

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 22, 2009
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Sheffels, Commissioners Hamlin, Lai, Mathews, Robertson, Orrico

COMMISSIONERS ABSENT: Commissioner Ferris

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development, Michael Paine, Heidi Bedwell, David Pyle, Department of Development Services

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:31 p.m. by Chair Sheffels who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Lai, who arrived at 6:34 p.m., and Commissioner Ferris, who was excused.

3. PUBLIC COMMENT

Mr. Marty Nyslick, 312 West Lake Sammamish Parkway, expressed concern regarding Bellevue's process to meet the state shoreline regulations. He noted that the issue of the Anacortes case was raised by an attorney at the July 8 Commission meeting and advised the city to reopen the critical areas ordinance to public comment and debate before incorporating any part of it into the Shoreline Master Program. The Commission acting in the capacity of a citizen advisory committee is not in fact a citizen advisory committee. At the only open house for the update process, more than 100 citizens participated; most were upset with what they heard staff say and they indicated the same. Aspects of shoreline management embedded in code in 2006 were glossed over by staff until specifically confronted with the facts. Staff credibility was further eroded by their use of erroneous statements. Bulkheads are not mandated by the Shoreline Management Act. Redmond has no lakefront buffers in its plan, though they do have a 35-foot setback. Lake shorelines are not inherently critical areas, especially where there are established code-compliant uses. The Shoreline Management Act gives deference to single family uses and private property rights; so should the city. No net loss of ecological function is not a mandate to revegetate shorelines. The Governor's office recently sponsored a workshop on voluntary restoration. There is no requirement to restore shorelines, particularly in single family residential areas to some earlier ill-defined time period. The city cannot impose a program on shoreline owners that has no significant relationship to the small impact they contribute relative to other activities. Redmond has completed, adopted and has received approval for its shoreline program. Their staff engaged respectively with shoreline property owners, and the end result is a program that has the support of the majority of lakefront property owners. It is legally

defensible. The Bellevue Alliance for Sensible Shorelines wants the same for Bellevue, effected through an open and transparent process that includes those most impacted by the proposed changes. For Bellevue, it appears that state guidelines have morphed into absolute rules, and setbacks have been morphed into buffers. The Commission was asked to consider the issues of appropriate process and undue haste, and to act sensibly in working to achieve the same results Redmond has achieved.

Ms. Betty Mastropaolo, 341 101st Avenue SE, spoke representing the Bayshore East Condominiums on the south shore of Meydenbauer Bay. She said the development has four main buildings, an outdoor swimming pool, and a cabana, which houses the equipment for the pool, restrooms and showers, a meeting room, and an apartment that is rented for income. Each of the 40 units has a view of the shoreline. Meydenbauer Creek runs between two of the buildings. In 2007 an envelope inspection was done and it was found the development was overdue for major repairs. A contractor, project manager and architect were hired, and application was made with City Hall for the appropriate permits. It was shocking to hear of requirements for numerous permits and approvals for colors and designs. One of the permits had an application form that was an inch thick. During the process some revisions were needed. One aged garbage dumpster enclosure could not be replaced because it was located too close to the creek. Many of the designs were trashed because of the lake shoreline and creek. Strangers walking by ignored the private property signs and used the site as a public park. The residents decided to erect a fence with no gates along the street to give the appearance of privacy, but that was not allowed by the city. Permits were issued piecemeal because of the revisions. The contractor could not do the work all at once. The critical areas rules triggered a lot of delays and cost a lot of money. A new round of permit applications is under way in order to put up new signs, replace the irrigation system, and replace vegetation. The whole process remains a maze to navigate; it should be streamlined, thus cutting costs for property owners. Owners should have the expectation of keeping their amenities intact and being allowed to maintain their homes. Multifamily properties should not be treated differently from single family properties where shoreline issues are concerned.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, pointed out that to date staff has not addressed the issue of the full silting in of the south end of Meydenbauer Bay. He said he would like to know who to talk to about that. He said there are fish dying in that area, and if the lake is lowered local residents will smell the dead fish.

At the request of the Commission, Environmental Planning Manager Michael Paine said staff has attempted to work with Mr. Baruffi and has directed him to the appropriate departments. To date, Mr. Baruffi has not been satisfied with the answers he has been given. He said the issue of silting in the bay is not directly associated with the Shoreline Master Program update. The city has on many different occasions indicated that the silting issue is not a city issue.

Ms. Margo Allen, 2217 West Lake Sammamish Parkway SE, spoke as president of the West Lake Sammamish Association. She said along with hundreds of other Bellevue citizens she is disheartened and disappointed with the process Bellevue has initiated to update the Shoreline Master Program. Rather than seek citizen input from those most impacted, the process has been designed to minimize input and provide too much editorial control over all input to staff. Staff have on numerous occasions said this or that is required by the Shoreline Management Act when in fact they have not spoken the truth. They have confusingly used the terms "buffer" and "setback" interchangeably when in fact they are different. The Commission has had to direct staff to inform affected property owners about proposed major changes to their properties. Cities like Redmond have been able to foster a spirit of trust and cooperation in developing a plan that has gained broad acceptance and approval by the Department of Ecology. Those who have had

the temerity to be upset at the lack of appropriate consultation and process have been branded as extremists or worse. The Commission should be concerned about receiving misleading guidance regarding the requirements of the Shoreline Management Act, and should seek to know all of the legal requirements placed on the process by the federal government and various court findings. The city should welcome the discussion and views of its highly educated and informed citizens. The proposed guidance document supplied to the Commission for review, coming at the last meeting before the summer break, is a case in point. The document should be subjected to public input before being brought to the Commission for review and approval. It contains inaccuracies and confusing statements. Input from the public is absolutely necessary in order to garner public support and to comply with the law. The Commission should not feel comfortable with any roadmap that has not had an adequate public hearing and comment period. Given the requirements of the Shoreline Management Act for public involvement, deference to property rights, and minimizing the impacts on single family residents, it would seem that acting in haste is inappropriate. The Commission should defer any decision on implementing the roadmap until the problems can be remedied, and until staff can be directed to confer with affected property owners on matters of process.

