing as to whether or not those requirements are intended to be adopted by reference as part of the Shoreline Master Program or not; clarification of the language is needed.

Commissioner Tebelius said it would be helpful to have pointed out the specific instances where there is confusion. Commissioner Hamlin said it would also be helpful to have suggested language changes submitted.

Mr. Klinge referred to comment 82 regarding site planning and offered a wording change. He said the confusion lies in whether or not the provisions apply to completely new residential buildings, or to new construction to an existing residential building. He proposed adding to 20.25E.065.B.2 language reading "These design criteria and development standards do not apply to existing residential development or modifications to existing residential development."

Land Use Director Carol Helland said new regulations do not apply retroactively to existing development; they only apply to proposals for new development, either entirely new buildings or changes to existing buildings. While it is understandable that people want certainty with regard to their existing homes when new regulations are adopted, that is the way land use works. To include the proposed language would make section 20.25E.065 fundamentally inconsistent with the rest of the sections of the Land Use Code. She further explained that where the comments submitted by Mr. Klinge previously represented clarifications, they were incorporated where possible; where the comments changed the direction of the Commission, the changes were not made pending direction to do so from the Commission. Where the Commission directs changes

be made, staff will make the changes.

Mr. Klinge differed with Ms. Helland's comment that regulations do not apply retroactively. Regulations can put a building into nonconforming status retroactively, and that leads to potential problems in getting insured and selling the home. The proposed language would mean the regulations do not apply to existing buildings or to modifications to an existing building. The provisions regarding site planning do not apply well to existing buildings on a site, particularly with regard to context sensitive design, topographic modification, and other issues.

Commissioner Tebelius asked Mr. Klinge to respond to the concern voiced by Ms. Helland that the proposed language would create a conflict with the rest of the Land Use Code. Mr. Klinge said he had no comment because he has not looked at that issue. He said the Shoreline Master Program is going to be adopted by the Department of Ecology and will supersede and be more important than other city code. What is needed is clarity, and there are different ways to get there.

Commissioner Laing said 20.25E.065.B.1 states that all general development requirements and standards governing site development of property citywide set forth in Chapter 20.20 of the Land Use Code apply, except to the extent expressly stated in 20.25E.065 and as stated in LUC 20.25E.010.C.1.c. Paragraph B.1 essentially means everything in 20.25E.065 applies to everything unless there is something more specific within the rest of the section. Ms. Helland said the original draft included much more by way of particulars, but as directed by the Commission the redraft simply makes references to the general regulations. The shoreline jurisdiction is an overlay and as such is another standard. The general regulations still apply. The site planning provisions are specifically applicable citywide, even outside the shoreline jurisdiction. The specific language in B.2 could simply be a reference out.

Commissioner Laing said his interpretation of the language in B.2 was that the regulations apply to new residential development, not to existing development. Ms. Helland agreed and clarified that new development does not refer solely to previously undeveloped sites; new development includes changes to existing development. That is the approach that is taken throughout the city in the general Land Use Code and the critical areas code. The nonconforming use provisions in the shorelines are based on the discussion the Commission had two years ago and are in fact the most lenient and flexible in the city; they supplant the regulations that apply to every other residential use in the city.

Commissioner Tebelius asked if the issue could be possibly put aside, allowing time for Mr. Klinge and Ms. Helland to seek a resolution before the next Commission meeting. Mr. Nizlek suggested that language can be developed to clarify the fact that new development includes modifications to existing development to avoid having readers being misled.

Mr. Klinge said the position of Ms. Helland is that a remodel to add a family room would trigger all of the regulations, since that would be an expansion of an existing use. Ms. Helland said all applicable provisions would kick into play. If the family room were planned to be sited waterward of the existing structure and trigger the need for new stabilization, the preference would be to site the new room on the other side of the house. The broader concern is that the conversation is micro-focused on the Shoreline Master Program. When drafting the regulations staff must take a far broader perspective that incorporates the rest of the code and how it applies to all areas of the city; to do otherwise could create even more conflict and uncertainty.

Chairman Carlson said he could see the arguments on both sides. He agreed with Commissioner Tebelius that Ms. Helland and Mr. Klinge should sit down together and try to hash out some middle ground.

