

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

November 28, 2012
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioner Turner

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:33 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 Turner who was excused.

3. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, noted that in recent discussions with the Commission, Dr. Pauley and his materials have been mentioned. He said he put together a compendium of Dr. Pauley's work, including his testimony, slides and abstracts. He noted that several WSSA action items were left open at the November 14 Commission meeting, including Item 2, the request that the City Council be briefed on the twist with respect to flood hazard regulations applying along the shoreline. He said WSSA is aligned with the greenscape idea that was raised on November 14, though there are clarifications needed, particularly whether or not the standard relative to structures of 30 inches or less will apply. With regard to Note 6, the beach area, soft stabilization and angled rock revetment should be considered part of the greenscape. There are instances wherein things such as barbeques and boat racks stand above 30 inches in height, and that should be clarified. The language relative to lifts and canopies needs clarification relative to total numbers. With regard to location, the standard of 30 feet from the ordinary high water mark or nine feet of depth from the ordinary high water mark should be used, unless the state or federal agencies approve something else. One light-transmitting fabric cover per dock should be allowed. With respect to shoreline stabilization, WSSA believes the staff meant to include "new or existing" so that change should be made.

Mr. Charlie Klinge spoke representing the Washington Sensible Shorelines Association. He said state law includes a specific provision that says the Shoreline Master Program must protect single family residences and appurtenances from shoreline erosion with effective and timely protections. The WAC lists both hard and soft stabilization measures, including rock revetments,

walls and bulkheads. While a wall is a vertical concrete structure, a bulkhead typically utilizes wooden boards with columns designed to hold them in place. Riprap or rock revetments are rock structures that serve the same purpose. A typical rock revetment has a base that sticks out to protect the toe, otherwise the toe will be undercut. When a vertical wall is taken out, there must be a good understanding of exactly where a rock revetment should be placed; if positioned too far back, the ordinary high water line will come up on the property and land will be lost, the setback will change, and other problems will be created. Slope ratio is very important for rock revetment. A 45 degree slope is beneficial for avoiding waves bouncing back and for providing crevices, and that is a ratio of 1:1. A 3:1 ratio is a slope of 18 degrees. If a four-foot wall is to be replaced, a 3:1 ratio will require twelve feet of land. As suggested by staff, he provided the Commission with a red line annotation indicating the language changes needed.

Mr. Brian Parks, 16011 SE 16th Street, called attention to the fact that Weowna Park was misspelled in the minutes. He said the Phantom Lake Homeowners Association recognizes that the Commission is reluctant to adopt specific non-regulatory language and programs in the Shoreline Master Program update. The Association also recognizes that there has been an expression of concern and sympathy from many commissioners regarding the Phantom Lake basin being a critical but limited sensitive system. The Council should at least be apprised of the travails faced by Phantom Lake homeowners, especially the fact that beaver habitation on city property is causing impacts. The Phantom Lake outlet channel runs through sensitive Weowna Park and into Lake Sammamish. The pulsing that occurs from repeated dam build-up and removal is not good for the lakes or the city invested restoration projects. Beavers living on city land abutting the lake have historically constructed dams that disrupt the lake drainage flow. While the dams are generally located on city owned property, the blockages occur on private property along the eastern drainage channel. Maximum flow is needed to prevent the flooding of private properties as well as for healthy lake turnover. A special no-beaver policy by the city to assure that there will be no beaver-created blockages is warranted.

Chairman Carlson asked what the city's policy is regarding animal constructed blockages or obstacles. Environmental Planning Manager Michael Paine said utilities staff has indicated that they act to remove blockages on city owned properties or leased easements. The city is not, however, in the business of trying to exterminate beavers on a regular basis. In cases of imminent danger, a property owner could act to remove a blockage.

Mr. Parks said beaver dams that get removed are routinely reconstructed by the beavers. The fact is if a dam is of a certain size, a SEPA permit is required in order to remove it. It is not possible to allow beavers and expect a free-flowing outlet channel; one or the other must be chosen. The clear preference is to remove the beavers to some other habitat.

Mr. Norm Baullinger, 16226 SE 24th Street, said for the past few months he has been recording the lake level and the amount of rainfall. Over the summer about eight trees fell due to saturated shorelines caused by a high lake level. During the summer the lake level stood at an elevation of about 260, but in the last two months it has risen about a foot and a half and currently is at about 261.6. Keeping the lake level down will reduce lakeshore saturation and will preserve trees. There are three contributors to the high water level of the lake: the weir board height, the unrestricted flow of water into the lake, and the presence of beavers. Beavers regularly dam up the outlet, and often debris must be removed twice a week. The beavers should simply be removed.

Commissioner Sheffels asked if the Department of Fish and Wildlife has any suggestions for how to discourage beavers from building dams in certain locations. Mr. Baullinger said a pipe can be installed under dams to allow the water to flow out. When a beaver hears rushing water it

acts to stop it. That approach is not practical in Phantom Lake, however.

Commissioner Laing allowed that the Commission has no authority to regulate beavers in the city. He asked if anyone has brought the beaver issue to the attention of the City Manager. Mr. Baullinger said a permit costing \$400 can be obtained, but the property owners cannot afford to continually take that approach. The Commission should do whatever it can, by working with other city departments if necessary, to help control the building of beaver dams on Phantom Lake. Commissioner Laing said the Commission intends to alert the Council to a number of issues when the Shoreline Master Program is transmitted, including the beaver issue. The Commission certainly is sympathetic to the Phantom Lake homeowners and the ongoing trials and tribulations they are facing, not the least of which is the beaver issue, but the Commission cannot do more than raise awareness of the issue with the city's elected officials.

