

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

May 12, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Sheffels, Commissioners Ferris, Hamlin, Himebaugh, Mathews, Turner

COMMISSIONERS ABSENT: Commissioner Lai

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:30 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 was excused.

3. PUBLIC COMMENT

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, said she is not in favor of the civic marina designation, which amounts to a blatant zoning change. If a designation for Meydenbauer Park is needed, it should be something like marina park. The civic marina designation would allow for commercial and non-park uses in the park without a conditional use permit, which is just unacceptable. The recent sewer leakage into Meydenbauer Bay will add phosphates to the lake, and that will cause the algae to grow and the fish to die. Two years ago there was a much larger sewage spill into Lake Washington. In 1990 there was a sewer spill in Phantom Lake. The spills are strong evidence that the problems in the lakes are not all the fault of the homeowners.

Mr. Jerry Laken, 4847 Lakehurst Lane, said the draft Shoreline Master Program makes reference to the 2006 critical areas ordinance which includes an extra 25-foot critical areas buffer along the general shoreline areas of Lake Washington and Lake Sammamish. Because there is also an additional 25-foot building setback, homeowners must stay away from the first 50 feet from the water, and they must perform normal maintenance in those areas. Bellevue, Kirkland, Redmond, Renton and Medina all define wetlands and the rivers and creeks feeding the lakes as critical areas. It makes sense to have buffers around critical areas. However, Bellevue alone defines the general shoreline along Lake Sammamish and Lake Washington as a critical area and adds the additional 25-foot buffer. There should be some uniform treatment of all shorelines of Lake Washington and Lake Sammamish.

Mr. Brian Parks, 16011 SE 16th Street, provided the Commission with copies of a report

concerning Phantom Lake. He explained that public hearing has only one inlet, which comes from the Eastgate/I-90 Business Park area, and one outlet, which is Phantom Creek, which is actually a drainage ditch dug by a farmer. The weir on the outlet that was installed in 1990 has been removed, but where it was has filled with sediment. There is no clear indication as to who is supposed to keep the outflow clear of sediment. The fact that the city has allowed development in the Eastgate area, that has in turn increased in the level of runoff flowing into the lake, combined with the fact that the outlet is being clogged with sediment, is causing a gradually rising shoreline. The lake level does not fluctuate more than three feet, but the sloped nature of the shoreline means that for every inch rise several feet of land goes under water. The lake is being used almost like a detention pond and is nearly always close to its maximum capacity; when storm events occur, flooding is the inevitable result. There has been a history of deals and broken promises in the past by the storm and surface water department. Historical data shows the normal highwater mark at 257. The CH2M Hill study a few years ago concluded with the same figure. The FEMA maps shows 261, however, and the Bellevue floodplain map shows 265, eight feet above normal. If the water were actually to reach 265 it would be cascading over into Lake Sammamish like Niagara Falls. The SAR analysis includes a contradiction in that it refers to a high fluctuating lake level in one section and a relatively low fluctuating lake level in another section. The set elevation of 257 should be adopted rather than a site-by-site analysis.

Commissioner Ferris asked where the level of the lake would be if the outfall were properly maintained. Mr. Parks said with good maintenance the lake should be able to handle the current water level. However, good planning is needed to avoid allowing additional runoff to flow into the lake from the Eastgate/I-90 area.

Chair Sheffels asked why the weir was removed. Mr. Parks said it was removed about two years ago but said he did not know why. The blocks that remain should also be removed since they are inhibiting the flow.

Mr. Dave Clark, 16280 SE 24th Street, said there was a weir in place as far back as 1973. A heavy rain during the winter caused the lake level to increase by several feet and a cyclone fence constructed to keep in dogs acted as a sieve, collected debris flowing out of the lake and blocked the water from flowing out. The county at the time admitted they had no one would could address the problem. Local residents spent four or five hours clearing the outlet which resulted in the lake level lowering by three feet or so.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, commented that until the March 24 presentation, citizens had found it difficult to participate in the Bellevue shoreline regulation process. The initial encounter in May 2009 opened the eyes of residents to the fact that the critical areas ordinance shoreline regulations passed in 2006 were put in place very quietly. Frustration with that process has been furthered by an up-front effort to provide goals, objectives and policies for the Shoreline Master Program update. The public listened patiently through the fall of 2009 as a series of experts provided testimony which, when questioned, failed to connect the dots in establishing a justifiable need or rationale for a comprehensive set of solutions. There should have been takeaway points provided as applicability to the city's lakes. The citizens are concerned that the outcome of the Shoreline Master Program will be a purely aesthetic program funded at the expense of the public, allowing a return to business as usual where needed elements are sidestepped or buried. Residents want the outcome to have a meaningful benefit for the lakes as well as for residents of the shorelines. The opportunity to provide an independent perspective on March 24 was encouraging. At that meeting 250 people heard concerns expressed. Impacts to the waters and the fish in them go far beyond the shorelines and include alterations and damage to streams and rivers, upland pollution, highway drainage, threats at sea, and some downright dumb actions. A systematic knowledgeable approach has not been