Commissioner Sheffels said if she wanted to modify her home in some way she would be required to go the city, obtain a permit, and apply with all applicable codes. To say that the same modification to a home in the shoreline district does not have to obtain a permit or adhere to all applicable regulations would be to treat homeowners differently based on where their homes are located. As the section is written, shoreline properties are treated the same as every other property in the city.

Mr. Klinge said the fact that an addition to a home is on shoreline property an entire array of additional regulations are triggered. When the critical areas ordinance went through the Commission, he pointed out that there were major concerns with what was intended, and those concerns are coming true in certain areas. In the Newport Shores area, because the river flows through the critical areas setbacks are expanded and entire homes are rendered nonconforming. There is a footprint exception that applies, but all improvements attached to the primary structure are nonconforming because they are in the setback, and clearing roses in the back yard becomes a potential violation of the critical areas rules. The shoreline is not a critical area and those concerns should not be perpetrated in that area.

Ms. Helland said the Commission is free to make any changes it wants to the draft. She said where changes are made that staff believes will be a problem, staff will point them out and provide a rationale. The reason staff did not incorporate many of the comments made by the Washington Sensible Shorelines Association was because they created code conflict issues. The Shoreline Master Program was supposed to jump off of the critical areas ordinance; that policy decision was made many years ago, but the Council found it necessary to constraint the budget funds and staff resources. That has led to revisiting the entire document, which was not the original intent. Certainly the Shoreline Master Program update was never intended as a springboard for revisiting the critical areas ordinance.

Commissioner Hamlin suggested allowing Mr. Klinge to continue working through his list of concerns, and then directing staff to meet offline with Mr. Klinge to seek a resolution. Chairman Carlson said where the offline discussion results in commonalities, the Commission's process will be accelerated.

Mr. Klinge said whether or not the site planning regulations apply to modifications to existing structures, the position of the Washington Sensible Shorelines Association is that there are issues to be addressed. It simply is not possible to go back and say the lots were created too small and things should have been done differently.

Mr. Klinge called attention to 20.25E.065.B.2.i where the issue of critical areas arises through incorporation by reference of the critical areas ordinance. Under the redraft, critical areas such as wetlands and steep slopes that occur within the shoreline jurisdiction are regulated by the critical areas. The old critical area code, however, regulates shoreline critical areas to the 50-foot line. The determination has already been made that the shorelines are not critical areas and should not be regulated as such, but what remains is the process step of making sure changes to the critical areas ordinance track with the changes to the Shoreline Master Program. Once the Commission completes its work, the Council will review the document and adopt a resolution indicating its intention to adopt the Shoreline Master Program. The document will be forwarded to the Department of Ecology for approval, but only after their approval is in hand will be Council be able to adopt an ordinance making the Shoreline Master Program law. If the critical areas ordinance changes do not track simultaneously, the Shoreline Master Program will be adopted and the critical areas ordinance will have to be changed to be consistent. That is the piece that is missing. The Department of Ecology is going to want to see the changes to the critical areas ordinance as part of the incorporation by reference.

Commissioner Sheffels pointed out that the Council directed the Commission from the very

beginning not to revisit critical areas. Given that direction, the Commission is not free on its own to seek to make changes to the critical areas ordinance. Mr. Klinge said he offered testimony before the Council on the topic under discussion and Councilmember Balducci said the Council wants the shoreline critical areas revisited as part of the Shoreline Master Program in order to get things right. That was two years ago. Staff have agreed that lakes are not critical areas, so there are no critical area buffers attached to them. The Commission's direction was to go to a 25-foot setback, not a critical area buffer. The shoreline critical area and the shoreline critical area buffer in the critical areas ordinance needs to be adjusted, otherwise there will be conflicting regulations. In fact the state legislature in Bill 1653 instructed all jurisdictions to make sure adoption of their Shoreline Master Programs includes resolving all conflicts with their critical areas ordinance. The Shoreline Master Program will regulate shorelines unless specific provisions of the critical areas ordinance are incorporated.