Commissioner Tebelius suggested the transmittal memo to the Council should both address the issue of beavers and request that the City Council direct a resolution to the problem~~issue and state that a resolution is needed~~. Chairman Carlson agreed it would make sense to highlight the issue of beavers at Phantom Lake in the Phantom Lake portion of the transmittal memo.

4. APPROVAL OF AGENDA

A motion to approve the agenda as submitted was made by Chairman Carlson. The motion was seconded by Commissioner Laing and it carried unanimously.

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

6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reported that the Lorge-Benis Comprehensive Plan amendment was presented to the Council on November 26 by Chairman Carlson and staff. A long and lengthy discussion followed, and some interest was expressed in trying to capture the applicant's idea for a rezone with some conditions attached, and a policy statement aimed at capturing the conditions.

Chairman Carlson said the Council appeared to be as split on the issue as the Commission was. They expressed concern about the proposed amendment but clearly recognized that the city could do something better than what currently exists.

Commissioner Laing commented that a few months ago the staff prepared a matrix of potential code amendments that might be going forward in the near future. The list was ranked by priority. He noted that one thing on the list was addressing the standard for Comprehensive Plan amendments, specifically the significantly changed conditions element. Mr. Inghram said the changed conditions issue was discussed by the Council on November 26, particularly what the term actually means. There is no specific schedule for taking up the matter in detail, however.

Commissioner Laing said one of the interesting artifacts of the city's Comprehensive Plan, when compared to other jurisdictions, is that there is a virtual identity between the zoning and the Comprehensive Plan. Many jurisdictions have Comprehensive Plan designations that are very general, such as "Residential," which encompasses everything from the lowest density single family to the highest density multifamily. In those cases, the zoning can be changed without having to obtain a Comprehensive Plan amendment. All the Lorge-Benis amendment proponents want is a rezone, but in order to get a rezone they must first have a Comprehensive

Plan amendment approved. He asked if there has been any discussion at the Commission or staff levels about changing the overall approach in Bellevue. Mr. Inghram said the Commission has not discussed the issue, nor has staff discussed changing the current status of the Comprehensive Plan map and the zoning map and how they relate to each other. There has been some discussion about changing the rezone process.

Mr. Inghram called the attention of the commissioners to the public meeting on downtown livability slated for November 29 from 5:00 p.m. to 7:00 p.m. at City Hall.

7. STUDY SESSION

A. Shoreline Master Program Update

Land Use Director Carol Helland called attention to the fact that WSSA had added Action Item 2, alerting the Council to the need for reform relative to flood hazards, to the list of outstanding issues. She said there was previous agreement to include the item in the transmittal memo, though it appears that the scope of the suggested language is broader than what the staff had in mind. Staff has always noted that the city has conformance obligations with respect to the critical areas code, but the suggested language seeks to advise the Council that the flood hazard regulations need to be revised. The Council, however, has not given the staff or the Commission direction to revise the critical areas code beyond what is needed for conformance purposes.

Commissioner Tebelius suggested that at the very least the issue should be brought to the attention of the Council. She proposed having representatives from WSSA and staff work together to draft language to include in the transmittal memo.

Commissioner Sheffels pointed out that the flood hazards issue applies beyond just the shorelines to all floodplains in the city. The Commission should visit the broader topic at a later date.

Mr. Inghram suggested including in the transmittal language indicating that the flood hazards issue may need to be revised. The commissioners concurred with taking the suggested approach.

Ms. Helland turned next to WSSA's Action Item 2, definition of structure, and noted the staff had previously suggested considering the greenscape option or going back to the Mercer Island option. She said it appears WSSA agrees with the greenscape option with some clarifications. She noted that structures less than 30 inches in height are always allowed, so the proposed clarification on that point is not necessary. With regard to the definition of greenscape in 20.50.022, it would be inconsistent with the greenscape provisions to call angled revetments out as greenscape. Additionally, because shoreline stabilization is not considered within the definition of structure, the greenscape requirement should apply essentially within the shoreline setback.

Environmental Planning Manager Michael Paine suggested that it would be legitimate to include soft stabilization in the greenscape requirement. The stabilization rules indicate that there are options for planting hard stabilizations, so a revetment with a very low angle could conceivably have successful plantings in the interstitial spaces in the rocks. All of the rest is hardscape, however, and one would be hard-pressed to call it greenscape.

Commissioner Ferris pointed out that the practice citywide with regard to rockeries is to count them as impervious surfaces. The rockery portion of a revetment should be counted in the same way. To exclude rock revetments from the impervious surface area calculation would be to give

shoreline property owners an exclusive advantage. He said he favored the Mercer Island option over the 25-foot setback, but allowed that the majority of commissioners did not hold the same view. If the greenscape option is selected, rockeries should be treated the same as the rest of the city relative to counting against the impervious surface area limits.