undertaken. Dr. Gil Pauley presented scientific information that somehow has been sidestepped in the process to date; he found serious shortcomings in what had been presented as best science. Not enough questions are being asked of the so-called experts, and opposing views have not been discussed. Meaningful details are being left out and the public does not understand why. Details count in setting shoreline policies. With the help of a professional planning consultant, a look was taken at what would transpire with a series of improvements to properties under the current regulations; that was done following reports from numerous property owners who were subjected to extraordinarily burdensome permit processes fraught with uncertainty and lack of consistency, all at huge expense and resulting in negative impacts on the lakes. Independent legal counsel pointed out the actual requirements and exemptions in the state's regulations which seem to have evaded consideration. The public has been told that the issues and concerns have been addressed, but the draft regulations as they are released should be subjected to a litmus test of reality, balance, reasonableness and justice by the Commission.

Mr. Rory Crispin, PO Box 40443, said he previously addressed the Commission regarding the inappropriate and illegally enacted critical areas designations assigned to Lake Washington, Lake Sammamish and Phantom Lake by the city in 2006 after failing follow the shoreline procedural approval provisions set forth in RCW 90.58.090. Under the Shoreline Management Act, RCW 90.58.030, shorelines of statewide significance may include critical areas as defined by RCW 30.670A, but they are not critical areas simply because they are shorelines of statewide significance. The Growth Management Act has similar language in RCW 30.670A.480 where it is stated that shorelines of the state shall not be considered critical areas except to the extent that specific areas located within the shorelines of the state qualify for critical area designation based on the definition for critical areas provided in RCW 30.670A. Clearly shorelines in and of themselves are not critical areas. EHB-1653 passed by the legislature in March 2010 addresses when critical areas as defined by the state can be regulated in the shoreline area by enacting an ex post facto provision. The policy of the Shoreline Management Act as stipulated in RCW 90.58.020 is to increase use of and in the shoreline. There are no policies aimed at increasing use in critical areas. The policy regarding increased use of the shoreline was demonstrated when staff spoke to the Commission about the proposed aquatic designation which, as proposed, would extend down from the ordinary high water mark and would be open to use by the public for recreation if accessed from the water; the areas would not necessarily be accessible from the land through private property. Staff was wrong about the ownership of the residential submerged lands, also known as lands of second class adjoining, which are in private ownership within the Bellevue jurisdiction. The staff's scheme for the aquatic designation was to encourage the public to use and frolic in the nearshore second class shorelands, which does not fit with the notion of a critical area being protected. The lakes within the regulatory jurisdiction of Bellevue are shorelines of the state and as such are regulated under the Shoreline Management Act. They are not critical areas. The public would like to hear the Commission discuss that issue and come to a consensus before moving on. Homeowners are owed a clear position regardless of the regulatory mistakes made in the recent past so the city can move forward with proper Shoreline Master Program regulations.

Mr. Cole Sherwood, 3270 West Lake Sammamish Parkway SE, said he waited for a very long time for a permit allowing construction of a wheelchair accessible dock. The permit finally came through and the dock was built in accord with all applicable regulations. The height of the dock is approximately three and a half feet above the water, hardly a safe height for a wheelchair. The level of Lake Sammamish can drop as much as two feet or more in the summer months, making the dock even higher above the water, and making it even less safe for a wheelchair user. The requirement to plant vegetation in the buffer areas is exceedingly restrictive for someone in a wheelchair and makes the waterfront viewable but not accessible.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, brought to the attention of the Commission a study by the United States Geological Society focused on lawn runoff and phosphorus content; copies of the study were provided to the Commissioners. She said the concern that has often been voiced is that lawn runoff is contributing to phosphorus loading in local lakes. In some places, including Bellevue, large deciduous and conifer trees must be added to the shoreline vegetation. The USGS study, however, found that woodland canopies add considerably more nutrients, including phosphorus, to runoff than lawns do, whether the lawns were fertilized with phosphorus-containing products or not. Trees absorb phosphorus from the ground and release it when leaves and needles drop and subsequently decay. The Washington Sensible Shorelines Association wants to see further analysis conducted regarding the implementation of policies that require large trees to be planted on shorelines. The unintended consequence of the action would most likely add nutrients to the lakes, thereby creating more unwanted aquatic plant growth and further reducing optimal fish habitat during the summer months. No connection has been made between the proscribed processes and salmon rehabilitation.