Ms. Helland called attention to the language of 20.25E.060 where it is stated that a code amendment to 20.25H, the critical areas overlay district, to delete provisions related to the regulation of shoreline critical areas. She allowed that the same language could be included in 20.25E.065.B.2.i. Staff has been clear from the start regarding the intention to go back and amend other sections of the code once the Shoreline Master Program is adopted. The fact is, however, it is necessary to complete work on the Shoreline Master Program before it can even be known what other code sections will need to be revised.

Mr. Klinge voiced concern over the language "...the provision providing the greatest protection to critical areas shall apply..." as used in 20.25E.065.B.2.i. He suggested the statement is vague and confusing at best.

Commissioner Laing commented that under RCW 36.70.A.480, which is what was enacted by the legislature pursuant to Bill 1653, shorelines of the state shall not be considered critical areas, except to the extent that specific areas located within the shorelines of the state qualify for critical areas designation. Where there is a steep slope, an aquifer recharge area or a wetland within the shoreline district, it should continue to be regulated as a critical area. The shoreline itself is not a critical area. The Washington Sensible Shorelines Association appears to be concerned that the current critical areas ordinance itself treats the shoreline as a critical area and imposes a 50-foot setback from the shoreline. He agreed that it will be important as the draft Shoreline Master Program goes forward that the 50-foot setback from the shoreline be removed from the critical areas ordinance. If the phrase in 20.25E.065.B.2.i is not excised and made to be consistent with RCW 36.70.A.480, the old setback could still apply. He suggested that 20.25E.065.B.2.i should specifically state that the shoreline itself is not a critical area and shall not be regulated as such.

Ms. Helland said the paragraph could be revised to remove all references to shorelines in 20.25H. The approach was seen simply as a bridge to the shoreline update that was allowed by the legislature. Mr. Klinge said the Washington Sensible Shorelines Association simply wants to make sure it will get done.

Mr. Klinge referred to the subdivision standards in 20.25E.065.B.2.k and pointed out that they are also tied to the critical areas ordinance, even though that is not clear in the way the paragraph is drafted. If there is a critical area involved in a subdivision, it must be put into a native growth protection area. Fixing the critical areas ordinance will also fix the subdivision standards.

Moving on to 20.25E.065.C.1, Mr. Klinge voiced concern with the sentence reading "Additionally, the general development requirements and standards governing site development of property citywide, contained in Chapter 20.20.LUC, apply." He said it is unclear if the statement incorporates the sentiment by reference as part of the Shoreline Master Program or if it is just a note to be aware of the fact. When it comes time to look at a shoreline permit and what

goes to the Shoreline Hearings Board versus what does not, those types of issues become important.

Commissioner Tebelius asked what the Washington Sensible Shorelines Association wants to see happen with regard to the sentence. Mr. Klinge said the concern of the group is whether or not the notion is being incorporated by reference into the Shoreline Master Program. The sentence could be removed; that would not incorporate it into the Shoreline Master Program and would leave the general rules to apply. Ms. Helland said the city allows variances to side yard and front yard setbacks that are not shoreline related all the time. The sentence in question was included based on direction received from the Commission.

Mr. Klinge pointed out that the strikeout in 20.25E.065.C.1 removes the language that says Phantom Lake shall be regulated by the critical areas ordinance and not by the Shoreline Master Program. The intension of the Commission was to treat wetlands on Phantom Lake under the critical areas ordinance. He commented, however, that the same is not carried forward in notes to chart 20.25E.065.C or on chart in 20.25E.050; that needs to be cleaned up. Ms. Helland explained that the original structure regulated Phantom Lake only according to critical areas, and the intent was to get the lake out from under competing regulations because in all cases the critical areas regulations were going to be more restrictive than the shoreline regulations. The note on page 7 is a note to readers that the critical areas regulations also apply. Mr. Klinge said the fact is the critical areas regulations apply to all properties. The position of staff is that Phantom Lake is ringed by regulated wetlands and so therefore it is all a critical area. However, the Phantom Lake people have said the wetlands were created artificially because of the flooding triggered by the city, and they hold the view that artificially created wetlands are not regulated under state law. In cleaning up the section, the implication should be avoided by having the note included. Ms. Helland said the user note can be deleted if the Commission directs staff to do so.