Commissioner Laing said his initial reaction after seeing the reference to angled rock revetments was close to that voiced by Commissioner Ferris. He suggested, however, that the comment by Mr. Paine was in line with the fact that some properties have angled rock revetments that are barely visible given the amount of vegetation grown in and on them. In a simple world with a 25-foot setback and an existing vertical bulkhead, and where the ordinary high water mark is at the base of the existing bulkhead, someone wanting to do the right thing by replacing the bulkhead with an angled rock revetment would immediately lose some four feet of land. If the width of the bulkhead is 100 feet, the property owner would lose 400 square feet of land overall that would count toward the 50 percent threshold, so 200 square feet of potentially non-greenscaped land would be lost by trying to do the right thing. Where disincentives for doing the right thing are created, people will not do the right thing. If there are benefits to angled revetments, there should be no associated penalty. Someone should not be asked to give up what amounts to the impervious area needed for a patio or a shed as a consequence of doing something that is beneficial.

Mr. Paine said one of the hard stabilization options is a revetment angled at a ratio of 3:1 or greater. The approach does result in the loss of some property to the stabilization function. The requirement for a new revetment, however, is that it must be partially bioengineered or planted. It would be reasonable not to count the planted areas as impervious surface area, but the problem is that the definition of greenscape may exclude the use of the provision. Modifying what greenscape means relative to the angled revetment option would result in some sort of specialized vegetation retention area, which would mean going back to where things started.

Ms. Helland added that there is a provision that allows for legitimizing existing conditions prior to a certain date. For shoreline purposes, the adoption date for the shoreline regulation could be used to determine that existing conditions are not nonconforming.

Commissioner Tebelius said there is no question that replacing an existing bulkhead is very expensive. Where disincentives are created, few will opt to go in that direction. Incentives need to be included for upgrading a straight concrete wall to an angled rock revetment, ~~even if that means treating shoreline properties differently than all other areas of the city.~~

Chairman Carlson said there is no question the Commission wants to see an approach that encourages the replacement of bulkheads with angled rock revetments. The issue is how to best reach that goal.

Commissioner Ferris pointed out that an earlier draft included a 35-foot setback and ten incentive-based items, including grandfathering in all existing structures. Under the approach, replacement of an existing hard shoreline yielded a reduction in the setback by five feet. When the Commission acted in favor of a 25-foot setback, restrictions on the amount of impervious surface were added. The draft now under consideration is the most aggressive plan put forward yet. The greenscape requirements only say that half of the setback area has to be green. The Mercer Island approach allows only ten percent impervious surface in the first 25 feet, and 30 percent in the next 25 feet. It does not make sense to first give away the farm and then give incentives to do more.

Mr. Klinge said the big difference between Bellevue and other jurisdictions with shorelines is

that Bellevue's shoreline is extensively urbanized. No assumptions should be made about what the Department of Ecology is going to say or not say. The compromise WSSA can support is the one it presented. Sometimes property lines extend beyond a bulkhead, and any sand or other beach material should be counted as greenscape. Soft stabilization should also be counted as greenscape. The property owners that own the upland out to the property line, which is typically the ordinary high water mark, also own second class shorelands, the lakebed, further out. The focus is not on the front yard or back yard of a typical neighborhood; it is on someone with waterfront access and property rights that extend out into the lake.

Commissioner Laing concurred but said in order to make it work language would have to be inserted referring to angled rock revetments that are installed as replacements for a vertical wall bulkheads. Without that language, there will be no incentive. At the end of the day, the issue is the 25-foot setback from the ordinary high water mark, so it is really irrelevant where the property lines extend to. It may be that on some properties the ordinary high water mark is on a sandy beach, and in those instances the setback will include the sandy beach.

Ms. Helland suggested the Commission should also consider requiring angled rock revetments of the options for hard stabilization that are included in section 20.25E.080.F.4.d.i. That section talks about including live staking and other vegetative enhancements.

Commissioner Hamlin proposed that calling angled rock revetments greenscape just muddies the language. If the greenscape option is the approach to be taken, the reference to 30 inches or less in height should be deleted. He said his preference is for the Mercer Island approach because it is simple to understand. He said he would not even consider Modification B as it is far too confusing.

Commissioner Sheffels said the Mercer Island approach is certainly a lot more green. Beaches are not generally planted, so they should not be counted as greenscape. When it comes to incentives, there likely will not be a huge rush of property owners seeking to replace an existing vertical bulkhead with a sloped revetment even with good incentives. She voiced her support for the Mercer Island approach.

Commissioner Laing said he has had Mercer Island shoreline property owners as clients. One of the things that makes Mercer Island different is that much of their shoreline has steep banks. As a practical matter, the development along the shoreline is not the same as that along Lake Sammamish and Lake Washington in Bellevue where there is more development and more structures closer to the water. He said he likes the Mercer Island Shoreline Master Program overall, largely because it does exactly what the Shoreline Management Act says an Shoreline Master Program is supposed to be, which is tailored to local circumstances. The opportunity exists to reflect Bellevue-unique shoreline circumstances. The issue of impervious surface amount in the setback was rightly raised at the last Commission meeting; the potential consequences are significant. Under the Mercer Island approach, however, the issue is imperviousness surface area, not necessarily vegetation.

Mr. Klinge said sand is a pervious surface and as such should be considered the same as greenscape. The focus is on replacement of existing bulkheads, not new or expanded structures. Replacement of an existing shoreline stabilization is a very different matter from starting with a clean site and putting in new stabilization, and the WAC guidelines treat the two approaches very differently.