Chair Sheffels stressed that the Shoreline Master Program update process is nearer the beginning than the end. She said there will be public hearings and all manner of opportunity for everyone to be heard during the process.

Mr. Rory Crispin, PO Box 40443, Bellevue, read from the minutes of the Planning Commission meeting of May 5, 2004 at which legal planner Mary Kate Berens said the issue on the table focuses on whether or not the scope of the critical areas update should be expanded to include the shorelines. She said the critical areas CAC began its work to recommend amendments to the Environment Element of the Comprehensive Plan in 2001. The charge given the CAC did not include shorelines because of a decision made by the city based on an interpretation of how the Growth Management Act works with the Shoreline Management Act. The understanding was that critical areas within shoreline areas are covered by the Shoreline Management Act, and all other critical areas are covered by the Growth Management Act. In 2003 the Growth Management Hearings Board handed down a decision which made it clear that in fact shorelines where they provide fish and wildlife habitat are considered critical areas under the Growth Management Act, and that the jurisdictions would need to include those critical areas as part of the critical areas update under the Growth Management Act. The decision by Bellevue to expand the scope and include shorelines was made in early 2004 following the conclusion of the CAC process. Because of the 2003 Growth Management Hearings Board ruling, the city reversed its standing interpretation of the separate nature of the Shoreline Management Act and the Growth Management Act and proceeded to include the shoreline jurisdiction in the Growth Management Act critical area review. That is a key point in time because that is when the city made the horrible blunder that it perpetuates to the present time. One need look no further than state law ESHB-1933. In 2003 the legislature acted to correct the January 2003 Growth Management Hearings Board ruling by passing ESBH-1993, which in part states that the act is intended to affirm the intent of the legislature that the Shoreline Management Act be read, interpreted, applied and implemented as a whole, consistent with decisions of the Shorelines Hearings Board and Washington courts prior to the decision of the Central Puget Sound Growth Management Act Hearings Board in Everett shorelines vs the City of Everett and the state Department of Ecology. The legislature corrected the mistake of the hearings board and clarified that the Shoreline Management Act regulates as a whole and is not to be broken into pieces and superseded by language in the Growth Management Act, and that the Growth Management Act does not regulate inside shorelines. A full year later, the Bellevue Planning Commission was being told by staff in essence that the city would be ignoring state law. During the last six years the Planning Commission, the City Council and the city attorney have been on various legislative

and judicial notice that the city ordinance 5861 was going to be illegal. Since its passage it has been illegal. Unfortunately, the city attorney cannot give proper or reliable guidance because the city attorney cannot admit the ordinance is illegal even though it plainly is because of a professional and legal obligation to misdirect, misinform and even lie in order to protect the city. The Commission was urged to question every designation being proposed by staff and to correct the mistakes made in the past. The Commission should follow the law.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, questioned why staff was suggesting proceeding with policies and regulations prior to reconsider of the Shoreline Master Program's general goals and objectives. Staff says the Shoreline Master Program guidelines for residential areas do not require the use of buffer setbacks or special vegetation, yet staff says they should be able to proceed with the proposed mechanisms because they are an effective means to that end and are commonly accepted practices. Staff has also said that it will be easier to use the mechanisms than to have to prove their validity. Staff has attempted to contradict previous public comments by saying that the guidelines function like rules because they are in the Washington Administrative Code. Staff has tried to debunk public comment on the validity of best available science by saying they really do not know, that their information is not perfect, but that something must be done because they are the government and the government regulates. Staff has pointed out that there are six categories/stages from general to specifics starting with goals and objectives. At number five on the list is policies and regulations, yet somehow because the Commission has had the discussion regarding proposed designation uses, it must be ready to move on to policy regulation. There has not been adequate discussion at all about the civic marina or shoreline residential designations, especially as they relate to commercial uses being proposed. With regard to the critical areas ordinance, a sentence in the staff memo says it all when it states that in 2006 without a scientific basis the existing shoreline structure setback was converted to a critical area buffer. The city should follow the example of Redmond, go back to the structure setback, and dump the buffer that cannot be defended with science. Staff recommends the Commission not seek to tread new ground because prior policies and standards are believed to be adequate. The shoreline residential designation purpose has been stated to be to provide appropriate public access and recreation uses, and it talks about new multifamily developments being required to provide public access and joint use for community recreation facilities. It mentions commercial uses to be encouraged in new residential developments. The designation also mentions park-oriented uses. The memo does not mention restaurants, shops, resorts, multifamily residential, land subdivision, signage or residential live-aboard uses for the civic marina designation, though they are likely still on the staff agenda. The designation is proposed for Meydenbauer Bay, so it is disturbing to see staff recommending public/private ownership, boat launch facilities, boat sewer pump outs, and boat gas docks. Staff has provided no data to justify the notion that existing uses and/or modifications to existing uses have any harmful effect on the health of the lake. Absent science to back up the decisions, it appears the best alternative is to simply grandfather existing uses, especially with respect to residential designations.

Mr. Richard Peterson, 395 1st Avenue SE, spoke as the owner of a condominium in the Bayshore East complex. He said when staff came to talk to the homeowners association the message proclaimed was that they could not do much more than apply the regulations of the state. There have been a few Meydenbauer Bay properties picked out for the mere fact that they are underdeveloped. That should not be a criteria. They are residential, they are not large scale, and there are not that many of the properties. Any picking on them would be discriminatory and not in the best interest of the public. Any interest on the part of the city to enhance ecological functions should begin with the property acquired by the city for a park use. Staff has talked about imposing a buffer, which is little more than a taking, especially given the things staff wants to see required in the buffer areas.