There was agreement on the part of the Commissioners to remove the note.

Mr. Klinge noted that the big change to chart 20.25E.065.C was to insert the 25-foot building setback. However, there are two additions that create a different result from what the Washington Sensible Shorelines Association thought was going to happen. Notes 6 and 7 were added and refer to the maximum allowed impervious surface. Note 6 says the maximum amount of impervious surface area within the 25-foot building setback is ten percent, but note 7 says the maximum amount of impervious surface within the area measured 25 to 50 feet landward of the ordinary high water mark shall not exceed 30 percent. Ms. Helland said the standard was taken directly from the Mercer Island plan. Mr. Klinge said conditions in Mercer Island are dramatically different from those in Bellevue. For one thing, Mercer Island has much larger lots and fewer lots that are less than 75 feet wide. In the original draft there was a vegetation conservation area buffer of 25 feet and an additional 25 feet for a total of 50 feet for the building setback. The direction from the Commission was to just have a 25-foot building setback. The redraft language allows a ten percent impervious surface maximum, and a 30 percent impervious surface maximum in the next 25 feet. Given the example of a 100 feet by 100 feet lot, within the 25- to 50-foot area there is affectively 35-foot setbacks on each side, and any impervious surface has to fit in that building envelope. The Washington Sensible Shorelines Association believes the approach is too restrictive and is not in favor of it. Notes 6 and 7 should be deleted.

Chairman Carlson asked what the current standard is. Mr. Klinge said under the current Shoreline Master Program there is a 25-foot building setback, and in that setback there are no restrictions. In the critical areas ordinance, which conflicts with the existing Shoreline Master Program, the first 25 feet is a no-touch buffer area, and the next 25 feet is a setback area. Ms. Helland added that certain provisions in the code apply in the second 25-foot area. The legislature allowed for amending those provisions of the code as a bridge to the Shoreline Master Program update, and that served as the starting point in the original update draft. Footnotes 6

and 7 were included in response to direction from the Commission to use the same impervious surface standards that Mercer Island employs.

Commissioner Tebelius said there is no question that many of the lots on Mercer Island are much larger. Footnotes 6 and 7 seem pretty onerous when applied to Bellevue lots.

Mr. Klinge said there are two purposes for regulating impervious surface coverage. The first is water quality. Water that runs off of streets is dirty, but the water that runs off of roofs and patios is not, so that is not an issue along the shoreline. The second reason is controlling too much water, and that is where steps are taken to infiltrate the water by using detention ponds and the like to keep the streams from overflowing and causing erosion. However, Lake Sammamish is a receiving water and therefore has no detention requirement. Impervious surface is regulated throughout the city, and 35 percent is the general rule. Shoreline properties will have to meet that rule one way or the other, but the property owners should be allowed to decide for themselves where the impervious surfaces should be located.

Chairman Carlson suggested simply eliminating footnotes 6 and 7 and other Commissioners concurred. Staff said the change would be made.

Mr. Klinge said a structure by definition is not the same as a building, thus when the term "structure setback" is used it could include far more than just buildings. A structure by definition is a combination of materials constructed and erected permanently or temporarily; that could include walkways that are bound together with grout. Ms. Helland pointed out that the definition specifically excludes vessels, shoreline stabilization, docks, residential fences, retaining walls less than 30 inches in height, rockeries less than 30 inches in height, and similar improvements of a minor character.

Chairman Carlson asked if use of the term "structure setback" had been a misprint but Ms. Helland said it was not. The 1974 Shoreline Master Program included a 25-foot setback for structures, not just buildings. Going with the change proposed by the Washington Sensible Shorelines Association would be more lenient than the 1974 program, and the Department of Ecology likely would object.

Mr. Klinge said the question is what the intention is. If the city is intending to apply the structure setback to patios, decks, barbeques, fire pits, boat ramps, walkways with or without grouted pavers. As written, the regulation is not clear. All of those items should also be exempted.