~~Commissioner Tebelius said she did not favor the Mercer Island approach.~~

Mr. Klinge said he was surprised even to hear the Mercer Island code talked about because it represents a dramatic change to what the Commission previously agreed to relative to the 25-foot setback. He said WSSA is seeking a compromise about what can be done in the 25-foot setback. The Mercer Island approach limits impervious surface area to ten percent in the first 25 feet and 30 percent in the next 25 feet, and along the Bellevue shorelines the second 25 feet would take in many existing homes. The circumstances in Bellevue simply are different than they are in Mercer Island.

Commissioner Laing agreed with Commissioner Hamlin that the language regarding structures 30 inches or less in height should be deleted. He said he would support Modification A only with the clarifying language referring to angled rock revetments that replace an existing vertical shoreline stabilization. He said he had no objection to Modification B.

Ms. Helland clarified that as proposed by Commissioner Laing, a reference to Land Use Code 20.50.022 for the definition of greenscape would be included, and as it relates to shoreline properties the language would say that the beach area, soft shoreline stabilization and angled rock revetments installed as a replacement for vertical shoreline stabilization shall also be considered greenscape. She noted that staff had suggested a reference to the section outlined on page 77 of the memo. What is needed, however, is clarification of what is considered an improvement that would warrant allowing an angled rock revetment to be treated as greenscape; some minimum slope dimension is needed.

With regard to Modification B, Ms. Helland commented that allowing structures over 30 inches of any amount takes the focus back to pre-original Shoreline Master Program. The city has not allowed permanent structures over 30 inches in the 25-foot setback since 1974, and staff are not wanting to reverse that practice.

Answering a question asked by Commissioner Sheffels, Ms. Helland said there are no exceptions or variances allowed for permanent structures in the 25-foot setback. She allowed, however, that irrespective of the code people have constructed things that are not permitted in the setback, and they cannot be legitimized. The exception is structures in the setback that were legally established prior to the adoption of the original Shoreline Master Program. Racks for kayaks and the like can be located outside the 25-foot setback if they are more than 30 inches tall, or they can be constructed as non-permanent structures.

Mr. Klinge commented that a kayak rack needs to be affixed to the ground in some fashion, otherwise during storms they can blow over. He suggested that regardless of what the old rules dictated, where a problem has been identified and the solution is modest and fair, the rules should be adjusted.

Commissioner Tebelius said she could see no ecological reason for prohibiting minor structures from being located in the setback. Mr. Paine said the prohibition was included in the original Shoreline Master Program because at the time citizens did not want the shoreline cluttered with the toys of shoreline property owners. The prohibition was more about aesthetics than ecological considerations. Ms. Helland added that the original purpose behind the creation of the first Shoreline Master Program was to stop the uncoordinated development of the shoreline.

Commissioner Hamlin stated that the Modification B language just makes things complicated and confusing. It would be better to keep the requirements simple while doing the right thing, but the proposed language does not do that.

Chairman Carlson suggested the argument against the language the Department of Ecology

might use would be that the setback is being reduced all the way down to 25 feet, and that a standard that has been in place for 38 years is being done away with. Mr. Klinge said the counter argument could be that the city has tailored its provisions to be Bellevue-specific and that the limited uses are appropriate.

Commissioner Ferris commented that Note 7 deals with an exception to the structure setback and would allow specific structures that are greater than 30 inches in height. If such structures were to be allowed, their impervious surface area would still count against the 50 percent limit. The draft language was drafted, however, based on the understanding that the Commission did not want to have structures in the 25-foot setback, though exceptions are allowed for things like decks and patios that are low. Watercraft racks can be constructed on sled bases and can provide plenty of safety without being permanently affixed to the ground. He agreed that allowing structures as proposed would not be aesthetically pleasing along the shoreline.

Commissioner Laing said he doubted the Department of Ecology would pick a fight with the city over the issue. In any event there is a good defense. The real issue is impervious surface area within the 25-foot setback. If a shoreline property owner wants to use their impervious surface area allowance for a barbeque, they should be allowed to do it. From an aesthetic standpoint, a kayak rack on sleds is the same as a rack on a permanent foundation, and a barbeque on wheels is the same as a barbeque on a cement slab. He said voiced his support for the Modification B language.

Commissioner Ferris said he could support Modification A with the clarification removing the redundant language as suggested by Commissioner Laing. He said he would not support Modification B.

Commissioner Laing noted his support for removing the redundant language, and said he would support Modification A only if the language were further modified to specifically refer to replacement rock revetments. He also voiced his support for Modification B.

Commissioner Sheffels agreed with the proposed language revisions to Modification A. With regard to Modification B, she said she did not support it. She noted, however, that even though structures have not been allowed in the 25-foot setback since 1974, shoreline property owners have ignored the provision. It is highly likely that if the prohibition is continued, it will continue to be ignored. At the very least, the impervious surface area of such structures should be counted against the total allowed.

Chairman Carlson indicated his support for Modification A with the amended language, but said he did not support Modification B.

Commissioner Tebelius said she was not aware of any shoreline property owners who are ignoring the law and doing whatever they want with their properties. She said shoreline homeowners care very much about what happens on the lake because for most of them their home investments represent their biggest asset. She agreed with the revisions to Modification A, and noted her support for Modification B.

Commissioner Hamlin said he continued to prefer to Mercer Island solution. He allowed, however, that he could support Modification A with the proposed revisions, particularly if wording was included mentioning angle ratio. He said he did not support Modification B.

Chairman Carlson clarified that the Commission supported Modification B as revised, and that the majority of commissioners did not support Modification B.