4. APPROVAL OF AGENDA

There was agreement to move item 10 to follow item 7-A.

The revised agenda was approved by consensus.

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

6. COMMITTEE REPORTS

Commissioner Orrico said she attended the recent senior housing forum. She said those who attended at one point broke into small groups to discuss particulars. She said the group she participated with focused on Planning Commission approaches to senior housing and housing affordability for seniors. It was noted that Mercer Island has a very interesting approach to accessory dwelling units that has been warmly welcomed by the residents. In Bellevue there is a prohibition against constructing an accessory dwelling unit within the first three years after a home is built. A report on the forum is forthcoming.

7. STUDY SESSION

A. Shoreline Master Program

Senior Planner David Pyle said the ecology guidelines encompass three purposes: 1) to direct local government in developing master programs by providing a framework of processes and the adoption process; 2) to provide standards for the regulation of shoreline development where a master program has not been developed; and 3) to offer criteria for state review of submitted plans.

There are specific ways local jurisdictions in the process of updating their Shoreline Master Programs can use the guidelines. The guidelines can be used to understand the requirements and how to go about formulating a master program that both considers local circumstances and is acceptable to the Department of Ecology. One example of local discretion is different types of mechanisms for protecting the shorelines while still achieving the same end result of no net loss. There are some requirements in the guidelines that cannot be ignored.

Bellevue has circumstances that are different from other jurisdictions. In order to adapt to those conditions within the environment, including how the Bellevue shoreline is built out and how the shoreline has been modified by natural events over time, a range of alternatives can be pursued which in the end will still meet the objectives.

Environmental Planning Manager Michael Paine clarified that whether called a buffer, a structure setback, or a shoreline management area does not really matter in the end. It is the impact on the preservation of functions that is the key component. In designing a program it is necessary to balance the various uses on the shoreline that have priority. One priority is for locating residences on the shoreline. At the same time one of the major goals is the net benefit for ecological functions, or no net loss. To say there is one preferred use that will eliminate the need to be concerned about ecological functions is outside the bounds of reason; it will be necessary to balance both. The same steps were taken in developing the critical areas ordinance. Developing the Shoreline Master Program will require the same balancing act, and the same tensions will be renewed given the desires of people who want to use the shoreline and the regulatory structure

that requires dealing with ecological functions. Whatever the buffer/setback/vegetative management area is ultimately called, it will have to meet a series of very specific outcomes having to do with functions.

Mr. Pyle allowed that there are many ways to achieve the same results just as one can take different roads to get to the same destination. Finding the most efficient route will be important. Shoreline property owners have highlighted their desire to see the permitting process streamlined, and it is possible that the requirements could be achieved as a result.

Mr. Pyle noted that many of the conclusions reached in 2006 were supported by environmental studies that had been published. There was a long list of publications that were considered in the citations list from the inventory document. The best available science still supports those conclusions, and any step backward to reexamine the science would be toward reexamining the same science all over again. The role of science in the guidelines is stated in both the WAC guidelines and the RCW that talks about the incorporation of current information into the update process. The available science addresses a full range of activities within the shoreline jurisdiction. While imperfect and sometimes incomplete, the science must be peer reviewed before it can be published.

There are key Shoreline Master Program components included in the guidelines. Mr. Pyle shared with the Commissioners the contents from the recently adopted Whatcom County Shoreline Master Program, though he pointed out that some of the items would not apply in Bellevue. With regard to the goals and objectives, he said they usually are developed near the tail end of the drafting process and serve to draw the document components together. He said the city has proposed shoreline jurisdiction environmental designations and submitted them to the Department of Ecology; the designations have been reviewed with the Commission, though details associated with each are still being worked on.

Continuing, Mr. Pyle said the various policies and standards for shorelines of statewide significance are generally broad in nature. He said there would be some intricacies associated with developing them. Mr. Paine said there are actors besides the public living along the shorelines that will play roles in developing the policies and standards. The lakes in Bellevue have significant ecological values and other agencies will have parts. To some degree those outside players and their interests will need to be reflected in Bellevue's master program. The outside parties include the Corps of Engineers, the Department of Fish and Wildlife, Department of Ecology, Department of Natural Resources, and the Muckleshoot Indian Tribe. In balancing the various interests, the guidelines direct favoring statewide interests over local interests.

Answering a question asked by Chair Sheffels, Mr. Paine explained that shorelines of statewide significance are defined as those around bodies of water 1000 acres or larger in size.

Mr. Pyle said the topic of existing uses incorporates existing development, uses along the shorelines, and historic buildings. There is a lot of interest in the topic on the part of the public. Mr. Paine added that special care was taken in the development of the critical area ordinance to exempt existing residential structures from nonconforming questions; the structure setbacks were carefully drawn around the buildings. That particular interpretation may not be as fully supportable in the shoreline update because of the way the Department of Ecology looks at the issue of nonconformity. Staff is working with that agency to determine what they will support from the critical areas ordinance approach.

Commissioner Robertson suggested it would be helpful as the policies are discussed to know exactly how many properties may be placed in a nonconforming status as a result. Mr. Pyle said

staff is currently undertaking a GIS study to determine how many properties are affected by various levels of regulations. Mr. Paine added that depending on the outcome of the study, the Commission may want to consider looking at some areas of the city differently from others based on levels of historical development and the existing setbacks. Kirkland in fact has set different buffers for their various residential types based on historical development. Ms. Bedwell added that staff are looking at how different jurisdictions have tackled the issue and the approaches they have chosen.