Mr. Dave Douglas with Waterfront Construction said he had met privately with Heidi Bedwell and David Pyle to discuss some of the waterfront issues. He reported that they both listened very carefully to the concerns he raised. If Bellevue holds true to allowing impacted piers in the nearshore area to be moved further out, without losing overwater coverage and without requiring conforming status, the city should be applauded. Such an approach would work for both the environment and property owners. The Department of Ecology haphazardly adopted the RGP-3 standards for Lake Washington and Lake Sammamish without doing any research on their own; they duplicated reports from other areas, some of which were faulty. The actual finding for the RGP-3 for Lake Sammamish and Lake Washington by the Corps of Engineers, the National Marine Fisheries Service, NOAA and the United States Fish and Wildlife Service is not likely to have adverse effects. He said since 2005 he had worked on many waterfront projects that far exceeded the construction specifications recommended, primarily because the Corps of Engineers looks at things on a case-by-case basis. If the Shoreline Master Program adopts proscriptively all of the elements outlined in the RGP-3 like it did under the critical areas ordinance, most of the piers will become legally nonconforming. It will be necessary to look very closely at the WAC and RCW requirements relative to nonconforming structures as a result. Structures damaged to more than 75 percent of their market value, or structures that are moved at all, are required to come into conformance. A method for moving forward without going through a variance procedure should be identified, one that will keep Bellevue as the approving authority, not the Department of Ecology. If the proposed shoreline restoration procedures are enacted, land use attorneys will be making a lot of money in the coming years.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, called attention to Chapter 1, page 2 of 6 of the working draft, and the statement that currently no environmental designations exist for any city of Bellevue shoreline. He suggested that statement should be clarified given the ongoing cry against being regulated to the max.

Comprehensive Planning Manager Paul Inghram explained that the Shoreline Management Act calls for jurisdictions to identify sections of the shoreline with specific environment designations. Under Bellevue's current Shoreline Master Program rules, there are no different types of use categories for shorelines spelled out.

Mr. Dean Patterson spoke on behalf of FutureWise, 814 2nd Avenue, Seattle, a statewide organization involved with land use planning, including Shoreline Master Programs. He said one of the oldest tenets of water law is the public trust doctrine which in essence says the shorelines belong to everyone, not just shoreline property owners. He said the Shoreline Master Program should be crafted to protect the public's enjoyment and use of the shorelines, and the

right of the public to a healthy and functioning lake system. One of the most important ways to protect ecological function is to identify and protect natural areas that are healthy. Shoreline designations or environments can be used to that end. Requiring buffers and vegetation management is another important step toward protecting areas providing ecological functions; undeveloped areas should have larger buffers, and developed areas smaller buffers. Buffers have many functions which are described in the scientific documentation. The Shoreline Management Act includes a requirement to rely on the best available science in seeking to project ecological functions.

Commissioner Turner asked about the source of the public trust doctrine. Mr. Patterson said the oldest roots are in English law from pre-Revolutionary times. The doctrine is about the public's ability to use the waters of the state or the nation and is built into 200 years of case law.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said there has been a lot of talk about the science and inventory that has been done as part of the process. The report from The Watershed Company uses the word "armoring" extensively and includes qualifiers such as "extensive," "significant," "moderate," "majority," "heavy," "large amounts of," and "as expected." A close reading of the report would lead one to believe that the Bellevue shoreline is highly armored and as such is being harmed. Relying on the document would lead to the development of specific policies aimed at addressing the highlighted issues. The fact is the Bellevue shoreline is only about 36 percent armored, not 71 percent as stated in the report. The report says 53 percent of the armoring is related to vertical walls, but the real number is 26.2 percent. The report said 18 percent of the armoring is associated with rockeries, but the real number is 10.2 percent. Migratory fish travel during the late summer months when the lake water level is at its lowest point, and most erosion occurs before the lake hits its peak level in January through March. In all, 7.4 percent of the shoreline of Lake Sammamish is touching some form of armoring during the time the fish are running. From that standpoint, the lake has a high level of ecological function. The Shoreline Master Program update webpage to which the public can post questions for the city to answer has a number of links, very few of which actually work; there are links to very few documents that are referenced in the answers. The Department of Ecology documents state clearly that restoration is optional, especially for private property owners. In July 2000 The Watershed Company produced a report as part of the critical areas ordinance work; that document is being relied on as part of the best available science. The problem is it is all focused on rivers and streams.