Ms. Helland turned next to Action Item 12 and the issues of boat canopies, moorage covers and boat lifts. She suggested clarifying the number issue by simply saying "The number of combined boat and watercraft lifts is limited to four per dock." The commissioners concurred.

Ms. Helland said staff had no problem with the suggestion relative to location. With regard to boat canopies and moorage covers, she suggested that the concern is almost the same as the one regarding barbeques in the shoreline setback and is in the category of what the neighbors think is a neighborly number of canopies on adjacent docks. The city has always limited canopy covers to one. From an ecological standpoint, it would be perfectly appropriate to allow state and federal agencies to deviate from the restriction and to allow more, but from an aesthetics standpoint, the Commission want to decide otherwise.

Commissioner Sheffels said canopies block views and the more there are of them the more obstructed the view will be. She supported limiting the number of canopies to only one.

Commissioner Laing said he was not sure the proposed strikeout language offers any clarification. He said he would be more comfortable with the original language. He asked when the city stopped allowing more than one canopy. Ms. Helland said she did not know the answer to that question.

Mr. Klinge said the language regarding light-transmitting fabric used on canopies may need to be adjusted over time as the Corps of Engineers learns more about it. Even with translucent canopy covers, given that a boat is under it sunlight is not really reaching the lakebed. The language proposed by WSSA attempted to get at both the number and the fabric.

Chairman Carlson asked Mr. Klinge to comment on the claim that waterfront property owners could find multiple canopies to be an aesthetic nuisance. Mr. Klinge said WSSA understands the concern but would prefer to come down on the side of avoiding micromanagement. To be allowed more than one canopy requires approval by a federal agency, which is not a simple process.

Ms. Helland suggested that at the very least the language proposed by WSSA should be revised to read refer to approval by the Corps of Engineers of either additional lift canopies or alternative materials. She stressed, however, that people are often agitated by their neighbors who seek to avoid obstructing their own views by putting docks, canopies or sheds on the edges of their properties, which more often than not obstructs someone else's view. That is why there are things like setbacks. Staff receives all manner of such complaints and must then work to reconcile the matters.

Commissioner Tebelius said she personally does not like boat canopies but has learned to live with them. She said shoreline property owners should be allowed to have a canopy, but said her preference would be to limit the number to only one.

Mr. Klinge said he agreed with the language proposed by Ms. Helland.

Commissioner Ferris asked if the section as originally drafted would limit the number of canopies per dock. Ms. Helland said the language of the draft allows one light-transmitting canopy per dock unless additional canopies are approved by state or federal agencies. The current code includes a site triangle calculation that determines where such facilities are allowed. Mr. Paine said the calculation makes sense for smaller lots but is complicated to enforce and is not liked by many shoreline property owners; the calculation often forced the construction of a

longer dock.

Mr. Nizlek reminded the Commission that at one time there was a requirement for dock owners to install light prisms at a cost of \$1500 each; their purpose was to transmit light under docks. The requirement was initiated without a lot of forethought and ultimately was rescinded. The requirement for light-transmitting fabric material may in time may also be obviated by changes in technology. That is why the language about state and federal agencies determining otherwise is important to include.

Commissioner Laing said the Shoreline Hearings Board has been very sticky about the use of non natural-color materials. He said he could support drafting the language to leave open the possibility of future changes in technology. The question is whether or not the limit should be one canopy regardless. If the number of canopies is allowed to exceed one, and if the site triangle calculation is removed, there could be a lot of arguments generated as a result.

Chairman Carlson asked what good reason exists for allowing more than one canopy. Mr. Klinge said a property owner with the room for more than one may determine that it would be reasonable and appropriate for their site.

The commissioners concluded that the provision should be worded to read "One light-transmitting fabric watercraft or boat lift canopy per dock is allowed unless alternative materials are approved by state or federal agencies."

****BREAK****

Following the break, Commissioner Laing asked what would happen in a shared dock situation. Mr. Paine said the existing code allows two canopies. Ms. Helland said she would draft the language to allow one canopy for a single dock and two canopies for a shared dock.

Turning to Action Item 14, clearing and grading and fill in the shoreline, Ms. Helland suggested the fix is simply to remove the current restriction on using the clearing and grading modification provisions on LUC 20.25E.080 on residential lots. Prior to the July draft when the Commission was formulating its revisions, staff was directed to include language relative to paragraphs that do not apply to residential development. That, however, had an unintended consequence relative to the clearing and grading requirements and fill in the shoreline. For instance, installing a rock revetment requires a toe on the beach structure, but the language change placed an absolute prohibition on such actions without first obtaining a variance. The answer is to say that the residential section in the clearing and grading provisions will address the vast majority of situations, but to leave the section available to residential property owners if they need to do some clearing and grading and filling. The fix, then, is simply to strike the provision that says LUC 20.25E.080.C does not apply to residential development governed pursuant to LUC 20.25E.065.

The Commission directed staff to make the fix as suggested.

With the permission of the Chair, Mr. Klinge explained the proposed WSSA revision relative to Action Item 16, shoreline stabilization. He noted that in LUC 20.25E.080 there are provisions that address shoreline stabilization for new primary structures. While not easy to accomplish, shoreline stabilizations for new primary structures are allowed, and the proposed language would make sure new is not excluded.

Ms. Helland said when there is new development there is a requirement to come into full

compliance with the code. Mr. Inghram said the tack the Department of Ecology has taken has been that new homes should be sited in ways that do not require the creation of a new bulkhead. That is the first step in the mitigation sequencing.