Commissioner Orrico said she would like to be updated regarding the approach taken in Redmond. Ms. Bedwell said staff will be sure to make that presentation to the Commission.

Mr. Pyle said the general policies and regulations apply across the Shoreline Master Program to all environments. They outline general concepts for how to manage specific resources or specific components of the shorelines generally. The use policies and regulations pertain to specific uses and modification of the shoreline. The more specific focus will require a higher level of effort to work through.

Permits and administration is one of the categories that staff believes should be targeted toward the end of the process in that it wraps everything together.

Commissioner Lai asked if the issue of permitting streamlining is something with which the Commission will be involved. Mr. Paine said the Commission certainly can offer suggestions, but the actual administration of the document will be outside the jurisdiction of the Commission, except that streamlining permitting as an incentive could be highlighted in the transmittal memo to the Council.

With regard to the specific designation criteria, Mr. Pyle said the purpose outlines the general intent of the environment. The designation criteria are focused on what specifically identifies the environment. Environment policies can also have specific use restrictions or an option for conditional uses.

Mr. Pyle said the purpose statements for the aquatic, shoreline residential and urban conservancy designations were taken directly from the WAC guidelines, whereas for urban conservancy-open space, marina and marina civic, custom purpose statements and designation criteria were drafted.

The aquatic environment is intended to protect, restore and manage the unique characteristics and resources of the shoreline. The designation criteria is generally shoreline areas waterward of the ordinary high water mark. One question still unanswered is whether or not in the future marina areas that are waterward of the ordinary high water mark should be included.

Commissioner Lai noted that the Commission had previously questioned the aquatic environment during times of low tide or other low water conditions. Mr. Pyle said the issue is one of the most complicated of the shoreline issues. Shoreline property owners do not always own the land under the water that is waterward of the ordinary high water mark. Each property owner would have to specifically contact the Department of Natural Resources to determine whether or not the private ownership extends below the water of the state. Many of the Bellevue shorelines are actually owned by the Department of Natural Resources, and how their properties can be used by private property owners is up to that department and will not be changed by the Shoreline Master Program.

Commissioner Hamlin noted that there is language in the WAC regarding the aquatic environment that is not included in the proposed Bellevue document language. He asked if the

additional language will be included later in the process. Mr. Pyle said there are cases in which the language does not apply in Bellevue, such as the language relating to marine environments.

Mr. Pyle said the purpose of the urban conservancy designation is to retain or restore ecological functions. The focus is on restoration, with a special focus on recreation and public access. The designation includes development activities and uses that support recreation and public access, or low-density residential. Generally, the ecological functions are somewhat intact and there is the potential for restoration. Urban conservancy areas include critical areas or cultural features requiring more protection.

Commissioner Orrico asked why the city should act to re-adopt what is already in the WAC; she said anything in the WAC presumably already applies. Mr. Paine said the process is required in order to get the Shoreline Master Program adopted by the Department of Ecology. The Department of Ecology will want to see either a reference to adopting everything in the WAC, or the amended language. The environment designations provided by staff that came out of the inventory and analysis were based on the WAC designation criteria.

Commissioner Robertson asked staff to clarify whether or not public access will be imposed on private property owners as part of the process. Mr. Paine said staff has absolutely no intention of ever taking anyone's private property for that purpose or for any other purpose. If the land waterward of the ordinary high water mark is owned by the state and the state says the public has a right of access, however, the city will not be able to regulate otherwise. At the same time, the city cannot stop someone from paddling a kayak up to within an inch of someone's dock and just sitting there for as long as they want; that is just the reality of public waters and the city has no say about it.

Commissioner Robertson observed that there had been public comments about the public access requirement for marinas. Mr. Paine said there will be no public access component imposed that is inside the secure boating area. The language for the designation primarily applies to new marina construction. The city could elect to set a redevelopment threshold, albeit quite a high one, that would trigger a public access requirement, but in all cases the design would be such that the private moorage spaces will not be infringed upon. In most new marinas, such as the one in Bremerton, a particular open space area for the public is created, along with a dock that allows the public to walk way out on the water without infringing on the private moorage slips. Staff does not anticipate the construction of new marinas, but there should be language covering it just in case.

Ms. Bedwell said the WAC specifically mentions in the management policies related to joint use recreational facilities, but the reference is generally in regard to contemplating the consolidation of recreation facilities for all new residents when platting or creating new multifamily. The reference does not contemplate public access.

Commissioner Orrico said she was unclear as to when the city would be required to adopt the WAC language verbatim and when it could be modified or ignored. Mr. Paine said the WAC does specifically require the adoption of certain policies. The specific language does not have to be adopted, but the city must ensure that the ultimate effect of the policy language will be implemented in some fashion. Commissioner Orrico said it would be very helpful in working through the policies to know which are optional and which are mandated by the state.

Mr. Pyle said urban conservancy is a designation that is not found in the WAC. It is focused more on low-intensity recreation and areas that have strong restoration potential because they are less degraded. The designation criteria looks at the levels of ecological function.

The purpose of the shoreline residential designation is to accommodate single family and multifamily developments, protection ecological functions, and provide appropriate public access and recreational use. Mr. Pyle said staff included the reference to public access to avoid precluding the locating of a future park property in the environment. The city has no intention of putting public access across private property.

Mr. Paine said the issue in large part is a zoning matter given that all city parks are in residential zones. Ms. Bedwell added that some jurisdictions have put shoreline residential on some of their part properties.

Commissioner Lai asked if, at some point the city were to purchase a shoreline residential-designated site with the intent of turning it into a public park, there would be an opportunity to change from shoreline residential to something else, or if there were some other approach that could be utilized to ensure the public that the city does not intend to impose public access through a private residential lot.