Ms. Helland said the structure setback in the draft Shoreline Master Program mirrors the structure setback applicable in all other areas of the city, except that it has been modified to specifically exclude vessels, shoreline stabilization and docks. Mr. Klinge said it was his understanding that a patio is an allowed use within the 25-foot back yard setback. Ms. Helland said a patio is allowed provided it is pervious and less than 30 inches in height. For the Shoreline Master Program, with footnotes 6 and 7 removed, structures of less than 30 inches do not count against the general land use setback. Mr. Klinge said there still is an issue regarding patios and decks. If the reference were to a "building setback" rather than a "structure setback," the issue would be resolved; the alternative would be to expand the definition so as not to capture the unintended consequences.

Mr. Klinge said there are a number of instances in which the option of using the special shoreline report was crossed out or changed, and he said he was not clear where the special shoreline report can or cannot be used. Ms. Helland said the report is not applicable in shoreline residential any longer because there is nothing left to administratively modify, everything having been deleted.

Mr. Klinge said the Washington Sensible Shorelines Association supports the changes made to 20.25E.065.E.1.a, which is where the specific elevations from which to measure the setbacks are included. However, a clarification is needed in that critical areas are referenced. In some circumstances there will be issues because of the FEMA hundred year flood rule, and flood hazards are critical areas. The fix would be to indicate that the shoreline setback may require modification due to the FEMA hundred year flood line, which is a flood hazard critical area. Ms. Helland said the last sentence of paragraph E.1.a was included as a note to the public to clarify that another provision may be applicable to them. From that perspective it is superfluous and could simply be eliminated. Mr. Klinge said he would prefer to see the sentence revised as suggested and included. Ms. Helland said it would be problematic to include the suggested language. The building setbacks do not get modified as a result of the FEMA hundred year flood plain and it would be better not to confuse the interplay between critical areas and the shorelines, which is where the ordinary high water mark comes up. The proposed language would in fact create a conflict. It would be better to simply delete the last sentence of the paragraph.

Mr. Klinge referred to the new provision included in 20.25E.065.E.2 relative to residential structure setback allowances. The city of Sammamish put in a similar provision for existing developments as a complement to nonconforming uses.

Mr. Klinge proposed rewording the first sentence of 20.25E.065.F to read "The citywide tree preservation standards in Section LUC 20.20.900 shall apply in the shoreline district when a land-disturbing activity is proposed." He said the concern is that in the referenced section of the Land Use Code there are numerous specific provisions about when tree preservation applies and what has to happen, and it would be better to simply rely on that. The Commissioners and the staff offered no objection to making the change as proposed.

Mr. Klinge called attention next to 20.25.E.065.I.4 and noted that the residential moorage rules apply to new or reconfigured residential docks, and there is a definition for "reconfigured." One should be allowed to do a full replacement in place, and that is different. The redraft says that when a dock is reconfigured the rules apply, which is good, but the reconfigured notion needs to be reflected in Chart 20.25E064.I.4. The Commissioners and the staff concurred.

Mr. Klinge noted that the chart sets forth a maximum dock size. Footnote 3 reflects the fact that the Army Corps of Engineers and state Fish and Wildlife heavily regulate docks and can permit larger docks.

Commissioner Tebelius observed that no permit will be approved without involvement on the part of the Corps of Engineers. Because of that, the requirements relating to docks in the chart could simply be deleted.

Commissioner Laing said one of the problems is that the city retains joint regulatory jurisdiction over the shorelines with the Department of Ecology. Accordingly, permit applicants must still deal with the city. The maximum dock size can be exceeded if the Corps of Engineers and Fish and Wildlife will approve it. In some jurisdictions, the way a dock permit is obtained is by first going to the Corps of Engineers for approval, and then taking their approval to the local jurisdiction to seek a permit. In that way the local jurisdiction retains its permitting process, but what gets approved is up to the Corps of Engineers. The maximum dock size should be indicated on the chart as the greatest length and area authorized through state and federal approval, and such approval should be required to be obtained prior to submitting a permit application to the city.

Environmental Planning Manager Michael Paine suggested there may be a shoreline property owner who would like to build a dock of exactly 480 square feet, and under the scenario in the

redraft they could do so on an accelerated permit process from the Corps of Engineers. The 480 square feet maximum is the number the Department of Ecology is looking for from every jurisdiction along Lake Sammamish and Lake Washington. He recommended leaving the number in with the associated footnote.