Commissioner Tebelius suggested that may not be possible ~~of~~ for every lot. She added that there may be large lots that could be subdivided, and the subdivision may result in a lot on which no home could be constructed. Ms. Helland said the city does not allow subdivisions where the result would be a nonconforming lot.

Answering a question asked by Commissioner Sheffels, Mr. Inghram said the technically feasible provisions of LUC 20.25E.060.C apply to new shoreline stabilization on lots that do not currently have any, but those provisions apply only to stabilization needed to protect an existing primary structure.

Mr. Klinge said what WSSA wants is for those provisions to also apply to new structures. Ms. Helland clarified that the provisions are written to preclude the creation of a new structure that must have shoreline stabilization. A variance would be required to gain permission to construct stabilization to protect a new structure.

Mr. Paine said one could argue that shoreline stabilization is not needed for a lot that for fifty years has not had any. If there is a special circumstance, the variance process is the way to address it. The principle is strongly evidenced in the WAC.

Mr. Klinge agreed that for existing lots where nothing has ever been constructed, no shoreline stabilization has been needed. The owner of such a lot should be allowed to build on it. The WAC appears to allow stabilization measures to protect new homes where the technical feasibility requirements are met.

Commissioner Laing suggested that at best the language creates an outright prohibition against putting in a new shoreline stabilization, even soft stabilization. Ms. Helland said the shoreline stabilization provisions of 20.25E.080.F are related to existing structures. One may have new or enlarged stabilization measures to protect an existing structure because it is unreasonable to expect someone to move a structure in the event it becomes threatened. However, there is no allowance for creating the need for shoreline stabilization in the case of new structures; structures are to be located far enough away from the shoreline to avoid the need to have stabilization in order to be protected. On odd-shaped lots where the primary structure cannot be set back far enough, shoreline stabilization is allowed through the variance process.

Chairman Carlson asked what the effect would be of adding "new/or" as proposed by WSSA. Ms. Helland said someone building a new house on the shoreline could site the structure as close as possible to the shoreline and create the need for a new bulkhead. The property owner would only need to work through the technical feasibility requirements and obtain a permit. The special shoreline report process, which may or may not be accepted by the Department of Ecology, is another way a property owner could seek a shoreline stabilization without a variance.

Commissioner Hamlin called attention to 20.25E.080.F.4.a and said the language appears to address the issue by saying shoreline stabilization shall be allowed only where avoidance measures are not technically feasible. Ms. Helland said the confusion lies in the fact that the section addresses two different issues, modifying shoreline stabilization and modifying new or existing primary structures. A bulkhead can be allowed to protect an existing structure.

Chairman Carlson said he could not see a clear and pressing need to change the draft language.

Commissioner Laing said the instance is one in which the WAC swallows the Shoreline Management Act. The Act says property owners are exempt from needing a shoreline substantial development permit to construct a normal protective bulkhead common to single family residences; nothing is said about the residence being existing or not. The Act also allows for the construction of a bulkhead in an emergency situation to protect property, which does not just mean structures, from damage by the elements. The point that properties not already having a bulkhead is evidence that one is not needed is well taken, but so is the position that the need for a bulkhead on properties not yet developed may not have even been considered, and the property may just be slowly eroding into the lake.

With the exception of Commissioner Laing, the commissioners concurred with Chairman Carlson and chose not to revise the draft language.

With regard to Action Item 16 having to do with the repair and replacement of bulkheads, Ms. Helland allowed that there is opportunity to include a definition of replacement as called for by WSSA. She said a definition of repair could also be added, but said staff recommended against making the balance of the proposed edits. The requirement to show a need for replacement stabilization on Lake Washington and Lake Sammamish should be retained, and the lack of design standards can be addressed by referencing back to the provisions that are already in the code.

Ms. Helland allowed that the repair and replacement issues originally were addressed in separate sections. By combining them some ambiguity resulted. She suggested that 20.25E.080.F.5 should become the replacement section regarding existing shoreline stabilization, and that is where the WSSA-proposed definition of replacement should be added. A separate repair section should be added with its own definition, which would be essentially anything that is not replacement.

Mr. Klinge said Ms. Helland's suggestion was in agreement with 12 of the changes WSSA proposed for the section. The comparable location provision in F.5.b has its basis in the WAC, but as drafted by staff it goes too far. Hardscape stabilization being replaced has to be located landward of the ordinary high water mark, though there can be some encroachment if the residence was occupied prior to January 1, 1992 and where there are overriding safety and environmental concerns. The WAC provision addresses the replacement of walls or bulkheads; it is not tied to all hard stabilization, including rock revetments. WSSA would prefer to see the WAC provisions implemented in the Shoreline Master Program. The distinction is a fine one but is important.

Commissioner Ferris said as proposed by WSSA, an angled rock revetment constructed as a replacement of a rock wall could have its top aligned with the top of the existing wall, but the toe of the rockery could extend out waterward as far as would be necessary to complete the 3:1 slope. Ms. Helland said the fact is a structure cannot be constructed below the ordinary high water mark without a variance. The permitting section includes a provision for a shoreline exemption, and paragraph F.5.b allows for replacement of hard stabilization. The shoreline exemption is from a permit criteria, but not from the requirements of the code.