Mr. Allen Aliff, 1426 163rd Place SE, pointed out that many from the public have information to present that cannot be adequately covered in only five minutes. That is one aspect of the process the public is upset about. The March 26 by the public brought forward a great deal of information, but not much if any of it is incorporated in the draft document. People are concerned about the loss of use of their properties, as well as excessive costs associated with coming into compliance, and violations of existing law. The process of coming to a final decision should be slowed to allow for fully exploring all of the issues.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. STAFF REPORTS

Mr. Inghram reported that the Bel-Red project was awarded a Vision 2040 award by the Puget Sound Regional Council. The award highlights public projects that demonstrate excellence in working toward achieving the regional vision. Vision 2040 is the four-county regional plan for growth in land use. The Bel-Red project spanned several years and a great deal of individual effort; it involved six boards and commissions, a number of Council meetings, Commission meetings, and staff and consultant time, and it is pleasing to be recognized for the work.

Chair Sheffels said the city is to be congratulated for its work on the Bel-Red project. She said the Commission worked diligently on the project and could be rightly proud of the outcome.

7. STUDY SESSION

A. Shoreline Master Program Update

Chair Sheffels noted for the record that the Commission had received several comments and written correspondence suggesting the city should simply adopt a Shoreline Master Program that matches the one adopted by the city of Redmond. She explained that one size does not fit all. The staff and the Commission will as part of the process look at what other jurisdictions have done and what is being planned. There will be no attempt to reinvent the wheel, but neither will there be an outright adoption of what works in some other jurisdiction. A thorough and thoughtful review and process will be undertaken, one that will result in a Shoreline Master Program that fits Bellevue and its shorelines. Bellevue residents deserve having the Commission and the Council spend time on the issue.

Continuing, Chair Sheffels clarified that work is under way on a working draft, not a final draft. It will continue to be refined as the process moves forward; sections will be added and paragraphs will be reworded. There is still plenty of time for the public to provide input, all of which will be carefully considered by the Commission as it deliberates the creation of the document.

Environmental Planning Manager Michael Paine introduced Legal Planner Catherine Drews and explained that her role will be to take direction from the Commission regarding regulatory concepts and policy and develop code language. Mr. Paine said staff recognizes the concerns of the community around a range of issues. He said every single issue, including the science objections, will be looked at in light of the specific code issues involved.

Ms. Drews said the draft Shoreline Master Program is important in that it continues Bellevue's legacy for providing citizens a quality living environment and further enhancing the quality of that living environment through the balanced management of the shorelines. She said the quality of living in Bellevue is reflected not only in the city's vibrant urban core, which is integrated with residential neighborhoods, but also in the city's beautiful natural areas and the numerous recreational opportunities those areas afford the citizens. The "city in a park" image is maintained through planning and environmental protections that balance forests with waters, residences, highways and high rises. The SMP working draft is a step forward in maintaining Bellevue's quality of life.

The working draft reflects the input received to date from the public. It has been crafted to meet the policy goals and requirements of the Shoreline Management Act. The document reflects planning for the present as well as the future.

Ms. Drews agreed with the comments of Chair Sheffels regarding the document being a preliminary working draft only. She said the document is intended to serve as a model for what

the Shoreline Master Program will generally look like in the end. It represents a compilation of baseline information taken from existing policies and codes, Department of Ecology guidelines, public input, and other local Shoreline Master Programs. The draft provides preliminary language and concepts as well as placeholders for future work. It is the starting point for the interactive policy and code development work that is just getting under way. The draft is not a staff recommendation, nor is it a perfect document. Continued public participation is encouraged and desired to help make the regulations and policies as good as they can be.