Commissioner Orrico suggested simply using the phrase “public access for city-owned properties.” Ms. Bedwell concurred with the suggestion and said it could be handled in the use charts.

Mr. Pyle said the shoreline residential designation is focused primarily on existing or planned residential developments. A vacant lot zoned for residential would be a candidate for shoreline residential.

The purpose of the marina environment is to provide for a variety of water-oriented uses with a primary focus on water-dependent and water-related activities associated with recreational boating. The designation criteria looks at where such facilities should go while recognizing the ones currently used and identifying the need to have criteria for siting a future marina use on a shoreline. The proposed approach is similar to how other jurisdictions have addressed the issue. The policy will not require a marina to be built somewhere.

The purpose of marina civic is different from the marina designation in that it looks more to publicly accessible water-oriented uses and focuses on public recreation and access. The marina civic designation criteria is similar to the marina criteria but is more focused on public access and uses held primarily in public ownership. Marina civic uses must be located in areas that will be least impactful to adjacent uses.

Mr. Pyle focused the discussion on the policies included in the memo and asked for direction on how to word them, beginning with the marina designation.

Commissioner Robertson said she wanted to make sure there was a policy relating to new or expanded marinas not unreasonably disrupting nearby residential properties. She pointed out that the Commission did not have information regarding options as they apply to the best available science and no net loss. She said as such she did not feel she had enough information to make a recommendation.

Mr. Paine said the recommendation of staff was for the Commission to consider hearing from a variety of different panels, such as a science panel, a panel of marine contractors, a citizens panel with a diverse range of perspectives, and a panel of recreational users. He noted that with respect to the science regarding marinas, most of the regulations will concern what goes in the water, including both upland activities and activities individual boat owners perform on their boats.

There is a growing recognition that there is a significant amount of water pollution that comes from marinas. They are regulated in marine waters and under NPDES. The water quality and habitat impacts is something that could be covered by a science panel.

Commissioner Orrico said she would like to see examples from other jurisdictions to better understand how the issues have been addressed. Mr. Paine said staff has compiled a comparison of marina best management practices that will be shared with the Commission at the appropriate time. Commissioner Orrico said she did not have enough information in front of her to even move forward with a preliminary recommendation with regard to the policies.

Mr. Paine said what staff was seeking was an indication from the Commission of which policies help to articulate the uses that would be allowed under the various designations. He asked for direction on which policies set the range of acceptable uses, what should be made a conditional use, and what uses are totally inappropriate. It should be possible to offer that direction without having all of the scientific background.

Ms. Bedwell said the Redmond policy allows development to be permitted only in those areas where adequate setbacks or buffers are possible to protect ecological function, where there are adequate access, water, sewage disposal and utility systems and public services available, and the environment can support the proposed use in a manner which protects or restores the ecological functions. The policy is very broad; the specifics regarding appropriate buffers and the like are guided by the science.

Commissioner Orrico said she would prefer to have all of the information presented before thinking about which policy direction to take. She said staff should not presume that the Commissioners have all the information they need.

Commissioner Mathews suggested that some issues could be addressed without having all of the science presented first. He highlighted as an example the policies concerning marinas being distributed regionally and local government coordination.

Commissioner Lai agreed with Commissioner Orrico that the Commission should not try to make recommendations regarding the proposal until all of the information has been shared. The subject is very complex and the Commission has a great deal of learning to do.

Commissioner Hamlin said his understanding of what staff was seeking was comment on the broader view of whether or not the proposed policies fit or do not fit. The details will be dealt with later. Policies that clearly do not fit should be called out, and gaps should be identified. Mr. Paine said that was exactly what staff was trying to find out. The need to focus on the scientific issues will come later in the process.

Chair Sheffels agreed that nothing should preclude the Commission from getting started on the policies. After the scientific information is shared, the Commission will be better prepared to either add or subtract criteria as needed for each of the designated areas.

It was agreed to begin with the shoreline residential policies. Commissioner Hamlin voiced concern with the proposed policy language as it relates to public access. He suggested the wording should be drafted to make the intent clear.

Commissioner Lai allowed that there had been some confusion around the difference between setbacks and buffers. He felt that should be clarified. Mr. Paine explained that setbacks are either zoning dimensional standards, such as a setback from a property line, or are setbacks from

a buffer intended to protect the buffer. A buffer is an area set aside to protect the functions of a critical area or aquatic environment. Buffers are a well-established and legally justifiable construct aimed at regulating private property for public benefit. Buffers have been used in Bellevue since 1987. Where shorelines are concerned, the buffer is 25 feet from the ordinary high water mark for developed lots, and 50 feet for undeveloped lots. There is no additional setback from the buffer for undeveloped lots, but developed lots do have an additional structure setback. In both cases the buffers can be modified. Structure setbacks are routinely modified.

Commissioner Lai asked if a shoreline property owner would need a permit to do some landscaping within the buffer or the setback. Mr. Paine said where there is already a lawn to the water's edge, the property owner can maintain their existing landscaping forever without being regulated by the city. If the property owner proposes a new project, however, such as a new dock, as mitigation for the impacts of the dock the property owner would be required to revegetate the buffer. Just because a buffer is imposed does not mean property owners must suddenly meet new requirements. There are restrictions, however; a property owner could not take a buffer area and turn it into a hard surface basketball court.

Commissioner Lai suggested it would be helpful to have a matrix aimed at clarifying the various terms. Mr. Paine agreed that would be useful. He added that prior to 1974 there were no buffers because there were no critical areas. There was a structure setback, but anyone wanting to do something within the structure setback that did not involve a structure could do what they wanted, including hardscaping the entire area. Those kinds of things can simply no longer be allowed because the no net loss standard cannot be met. However, the buffer allows for a degree of private use, including some construction, provided the no net loss standard is met; putting a patio in one place could trigger a requirement for additional plants in another place. In critical areas, buffers tend to be more inviolate.