Mr. Klinge said the fact is the two provisions relate to each other. By not being permitted to construct a angled rock revetment partially waterward of an existing vertical rock wall, the ordinary high water mark will in fact be moved landward and the property owner will lose land and the point from which the setback is measured will be shifted. In paragraph F.5.b, the word "shall" should be replaced with "may."

Ms. Helland pointed out that the draft includes a provision in F.4.g that retains the original setback where new soft shoreline stabilization moves the ordinary high water mark landward. Commissioner Laing countered while that is well and good, the property owner will still be giving up land.

Mr. Klinge commented that a sloped replacement for a hard stabilization measure must have a 3:1 slope ratio, which is an 18 degree angle and takes up a lot of space. The rules in the WAC are very strict when it comes to putting in new or large structures, but the WAC does not have rules regarding replacement. The WAC simply says an existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principle uses or structures from erosion, and replacement structures should be designed, located, sized and constructed to assure no net loss of ecological function. Soft shoreline stabilization can be located waterward of the ordinary high water mark. The definition of replacement proposed by WSSA does not require strict feasibility as is required for new structures, and does not require a 3:1 slope ratio. WSSA holds the view that the draft should allow for voluntary replacement, not mandatory. The old staff provision was that existing vertical concrete shoreline stabilization measures may not be replaced with a similar structure unless there is no technically feasible alternative, which is a very strict standard. WSSA also wants to include a provision that allows stairs or other reasonable access to water as part of any replacement structure.

Continuing, Mr. Klinge said the staff is saying property owners must show no net loss. Replacing like with like should meet that definition. The WAC allows for replacement of hard stabilization structures where there is a demonstrated need, but the language proposed by staff does not include that notion at all. There has been a great deal of testimony offered regarding wave action and beach erosion on Lake Washington and Lake Sammamish, so clearly there is a demonstrated need. For all non-residential, a qualified professional should be required to demonstrate need.

Ms. Helland reminded the Commission it previously concluded that 20.25E.080 was done. She said if directed to do so, the staff will reopen the section. She stressed, however, that it will not be possible to revisit 20.25E.080 and have the transmittal memo ready for review by December 12, the Commission's last meeting of the year.

Mr. Paine said WSSA wants to be allowed to construct replacement hard stabilization at 45 degrees. The draft allows for a ratio of 1.5:1, which is roughly 30 degrees, but only when the primary structure is within ten feet of the ordinary high water mark. If the Commission wants, staff will take and massage the draft language.

Ms. Helland said she fundamentally disagreed with the legal analysis of what is permitted to be replaced under an exemption, what the WAC says, the defensibility before the Department of Ecology, and the information with respect to property lines. With regard to the latter, the location of a bulkhead does not change the property line.

Chairman Carlson asked if people would replace their existing bulkheads sooner under the draft language or with the proposed WSSA language. Mr. Paine said the issue is whether or not people will be directed to do something or just be given the option. The optional approach represents a big departure from where the draft currently stands. Chairman Carlson voiced discomfort with just the optional approach. The question is whether or not the draft language will cause people to hold on to their existing bulkheads. Ms. Helland said the fact is bulkheads are expensive to replace and most will probably elect to repair rather than replace. The draft has no restrictions on the repair of existing bulkheads.

Answering a question asked by Chairman Carlson, Mr. Klinge said the proposed language regarding a qualified professional is already included in the draft relative to technical feasibility. All documentation must be submitted to the city for review, so it would be very difficult for a property owner to handpick a professional who will generate a report justifying what they want to have done.

A motion to extend the meeting by 45 minutes was made by Commissioner Sheffels. The motion was seconded by Commissioner Laing and it carried 5-1, with Commissioner Tebelius voting no.

Commissioner Hamlin said he agreed in spirit with what Mr. Klinge had to say. He said he would want to tweak the proposed language, especially the last paragraph. He noted that overall he would be open to trying to capture of the spirit of what WSSA was proposing for the section.

Commissioner Tebelius said she also was open to seeking a compromise. She added that she was less concerned about taking additional time and more concerned about making sure the end product is done right.

Commissioner Ferris said it was his understanding that in the comparable location section "shall" would be replaced with "may." With regard to the comparable design section, he said he would leave out everything after "...a qualified professional concludes there is no practical alternative." The language regarding site conditions, landward movement of the ordinary high water mark, loss of land and other special conditions could always allow a vertical wall to be replaced with a similar structure. He said he could accept the language regarding angled riprap, except that he would not include "appropriate sand or other beach material shall be used," which is really an engineering solution. He agreed that stairs providing access to the shoreline should be allowed provided they are not located waterward of the ordinary high water mark. Paragraphs (d) and (e) are not needed. He said absent any legal ramifications, he would support the proposed changes.

Mr. Klinge proposed that if the Commission does not like the WSSA paragraph (d) language regarding limitation on comparability, the staff language should be approved instead. The WAC includes the same language. With regard to paragraph (e), he said he could support simply stating that a qualified professional must demonstrate a need in all circumstances; it would be better to spell it out than to not have it included.

Commissioner Laing concurred with commissioners Hamlin and Ferris. He said he also agreed with the proposal of staff to include the definitions of repair and replacement as outlined in the WAC. He asked Ms. Helland to indicate her concerns relative to the comparable location provision and she pointed out that when a vertical structure is replaced, the Department of Ecology will require relocation to the ordinary high water mark. She clarified that a variance will be needed to place anything lower than the ordinary high water mark. The Commission is free to include language that will test the Department of Ecology. Language drafted by staff for one part of a section has been conformed to the language in all other parts of the same section, so paragraphs 20.25E.080.F.5 (a) through (d) work together. Existing legally established stabilization measures may be repaired or replaced with a comparable structure provided it is of a comparable size, is in a comparable location, has a comparable design, and results in no net loss of shoreline ecological function. The WAC requires geotechnical reports that adhere to certain standards, not just the word of a technically competent person, and the technical feasibility aspect was an attempt to include that element.