Mr. Klinge explained that the 480 square feet maximum is predicated on the old Regional General Permit 3, which is intended to be a shorter form approval process where certain criteria are met. However, RGP3 has not been renewed.

Commissioner Tebelius suggested that there is nothing in the RCW that suggests local jurisdictions must include a maximum dock size given that the Corps of Engineers has the final authority. Ms. Helland said the city must demonstrate compliance with the guidelines, which call for the minimum necessary in relation to the height of the vessel. The articulations in the chart are the fog lines that guide applicants into a safe harbor of where the waters have been tested with the Department of Ecology. Staying within the fog lines will give the Department of Ecology the impression that the city is trying to legitimately meet their guidelines.

Mr. Nizlek pointed out that the Corps of Engineers could at any time change the 480 square feet to something less or something more, and the real issue is covered by footnote 3.

Commissioner Laing pointed out that in fact the Commission had previously concluded a specific number relative to maximum dock size should be included, and that it should be in line with what the Corps of Engineers and the Department of Ecology are looking for. What needs to be clear is if the state and federal agencies approve something larger, there will be no debate at the city's permit counter.

Commissioner Tebelius countered that by including a specific number, the specific number will be treated as if it is set in stone. Instead of showing a specific maximum dock size, the chart should simply indicate that maximum dock size is subject to the Army Corps of Engineers.

Mr. Klinge said the proposal made by the Washington Sensible Shorelines Association in its sensible shorelines plan was to indicate a maximum dock size of 750 square feet for Lake Sammamish, 1000 square feet for Lake Washington, and 400 square feet for Phantom Lake, subject to gaining approval from the Corps of Engineers.

Commissioner Hamlin said that could lead an applicant down a path toward an unattainable goal. The whole point of the 480 square foot maximum is that it is something applicants are likely to get without any restriction. He added that it might be helpful to include the language of footnote 3 in the box on the chart.

Chairman Carlson suggested the best approach would simply be to say the maximum dock size is 480 square feet or whatever the Corps of Engineers will allow. Commissioner Laing said that could be accomplished by writing footnote 3 to unequivocally say that the city shall approve a dock larger than 480 square feet if the state and federal agencies give their approval. Ms. Helland said that was the intent of staff in drafting footnote 3.

Mr. Klinge said there is a different issue facing Phantom Lake. The numbers in the chart do not add up. A four-foot walkway is too narrow and really should be six feet. Even a four-foot walkway that is 100 feet long would yield 400 square feet, which is far more than what the chart allows at 250 square feet.

Mr. Klinge suggested that the minimum ell requirements on the chart are somewhat confusing. He said he understood the reference to be the cross piece at the end of the walkway. According to the box, the minimum water depth at the ell must be 30 feet, but that will only rarely happen.

That needs to be cleaned up. Additionally, rather than the requirement for at least nine feet of water as measured from the ordinary high water mark should in fact be measured from the mean low water mark. Staff and the Commission agreed to utilize language calling for a minimum of ten feet of water depth as measured from the mean low water mark.

Mr. Klinge questioned why an ell is not permitted on a dock in Phantom Lake. A maximum square footage should be established and the property owner should be allowed to determine what shape that should take.

Mr. Klinge referred next to 20.25E.065.I.4.v and the topic of open-sided boat moorage covers, also known as a canopy. He noted that a special shorelines report is required in order to get a canopy permitted, and that is too restrictive. Additionally, requiring open-sided boat covers to be considered as part of the moorage platform loops back to the 480 maximum square footage. That is not how the Corps of Engineers regulates canopies under RGP1. The Washington Sensible Shorelines Association does not believe boat canopies should be regulated at all and as such the paragraph should be deleted. The Corps of Engineers can allow more than one canopy per dock and that should be reflected if the section is retained.

Commissioner Laing noted that the language allows for a canopy only where a proposal will result in a net benefit to shoreline ecological functions. He said he could not imagine a scenario under which a special shorelines report would conclude that adding a canopy would benefit the shoreline ecological functions. He suggested the paragraph should be rewritten to essentially say if the Corps of Engineers allows it, the city will allow it.