Mr. Pyle stressed that the process to develop the environment designations and the associated policies is in the preliminary stage. He said the current focus was only on whether or not the rules should exist and if so what they should include. The WAC guidelines are not specific with regard to the use of buffers or what size they should be if used.

Commissioner Hamlin asked why the policy regarding commercial development was included in the shoreline residential designation. Ms. Bedwell said the policy was taken straight out of the WAC, but agreed it may not apply.

Chair Sheffels asked how houseboats are treated. Mr. Paine said the city does not currently allow people to live aboard. Ms. Bedwell pointed out that while there is no policy in the Comprehensive Plan, there is a specific regulation in the Land Use Code that says no boat, houseboat or watercraft moored seaward of the ordinary high water mark can be used as a permanent residence. She suggested that a companion policy in support of the regulation would be good to have. Mr. Paine said there is nothing in state law that prohibits the owner of a barge that has a motor on it and which functions like a boat from being kept in a marina and used as a permanent residence, provided the local Shoreline Master Program allowed for live-aboards in the particular marina. That issue may be a contentious one when it comes up as the suspicion is there are some live-aboards in various places in the Bellevue shoreline currently.

Commissioner Orrico asked if the intent is to establish two or more shoreline residential environments as noted in the proposed policy at the top of page 14 in the packet. Ms. Bedwell said there is no such intent, that everything within a residential use, either multifamily or single family, would be considered shoreline residential on both lakes in Bellevue. Commissioner Orrico suggested removing the provision from the proposed policies.

Commissioner Mathews asked if the proposed policy language calling for new residential development to be located and designed so that future shoreline stabilization is not required is an attempt to avoid the use of bulkheads. Mr. Paine said that was correct. Commissioner Mathews asked about situations in which a lot limits where construction can occur and some stabilization might be needed. Mr. Paine said there is a wide range of stabilization techniques available. The intent of the approach to those situations in critical areas has been for the property owner to demonstrate that the worst possible solution is the only solution; all other solutions must be looked at first. The policy will not preclude bulkheads and the like, but only if it can be proved that no other solution will work. The policy does not mean existing bulkheads cannot be maintained.

Commissioner Hamlin asked what policy SH-36 is trying to get at. Mr. Paine said it may have been a policy that was attempting to recognize that there would be some other uses that would go into the very uniform residential character. It may also refer to the fact that typically schools, churches and parks are allowed in residential areas.

Commissioner Robertson said she would need a better understanding of the science to determine whether or not the first policy under shoreline residential would actually result in no net loss. She said she was not comfortable with the wording of the second policy relative to public access. She concurred with the third policy, suggested the fourth policy should be eliminated, and suggested the fifth policy should apply only to city parks.

Ms. Bedwell pointed out that commercial develop is not permitted along Lake Sammamish. Mr. Paine said the confusing point is that parks allow commercial uses within them, and the policy calling for commercial development to be limited to water-oriented uses may have been aimed at that possibility.

Chair Sheffels asked why the issue of public access should be targeted specifically at new developments. Mr. Pyle explained that some jurisdictions require plats when subdividing property along a shoreline, and it is not unreasonable to think that could happen in Bellevue. Many of the jurisdictions require the provision of public access whenever a short plat or plat is executed along the shoreline. Primarily that is to allow for joint moorage facilities. Mr. Paine added that providing public access to the shoreline when there is a subdivision or short subdivision is a shall, in the WAC, not a should. Chair Sheffels suggested the issue should be given some more discussion given that the requirement would impinge on the subject property as well as the properties on either side.

Commissioner Lai asked if the policy stating that water-oriented recreational uses should be allowed applies only to shoreline residential designated properties used as parks. Mr. Pyle said the policy could be drafted that way, and Commissioner Lai said he would prefer to see it that way.

Mr. Pyle observed that some private property owners who have docks that can accommodate a certain number of boats elect to rent moorage in the summer months. He asked the

Commissioners to comment on whether or not that is appropriate in the shoreline. Commissioner Hamlin suggested the issue is yet another one for which a balance will need to be struck. He said a property owner wanting to rent moorage to a friend for the summer should not be precluded from doing so, but added that charging moorage to four or five boats may not be appropriate on a residential shoreline.

Turning to the urban conservancy designation, Commissioner Lai asked staff to clarify the difference between “water-oriented uses,” “water-dependent uses,” and “water-related uses.” Ms. Bedwell said each term is defined in the guidelines. She said water-dependent uses must have a relationship with a water body in order to function; an example would be port facilities.

Mr. Paine noted that urban conservancy will only apply to city-owned properties and the Bellefield Office Park.

With regard to urban conservancy-open space, Mr. Pyle reminded the Commissioners that the designation is oriented to sites that have a higher level of ecological function and as such are more apt to provide a recreational resource. Mercer Slough is a good example, with the exception of the Bellefield Office Park area.

Chair Sheffels asked if the proposed policy that talks about existing low-intensity agriculture is intended to refer to the blueberry farm. Mr. Paine allowed that it is, as well as to the farming that occurs in the Lake Hills area.

Commissioner Hamlin said the inclusion of examples in the proposed policy that talks about avoiding commercial activities was very helpful. He suggested that adding examples to the other policies would add some clarity.

Commissioner Lai asked if there is sufficient difference between urban conservancy and urban conservancy-open space to warrant having both designations. Mr. Paine said the intention for having the two designations was to distinguish between the more active use of the shoreline parks and the use of Lake Hills and Mercer Slough. On any given summer day Newcastle Beach Park is full of people, the parking lot is full, and there is lots of activity. Mercer Slough is more oriented toward dispersed recreation with low-intensity activities that are spread out rather than concentrated.