Commissioner Laing said he could accept paragraph (b), though a comma is needed after

"ordinary high water mark" in the third line. He questioned whether a rock revetment versus a concrete bulkhead provide restoration. The Shoreline Management Act and the WAC guidelines talk about shoreline restoration and indicate that some things can be done, including some work waterward of the ordinary high water mark, if the work accomplishes shoreline restoration. Ms. Helland said soft stabilization is already contemplated in the code.

Commissioner Laing said he was okay with the comparable location paragraph as proposed, and agreed that "shall" should be used instead of "may."

With regard to comparable design and the issue of technically feasible, Commissioner Laing noted the draft does not say that any one factor is dispositive, and as written unfettered discretion is given to the Director to determine whether or not something is technically feasible based on the listed factors. If the permit staff concludes after reading a report submitted by a qualified professional that a proposed approach is not technically feasible, the city should be required to prove its finding, rather than just to have someone disagree and throw it all out. If there were not unfettered discretion to throw out expensive reports, the reference to a qualified professional being able to conclude that something is not technically feasible could be retained, which would result in a consistent standard throughout the code.

Commissioner Laing proposed paragraph (c) would read better if revised to say "In the Shoreline Residential Canal environment, existing vertical concrete shoreline stabilization may not be replaced with a similar structure unless there is no technically feasible alternative."

Commissioner Laing agreed with the notion of striking the last sentence from paragraph (c)(ii). For consistency within the code, the paragraph should be worded to indicate the ratio rather than a slope percentage or angle. With regard to paragraph (c)(iii), he concurred that stairs should be recessed into the wall and not allowed waterward of the ordinary high water mark.

Turning to paragraphs (d) and (e), Commissioner Laing suggested that if a qualified professional is involved, there could be a situation in which there would be a net loss of ecological function. He said his preference relative to paragraph (e) would be strike the last sentence.

Chairman Carlson agreed a ratio of 1:1 should be used in place of the suggested 45-degree angle. He also concurred with the suggestion of Commissioner Ferris specifying that stairs be recessed and not allowed to protrude waterward of the ordinary high water mark, and with the suggestion of Commissioner Laing to strike the last sentence of paragraph (e). Chairman Carlson said he also would strike from paragraph (c)(i) the conditions under which a professional makes a conclusion. Ms. Helland pointed out that the proposal relative to paragraph (c)(i) would leave no standards to guide the professional.

Mr. Klinge proposed revising the language to read "...unless the Director determines that there is no practicable alternative based on a report by a qualified professional." Mr. Paine pointed out that the Department of Ecology, in approving every Shoreline Master Program for jurisdictions associated with Lake Sammamish and Lake Washington, has insisted on requiring a geotechnical analysis. Mr. Klinge said the WAC is clear in saying where a geotechnical analysis is required, which is for new and enlarged shoreline stabilization. The WAC section focused on replacing existing shoreline stabilization structure with a similar structure only says there must be a demonstrated need to protect principles uses or structures.

Staff agreed to revise the language of 20.25E.080 as directed by the Commission and to bring the entire redraft back to the Commission for review on December 12. The Commission allowed staff some license to draft language that captures the intent of the direction given. Staff also

agreed to email the redraft to Mr. Klinge.

Mr. Inghram congratulated the Commission on the amount of work done to develop the Shoreline Master Program. Chairman Carlson turned the compliment back on the staff and thanked them for their patience and their perseverance.

8. OTHER BUSINESS – None

9. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, said WSSA has no desire to extend the Shoreline Master Program discussion into the holidays or beyond. He said the group would appreciate being kept in the loop with regard to the redrafted language, and highlighted the need to see the new language as far ahead of the meeting on December 12 as possible. In addition to the commissioners and the staff, he thanked the citizens who have been involved in the process for the past three years.

10. APPROVAL OF MINUTES

A. September 26, 2012

A motion to approve the minutes was made by Commissioner Sheffels. The motion was seconded by Commissioner Ferris and it carried unanimously.

B. October 10, 2012

The commissioners discussed and approved a few revisions to the minutes.

A motion to approve the minutes as amended was made by Commissioner Hamlin. The motion was seconded by Commissioner Laing and it carried without dissent; Commissioner Tebelius abstained from voting.

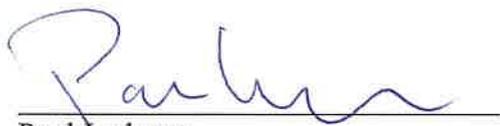
11. NEXT PLANNING COMMISSION MEETING

A. December 12, 2012

Mr. Inghram asked the commissioners to mark January 24 on their calendars as the date for a meeting with the city's other boards and commissions to discuss the process of updating the Comprehensive Plan.

12. ADJOURN

Chairman Carlson adjourned the meeting at 10:45 p.m.



Paul Inghram
Staff to the Planning Commission

3/13/13
Date



John Carlson
Chairman of the Planning Commission

3-13-13
Date

* Approved with corrections February 13, 2013