Ms. Helland said the language limiting boat canopies to only one was included to alleviate the concerns of shoreline property owners who fear their views obstructed by the construction of boat canopies over docks. The proliferation of canopies is one of the complaints city staff deals with most often.

Commissioner Tebelius said there are not that many canopies on the lake. Mr. Nizlek pointed out that currently about 46 percent of the docks in Lake Sammamish have canopies. Commissioner Tebelius said she could agree to the limit of one canopy per dock.

Commissioner Sheffels asked if shared docks are limited to only one canopy as well. Ms. Helland said a different number could be included for shared docks.

Mr. Klinge backtracked to the accidental destruction provision in 20.25E.065.I.3.c. He questioned including the phrase "beyond the control of the owner" in conjunction with accidental destruction. It would appear the phrase would mean the owner cannot burn down the structure, but that would not be an accident. Additionally, there is a requirement for reconstruction to commence within a year, but is entirely too short a time period. He suggested the language "...provided that a permit application for reconstruction is submitted within two years, and such reconstruction is completed according to the issued permits."

Ms. Helland pointed out that the nonconforming use provisions talk about twelve months and the section was drafted to provide consistency. The city has been very flexible with the one-year provision in cases of accidental destruction.

Commissioner Sheffels said she agreed with the proposed language, except that the permit application should be submitted within one year.

Commissioner Laing favored striking the phrase "outside the control of the property owner." Ms. Helland said the language reflects the approach taken in Bel-Red, which is what the Commission directed the staff to do. She stressed the need for language that is consistent with

the rest of the code; to say thing one way in one place but another way in another place could be construed to mean two different things.

The Commission concluded to retain the phrase "outside the control of the property owner" and agreed to revise the draft to allow for the submitting of a permit application within two years over having construction commence within a year.

Commissioner Laing referred to the last sentence of 20.25E.065.I.3.c and the issue of areas of temporary construction disturbance required to be restored pursuant to a mitigation plan approved by the Director. He suggested the sentence should be revised to read "Areas of temporary construction disturbance resulting from the reconstruction shall be restored to the pre-construction condition." As drafted, a property owner who through accidental destruction could lose a dock and be allowed to rebuild it, but also be saddled with a mitigation plan that could go well beyond just putting things back to the way they were.

Commissioner Hamlin pointed out that the Commission had previously discussed the issue and concluded that the draft language is correct. The same language is used in a number of different places. He said he favored keeping the draft language in place.

Commissioner Sheffels commented that the mitigation plan can be as easy as showing photographs of the way things look before. It is not onerous to require a mitigation plan.

Ms. Helland said there are site disturbances created as a result of construction activities. The intent is to see those disturbances restored. She said staff had no argument against removing from the reference to a mitigation plan approved by the Director.

Mr. Klinge referred back to 20.25E.065.H and the definitions for boatlifts. He said the problem with the definition of an attached boatlift is that many boatlifts attached to a dock do in fact have some kind of anchoring down into the substrate. Such boatlifts do not fit either the attached or freestanding definitions. A similar complication exists relative to the definitions for watercraft lifts. In the Regional General Permit I used by the Corps of Engineers there is reference only to watercraft. The approach taken in the draft makes it necessary to determine the difference between a watercraft and a boat.

Mr. Klinge went on to say that the regulations in 20.25E.065.H.6 need to be cleaned up. It says attached lifts are preferred over freestanding lifts, but then goes on to restrict the number of freestanding lifts. While the text allows for the repair and replacement of existing docks, it introduces standards that include grating. Replacing a board here and another one there where the replacements exceed 20 square feet require the use of grating, which will be higher than the other planks on the deck. Additionally, putting in grated deck often requires the use of additional stringers to hold up the deck, so the result is an uneven deck and far greater expenses. The state regulations come into play and there is no need for the city to have regulations of its own. Paragraph 5.a should be deleted.