Commissioner Hamlin said he liked having the two designations kept separate, but said it would be helpful to have examples included.

Focus was given next to the aquatic designation. Commissioner Robertson stressed the need for the policies to be science driven because it is the water and the habitat created by the water that caused the city five years ago to designate all shorelines as critical areas. She said she would need to have a presentation on the science before reaching any decisions. Mr. Pyle agreed the aquatic policies should be more supported by science than some of the other designations, and the science panel presentation will make things much clearer relative to what the aquatic designation will require.

Answering a question asked by Commissioner Hamlin, Mr. Paine explained that the builders of docks prefer to call them piers. A dock is typically something that floats on the water, whereas a pier has pylons. The critical areas and shorelines codes use the blanket term “moorage” while the proposed policies for the aquatic designation use the term “over water structure.” He said the reality is that each term refers to the same thing.

Commissioner Lai referred to the policy calling for developments within the aquatic environment to be compatible with the adjoining upland environment and asked if such developments are actually in the water. Mr. Pyle said the reference is to over-water structures having pylons that are located in the aquatic environment, groins, breakwaters and habitat structures. Any structure on the water side of the ordinary high water mark is within the aquatic environment.

Commissioner Robertson asked staff to develop a glossary sheet containing all the terms used.

Commissioner Mathews thought the policy referring to utilities could be clearer with regard to exactly what kind of facilities are intended. Mr. Paine said the definitions in the Land Use Code are very specific to publicly owned facilities.

With regard to the marina designation, Mr. Pyle said the city does not currently have proposed policies or even environments that include marina regulation. The fact that there are four marinas in the city triggered the inclusion of marinas to the mix. He said the first proposed policy is intended to convey the notion that marina uses should generally include those things that require water, such as boat maintenance, boat repair, boat retail sales, boat storage, and boat moorage. A chandlery, which is a store in which boaters can purchase supplies such as food and ice as well as boating accessories, is not necessarily a water-related use, but it is an associated use that might be allowed as a subordinate use. Yacht clubs and their associated uses would be specifically allowed in the category.

Commissioner Robertson said her primary concerns regarding the two marina designations is the public access requirement for the non-public marina, which should be required only when there is a substantial change, not just replacing piers and pilings; and the fact that there is nothing in the proposed policies that talks about siting the uses in a way that will be sensitive to surrounding residential uses, including noise, light and traffic impacts.

Commissioner Hamlin pointed out that any increased activity at a marina will impact not only the adjacent neighbors but also neighbors all around given that sound is amplified on the water or in a bay.

Commissioner Mathews referenced several of the proposed policies and highlighted the need to be clear about how to determine the number and size of marinas in the city needed to recognize the boating demand in Bellevue without overbuilding. Mr. Paine said that will be an issue to address. He said staff has heard from the public about demands for an additional marina and marine services on Lake Sammamish, and for additional boat ramps. However, those claims

could not be verified without conducting a lake-wide study. The subject is complicated, and the policies will need to be written in a way that recognizes the complexities.

Commissioner Lai asked what the difference is between a boat owner's need to make repairs in a marina setting and allowing major boat repairs at a marina that might include noise and pollution. Mr. Paine said boat repair can range from varnishing or waxing a boat to pulling the boat out of the water, setting it up on blocks and removing the engine for a complete refit. The latter could involve the sanding off of copper-based paint. Those kinds of repairs are very noisy and potentially toxic to the environment. On the other hand, the fresh water systems in Bellevue generally see smaller boats and less of that kind of repair activity.

Mr. Pyle said the city went through a conditional use application for the redevelopment of a portion of the Seattle Boat facility in Newport Bay. He said they came in with a proposal to add stacked storage and boat maintenance facilities, and intended to add bays and improve their management practices. None of the public comments received were in regard to the maintenance of boats; all of the comments were related to the storage facility, predominantly the back-up beeper on the forklift.

Commissioner Orrico asked why policy SH-13 should be included in the marina category when it is not included in the other categories. Mr. Pyle said the language is intended to be part and parcel of the proposed policy that calls for new marinas to be located and designed in a manner that will minimize environmental pollution in an effort to protect and improve aquatic habitat, particularly spawning waters.

Chair Sheffels asked if other jurisdictions with a marina designation have completed their Shoreline Master Program update. Mr. Pyle said Port Townsend falls into that category. In their Shoreline Master Program they highlight the need to expand their marinas over time. They specifically identify delineate where each of their marinas are located and break the designation criteria into existing and proposed areas.

Chair Sheffels said she did not know of any way to identify potential marina areas in Bellevue but said she would like to see the existing marinas shown on a map in the Shoreline Master Program.

10. PUBLIC COMMENT

Mr. Marty Nyslick, 312 West Lake Sammamish Parkway, thanked the residents who came to the meeting for staying to hear the entire discussion. He said it would be very helpful to have the language being considered shown on the screen for all to see. The Commission certainly should review the goals and objectives before seeking to develop policies and regulations. With regard to buffers, he said they come from the critical areas approach that have previously been called into question; the public would like to know if the Commissioners agree that all shorelines of the city are to be declared critical areas and that they will have associated buffers. Policy creep is similar to project creep. Policy creep comes in down the road when a citizen comes in and wants to put in a patio. At the permitting desk a policy freak imposes shoreline restoration even if it is

not a requirement, something the person seeking a permit may never be told. The science and other panels are a very good idea, but the public should be able to recommend people for the panels and should be allowed to ask them questions.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, said everything the Commissioners may want to know about rentals can be learned at the I-90 park underneath the east channel bridge. The comment made by staff that there is little or no difference between buffers and concepts should be carefully considered; the fact is words do have meaning. The difference is buffers are grasses and setbacks have to do with buildings. Willow trees shades which are part of the buffers grow to be approximately 80 feet tall and 60 feet wide; that requirement makes no sense at all. It makes no sense that the shade from willow trees is desirable while the shade from docks is not; it is not likely the fish can tell the difference. The list of permitted activities for Meydenbauer Bay includes 14 transient moorages, and that will impact the bay and its residents well into the night, far more than any of the other things the Commission has discussed. The city should look into buying back those moorages. He said he owns a 400-slip marina in Olympia that is home to 75 live-aboards. The restaurant burned down and could only be rebuilt on the previous footprint.