Ms. Drews said the proposed review principles were crafted by staff to help guide the Shoreline Master Program drafting process. She said the principles are consistent with the city's past approach to environmental regulation and its commitment to fully implement the Shoreline Management Act by balancing sometimes competing goals. The principles are intended to provide guideposts for both the Commission and the public understand the starting points, the ultimate destination, and the path that staff will need to follow to finalize the SMP. The regulations should reflect the fact that Bellevue is a highly urbanized area; as such the regulations should be designed to ensure no net loss of ecological function without going so far as to require predevelopment conditions. Neighborhood character is important in Bellevue; the vision of a "city in a park" has resulted in neighborhoods that reflect natural areas juxtaposed with the built environment. As the process moves forward, it will need to be inclusive of a wide range of stakeholders.

Senior Planner David Pyle explained that the working draft consists of a series of essential chapters supported by reference and definition sections. The document is structured to generally follow the format of the Land Use Code and to guide readers from course concepts to refined concepts. Each section of the draft starts with a discussion, moves through applicability, and then goes into actual proposed policies, each of which is accompanied by proposed regulatory concepts.

Mr. Pyle said staff has identified key topics that will be essential to work through. They flow from a review of the information received from the public, and from the work of writing the draft document. The key topics are setbacks and vegetation management; piers and docks; shoreline stabilization; nonconforming sites, uses and structures; and the general use provisions, also known as the use tables.

Staff will be sending to the Commissioners prior to each meeting a topic paper. The information will include the state WAC requirements from the guidelines, the relevant environment designation, the existing city rules and policies, a summarization of what other jurisdictions have done to deal with similar issues, a summary of citizen comments and concerns related to the topic, and proposed policy and regulatory concepts for the Commission to consider. The direction given from the Commission during each study session will be the basis for drafting code language.

Commissioner Ferris asked if it would be possible to identify the contribution of any applied regulations toward the ecological functions. That would steer the focus away from areas where there will not be much benefit and toward areas where the benefits will be much greater. Mr. Paine said staff intends to make the connection between the regulations and the identifiable benefits.

Commissioner Hamlin asked where the initial policies in the draft came from, if they came from staff sitting down and hammering them out or from existing policies. Mr. Pyle said they came from both of those sources. He said staff has listened carefully to the concerns voiced by the public at Commission meetings and in private conversations. The baselines are based on

everything that has been learned to date.

Commissioner Turner asked how the ecological and other benefits will be measured through the process. Mr. Pyle said staff could add to the discussion format an analysis of the benefits to the community for each of the topics in terms of ecological functions and community values.

Commissioner Himebaugh suggested that if a discussion of the benefits of regulations is to be added, a discussion of detriments should be added as well so the Commission can see both the pros and cons. Mr. Pyle agreed that would be a good idea.

Mr. Pyle said it will take a number of meetings to work through all the issues. He said a staff recommendation will be made available prior to the public hearing before the Commission. The Commission will then make revisions to the draft as deemed necessary, and when completed forward the document to the City Council in November for review and approval before being forwarded to the state Department of Ecology.

Chair Sheffels noted from the staff report that staff has held some small-scale meetings with certain stakeholders, but pointed out that the Commission has not been given any information about the topics covered and what, if anything, was decided. She suggested the Commission would benefit from having such information. Mr. Pyle said with the working draft released, staff is actively contacting the various stakeholder groups to gain concise reactions to the draft policies and regulatory schemes. He said staff will certainly keep the Commission in the loop.

Commissioner Ferris commented that during the Bel-Red study the Commission delved into such specificity as the types of materials should be allowed on the outside of buildings. He asked if the Commission will be asked to zero in on specific solutions that may be allowed for piers or bulkheads or planting areas, or if the Commission will stay with the more general policy issues with the specific details left to be worked out by some other group. Mr. Paine said the intention is to bring to the Commission an outline of each topic along with a couple of regulatory suggestions. Each outline will be sensitive to the range of comments. It will be incumbent on the Commission to select the option that will best represent the interests of the city, the state and the regulated community. The Commission will, of course, be free to accept or reject any staff-proposed solution. The regulatory language will not be tied down until there is policy direction in hand.

Chair Sheffels pointed out that the public continues to be frustrated with only having five minutes at Commission meetings to outline their concerns. She asked if the decision is made to hold focus groups on specific topic areas outside of a regular Commission meeting, the Commission would benefit from having a full report on the opinions expressed and the eventual outcomes. Mr. Paine allowed that the Commission should be open to that format, but stressed the need to keep in mind that the schedule is aggressive.