Associate Planner Heidi Bedwell said the intent was for the 20 square feet to be contiguous, not one board here and another one there. Commissioner Tebelius said while that may be the case, that does not address the even deck problem that could result or the need for extra support. She agreed paragraph 5.a should be eliminated.

Mr. Paine pointed out that there is some environmental benefit to the grated docks. Instances where a dock is being replaced is the opportune time to convert to grated surfaces. Commissioner Tebelius agreed but pointed out that that is governed by the state and the Corps of Engineers .

Commissioner Laing agreed that where replacement is needed, there should be a conversion to grating. However, where the issue is repair like materials should be allowed to avoid unintended consequences. Banned materials should never be allowed.

Mr. Klinge said his final concern had to do with the subject of nonconformance and said he would submit his comments in written format.

BREAK

8. OTHER BUSINESS

Commissioner Sheffels noted that at a previous meeting Deputy Mayor Robertson informed the Commission that Commissioner Laing had been appointed to serve as liaison to the Transportation Commission. She said the Commission has not in the past had liaisons to other boards and commissions; the chairperson is often tasked with attending the meetings of boards and commissions to give a report or offer an opinion, but the Commission has not historically represented itself to other boards and commissions. In the appointment of Commissioner Laing that was announced by Deputy Mayor Robertson, the other Commissioners were not even consulted. It sets a bad precedent for the Commission to impose itself onto another board or commission.

Commissioner Laing said the rumors of what the appointment entails have been greatly exaggerated. He said during a Council meeting three weeks ago, Councilmember Chelminiak, in the context of a discussion about the transit master plan that will be coming before the Transportation Commission, made the recommendation to the City Council that a person from the Planning Commission and a person from the Human Services Commission should sit in on the transit master plan meetings with the Transportation Commission. The topic is near and dear to both the Planning Commission and the Human Services Commission. Under city code, all city boards and commissions are directed to coordinate their planning activities as they relate to land use or the Comprehensive Plan with the Planning Commission. That is a mandatory affirmative obligation. The City Council put into the hands of the liaison to the Planning Commission, Deputy Mayor Robertson, and the liaison to the Human Services Commission, Councilmember Wallace, the task of selecting Commissioners to sit in on the transit master plan meetings so that both commissions can be fully informed as the update process moves forward.

Commissioner Laing went on to say that a member of the public and a member of a political action committee from Bellevue attended the Planning Commission meeting the night the appointment was announced by Deputy Mayor Robertson, and either misheard, misunderstood or misreported the substance of the meeting. What has followed from that is communication to the City Council that has somehow confused the Transportation Facilities Plan update work, which the Transportation Commission actually completed several weeks ago, with the transit master plan process. He said there will be a limited number of meetings at which the focus of the Transportation Commission will be on the transit master plan, and it will be only those meetings that he and the representative from the Human Services Commission will attend as appointed liaisons.

Mr. Stroh offered to have staff facilitate a memo to clarify the situation with regard to the appointments, including how the process came to be, the roles as set forth, and the Council direction. He suggested the potential for misunderstanding could be cleared up in that way. Chairman Carlson welcomed the suggestion.

Commissioner Tebelius said it was too bad things had reached the point of having to take steps to clarify the situation. She allowed, however, that when Deputy Mayor Robertson made the announcement to the Commission she had been confused as to exactly what the appointment

entailed.

Commissioner Hamlin said he also had questioned the manner in which the appointment was made and the role the liaison to the Transportation Commission was to play. He welcomed the notion of having a memo drafted to clarify the situation.

Commissioner Sheffels said whenever opportunities arise for Commissioners to serve as representatives or liaisons, the opportunities should be announced and the Commissioners given the opportunity to express an interest in being appointed. That alone would provide clarity and openness.

9. PUBLIC COMMENT – None

10. APPROVAL OF MINUTES

A. June 27, 2012

There was consensus to put off approving the minutes until the next meeting.

11. NEXT PLANNING COMMISSION MEETING

A. September 12, 2012

12. ADOURN

Chairman Carlson adjourned the meeting at 10:00 p.m.

Paul Inghram
Staff to the Planning Commission

10/10/2012
Date

John Carlson
Chairman of the Planning Commission

10-10-12
Date

* Approved September 26, 2012