Ms. Kathryn Pizo, 528 West Lake Sammamish Parkway SE, asked how Bellevue is different from the neighboring jurisdictions. If Redmond has finished its plan using a lot of taxpayer money, Bellevue should start with their plan and modify it as needed to match local conditions rather than starting from scratch. That approach would save time and money. She said it is unclear if the document being constructed will involve just the shorelines or if it will include the issue of water quality. There is nothing in the proposal that says water quality is an objective. If the buffers apply from the shore into the water, there should be buffers around buoys and buffers that prevent access to the shoreline from the water. Shoreline residents are not the only ones who are impacting the shorelines; the wakes from powerboats are certainly having an impact. There is no science showing that rebuilding a structure on the same footprint but going higher will cause additional impact on the environment. There should be some sort of a document organization that determines the hierarchy of all the organizations involved and who takes precedence over any given area. The list of panels should include boat owners who deserve to be heard as well.

There was consensus to extend the meeting time to 10:10 p.m.

Mr. Rory Crispin, PO Box 40443, Bellevue, reminded the Commissioners that the Shoreline Management Act is a statewide activity with guidelines that apply statewide. He noted that the city will be required to revisit the issue at least every seven years. The best available science term is from the Growth Management Act and is used for critical areas. Critical areas typically involve streams, creeks, wetlands and steep slopes. The term is benign but often carries with it a heavy price tag. The Shoreline Management Act with its balance of use and protection is less burdensome. Buffers is a critical areas and a land use term, and under state law is associated only with what used to be environmentally sensitive areas. A buffer is a no-touch area. Even under the Growth Management Act, a buffer is not required. A critical area is a feature, and a buffer can only be placed around the feature. A setback is a dimension from a border or

boundary, and that boundary can be the feature. The idea of requiring public access where there is a subdivision makes no sense at all.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, noted that the only place slated to be designated marina civic is Meydenbauer Bay park. She suggested that when the Commission focuses on that designation it should spend some time looking at the reality of what might be included in the park. It could include restaurants, multifamily, signage and live-aboards along with fuel docks and boat launches, things that would be totally inappropriate for the area. The crafting of the designation particulars should be done with the thought in mind that it will only apply to the one area. If there must be particulars in the residential designation that has to do with city-owned property, the Commission should be very specific to avoid commercial uses and multifamily with ground floor retail uses.

Ms. Susie Winkowsky, manager of Vasa Park Resort, said the facility has been in operation for 83 years and serves between 400,000 and 500,000 each summer. The site is zoned single family residential, and the desire is to keep it that way. The park membership has never been informed by the city of the possible rezoning to urban conservancy. She thanked the Commissioners for asking some very pointed questions of staff in an attempt to become more knowledgeable about the issues before setting policies.

Mr. Richard Peterson, 395 SE 1st, said the comment made by staff that it is difficult for traffic to get into and out of the marina area was interesting in light of the fact that consideration is being given to closing 100th Avenue SE, which is the only decent way out of south Bellevue. The EIS reported that there is no traffic problem there, which is questionable. He agreed that the policy language should include specific examples to avoid policy creep. The marina designation that includes maintenance is scary. It is an industrial use in the middle of a residential neighborhood; it should not even be considered.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, thanked the Commissioners for asking the tough questions. He said he grew up on Lake Sammamish and has watched the changes over time. In 1970s before the sewer system was installed there was foam on the lake surface; now the water is clean. It is not the shoreline residents that are making conditions worse in the lake; the problem lies more with the developments on the surrounding hillsides. He said when he applied for a permit to rebuild his dock he was required to purchase eight prisms at a cost of \$125 each, but after one year they no longer functioned as intended to give more light to the salmon. The real objectives should be clear along with ways to accurately measure progress toward achieving those objectives. The process should be very public and involve those who have lived on the lake for many years. The water level in Lake Sammamish fluctuates greatly, largely because of the impervious surfaces all around it; when it rains, the water level rises considerably. Some say the loss of salmon in the lake is from the bass, yet the bass live under the docks where the shade is. The bass are not even a natural species to the lake. The sports fishermen who go after the bass simply release them to continue the sport.

8. OTHER BUSINESS

Chair Sheffels asked staff to provide a response to Mr. Hoyt who sent a letter to the Commission about possible impacts resulting from the marina designation. Mr. Pyle said he would follow up on that issue.

9. APPROVAL OF MINUTES

A. May 13, 2009

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Robertson and the motion carried unanimously.

B. May 27, 2009

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

11. NEXT PLANNING COMMISSION MEETING

A. July 29 Retreat

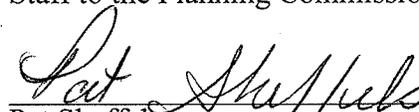
12. ADJOURN

Chair Sheffels adjourned the meeting at 10:10 p.m.



Paul Inghram
Staff to the Planning Commission

11/18/09
Date



Pat Sheffels
Chair of the Planning Commission

11/18/09
Date