Mr. Pyle said there are some basic concepts that if not applied properly can lead to a lot of misinformation, confusion and distrust. A prime example of that is the use of a certain datum in measuring elevation. There are multiple datums out there, which engineers and surveyors understand, but the layperson reading a technical document is looking at specific numbers and may not understand the datum used; the result could be a significant difference in a number. For example, to accurately compare previous FEMA floodplain information, reported in National Geodetic Vertical Datum (NGVD 39), with current elevation information reported in NAVD 88, you must first convert the elevation reported in NGVD 39 to NAVD 88. In Bellevue, this may mean adding 3.6 to the elevation reported in NGVD 39, so an elevation 261 NGVD 39 becomes elevation 264.6 NAVD 88.

Commissioner Ferris suggested that there are only a handful of topics that can be classified as having the greatest sensitivity. He thought the Commission would benefit from having meetings focused just on those topics, with time set aside to hear from the public on those topics, all within a limited timeframe. Mr. Paine agreed.

Chair Sheffels noted that there seems to be a lot of frustration about the costs and time involved with permitting. She asked if that topic will be part of the discussion. Mr. Paine thought there could be a session focused on permitting. He commented that the critical areas code was written so as to allow people the maximum level of flexibility; it sets prescriptive regulations and then allows property owners to depart from them and build anything they want so long as they can show a better ecological result. The problem people are finding is that departing from the proscriptive path and proving another way would be better costs money and takes time. That is not to say that the ordinary prescriptive permitting process could not be done faster, more efficiently, and for less cost. The intent of staff with regard to the Shoreline Master Program is to also provide flexible options that will up to a point not require a great deal of scientific investigation; hopefully the Department of Ecology will accept that approach. However, in instances where a property owner wants to stray from the prescriptive path, there will need to be a scientific investigation.

Answering a question asked by Commissioner Turner, Mr. Paine said often the complaints people have with the permitting process relative to waterfront properties is the layers of regulation involved. They must start with Bellevue but they must also deal with the Washington State Department of Fish and Wildlife, the U.S. Army Corps of Engineers, and the Washington State Department of Ecology. Working through those layers takes a great deal of time, costs a lot of money, and triggers a lot of frustration. Bellevue staff are working with some of the agencies to get them to agree that within specific parameters a Bellevue permit will be sufficient to satisfy everyone. He allowed that the degree to which those talks will be successful cannot be predicted. An approach used by some communities has been to simply let the higher authorities have sway; Bellevue cannot, however, forgo its responsibilities under the Shoreline Master Program.

Mr. Pyle said an internal survey of the permitting records over the past ten years has been conducted by staff. That information has been graphed out and will be shared with the Commission. The interesting thing is that the number of enforcement actions outweighs the number of permits issued; that is evidence of the level of frustration with the community and the claim that the permitting process is an obstacle.

There was agreement on the part of the Commission to move ahead in studying the list of issues as outlined in the staff memo. Mr. Paine said staff was leaning toward starting with the setbacks issue.

Chair Sheffels said she wanted to see the issue of incentives discussed as the process moves forward.

Commissioner Himebaugh asked to what extent the issue of critical areas will be addressed. Mr. Paine said the issue of critical areas will not be relevant to the discussion for most of what the Commission will be doing. He allowed that there is no question that for those resources currently covered under the critical areas code, if they are in a shoreline jurisdiction they will be regulated under the critical areas code, though they will be called shoreline critical areas and will be brought into the Shoreline Master Program. There will be some pieces that will not survive the transition, and for them it will be necessary to apply some of the standards that shorelines

demands. For example, reasonable use will become a variance. The biggest objection the public has expressed is with the appropriateness of the city to apply the critical areas code to the shoreline; at the time there was no question that habitat was involved and that it was appropriate to regulate it under critical areas. The approach has been reiterated by the state and the rules will stay in place until the Shoreline Master Program update is completed.

Commissioner Himebaugh asked if it would be within the bounds of what the Commission is trying to accomplish with the Shoreline Master Program update to revisit the critical areas designations. Mr. Paine suggested the issue is simply not relevant in that the Commission will be looking at a totally different way of regulating the shoreline.

Commissioner Himebaugh said his question was how the Shoreline Master Program update will affect the critical areas designations, particularly the designation of shorelines as a critical area. Ms. Drews said the legislature recently passed and the governor signed SSB-1653, which states that critical areas that were adopted apply in the shoreline until a Shoreline Master Program is approved by the state Department of Ecology. Bellevue currently has critical areas provisions that apply on the shoreline. The city can choose to bring them into the Shoreline Master Program while still calling them critical areas, provided they are approved by the Department of Ecology.

Mr. Inghram said the proposal of staff is in fact to reopen the issue of critical areas as they relate to the shoreline only. The focus will be more on setbacks and vegetation management.

Commissioner Turner allowed that some of the angst expressed by the public is related to all the regulation that is required to make it all work. He asked if a strategy is being considered that would reduce the level of regulation, substituting some of it with incentives instead. Mr. Paine said when the process was first kicked off, the direction given by the Council was to port over the critical areas code and then focus on incentives, restoration plans and the like. That was lost sight of in the dispute over critical areas. There is a general consensus from the Department of Ecology down that incentives are the preferable way to go, though they are clearly not the only way to go. Every opportunity to include incentives will be sought.

Commissioner Ferris pointed out that the draft is not organized around the list of topics. The document is very complex and it would be helpful to know in advance of each meeting which sections need to be read in order to be fully prepared to participate in the discussion. Mr. Paine said staff will make sure that is done.

Chair Sheffels said during the process she would like the Commission to discuss whether any of the shoreline designations will result in a downzoning. Mr. Paine said there may be places where constraints will be placed on the infinite freedoms to use properties as desired; the density and yield may be the same, but it may not be allowable to put a house wherever wanted.

Commissioner Turner asked the degree to which the concept of “a city in a park” could directly impact how people are allowed to use their properties. Mr. Paine said Bellevue, unlike other jurisdictions in the area, still has a lot of trees. That character identifies the city and is something residents feel strongly about. There are a lot of existing regulations around tree preservation, though most of them are relatively modest in scope. Within the shorelines there may be some planting or tree preservation requirements, but they will be for completely separate reasons; the “city in a park” concept will not be the driver for those requirements.

Commissioner Ferris asked if floating docks are allowed as a solution to fixed pier docks. Mr. Paine said floating docks do not currently meet the current pier standards, though some of them

have been approved. That is one area where departures from the proscribed approach is allowed.

8. OTHER BUSINESS – None

9. APPROVAL OF MINUTES

A. March 24, 2010

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

10. PUBLIC COMMENT

Mr. Dave Rhadibah with the Department of Ecology thanked the staff and the Commission for moving into the areas of policy and regulation development. He allowed that the Commission will have a very busy summer reviewing the materials and reaching conclusions.

Mr. Rory Crispin, PO Box 40443, said he appreciated the clarification regarding the lakes themselves being called critical areas. He said he presumed that once the Shoreline Master Program document is completed, there will be some shuffling around and the deleting of certain ordinances or codes from one section because the solutions will be in the new document. It would be a good idea for the dozen or so owners of properties proposed for designation as urban conservancy to be provided notice with a distinct and separate letter given that such an action is a de facto rezoning. He agreed with the notion of getting staff and stakeholders together to talk about specific issues.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, commented that most docks on Lake Sammamish are constructed at the height they should be during the summer months. The fact is that during the stormy winter months docks get destroyed unless they are well anchored. In some parts of the lake, having a floating dock would be out of the question. The worst storms come from the south and the Bellevue shoreline takes the brunt of them. Any trees required by code to be planted along the shoreline likely would not survive the winter storms.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, suggested most homeowners want to do the right thing with their properties. The focus should be on education rather than regulation.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, stressed the need for the Commission to measure the benefits and carefully study the pros and cons of all proposed regulations. In each case, the problem that needs to be solved must be clear. Careful tracking of the water quality of the lakes needs to be done so that as events such as sewage spills occur it can be determined to what degree they contribute to the degradation of water quality.

Mr. Allan Allif, 1426 163rd Place SE, said each lake in Bellevue is unique and has its own set of circumstances. Each one will need to be looked at differently, and in some cases the regulations will need to be specific to different parts of each lake.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, asked the Commission to be clear about how ecological functions should be measured in a dynamic system of lakes that change from season to season and from location to location.

11. NEXT PLANNING COMMISSION MEETING

A. May 26, 2010

12. ADJOURN

Chair Sheffels adjourned the meeting at 8:57 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Pat Sheffels
Chair of the Planning Commission

Date